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President Muhammad Daud Khan came into power on 17th July 1973 through a coup, declaring Afghanistan to be a Republic. The Constitution of 1964, along with its independent judiciary was abolished. Republican Decree No. 3 was issued to run the judicial affairs of Afghanistan, in the new Republican revolutionary era. Hence it was meant to replace the entire chapter seven of 1964 Constitution, dealing with the judiciary. The powers entrusted to the King regarding the judiciary were transferred to the President of the Republican State with effect from July 17, 1973, whereas the specific Constitutional powers of the Chief Justice were transferred to the Justice Minister1. The powers of the Supreme Court given in the Constitution of 1964 were transferred to the High Judicial council.

The Justice Minister was empowered to appoint the judges, subject to approval of these appointments by President of the State. The judges already serving were required to take the following oath to be able to preserve their judicial authority2.

“I Swear in the name of God Almighty to perform judicial duties honestly and with dignity and respect to the tenants of Holy Islam and other values of the Republic of Afghanistan and decrees and laws of the state, to preserve the secrets of my duty and to be loyal to the Republican state of Afghanistan.”

The Law on jurisdiction and organization of courts 1967 was abrogated, but the provisions of the law ‘not contravening’ with Republican Decree No. 3, were retained and were enforceable as ‘Law on jurisdiction and organization of the judiciary of the Republic of Afghanistan’. The courts were instructed to settle cases under provisions of the Republican decrees and state laws not contraving the values of

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Republicanism. In case of no guidance provided in the above laws, decisions could be issued in pursuance of the general principles of the Hanfi Fiqah of Islam and within the limits of instructions given in the Republican decrees, to ensure justice in the best way. The court organization, other than the Supreme Court, however, remained unchanged.

The executive and legislative powers were concentrated in the President of the Republic. The judiciary, granted an independent status under the 1964 Constitution, was merged once again with the Ministry of Justice. As an organ of the executive branch, the Ministry of Justice was responsible to the President and Prime Minister, Mohammad Daud. The Republican Decrees abolished all notions of the separation of powers of government. With the suspension of the 1964 Constitution, the Constitutional guarantees on democratic rights and liberties were also brought to an end.

**Organization of the Ministry of Justice**

The Minister of Justice, ex officio Attorney General of Afghanistan, was made chairman of the High Judicial Council, to which powers of the Supreme Court were transferred. Head of the Cassation Court, Deputy Attorney General and Deputy Minister of Justice for Administrative Affairs were also ex officio members of the Council. Other learned persons could either be directly appointed by the Prime Minister or on the recommendation of the Justice Minister. Seven members of the High Judicial Council in 1975 were as under:

1. Dr. Abdul Majid, Minister of Justice, Chairman of the council.
3. Abdul Basir, Head of the Cassation Court.
4. Sami Ud Din Zhouand, Deputy Minister of Justice.
5. Abdul Hadi Hedayat, Deputy Attorney General.
6. Dr. Said Afghani, Administrative Court for Judges.

The High Judicial Council was responsible for organizing the structure and procedure of the courts, setting the basic policy for the judicial system and supervising the administration and modernization of Afghanistan’s judiciary and judicial system. Research Department of the judiciary was responsible for carrying out research work and recommending legal standard of the judges and giving opinions on the
matters of the law. Keeping the judiciary updated about new developments in the law was also responsibility of the Research Department. Seminars were important means of achieving this objective. Through such seminars of judges, the Research Department also collected information about actual problems being faced by the local judges in the field. The judges were assisted in solving common problems and developing unified judicial attitude. It also published “Qaza’, monthly law journal of the judiciary department. The ‘foreign relations’ sub-department was responsible for the international affairs of the judiciary. The inspection department carried out inspection of the courts of Afghanistan about mal-practices, inspection for handling of a specific case, or a general inspection of all work of court.

Supervision of the registration of judicial and semi-judicial documents and deeds was responsibilities of the central Department of registration of documents and deeds. It provided guidance to the Documents Registration offices and primary courts, about various problems faced in the registration. The guidance covered the area like interpretation of the marriage and divorce law, the law of real estate, the inheritance law, mortgage law and rules about land lord and tenant relations. The Petition sub department processed thousands of extra judicial petitions, annually, addressed to the High Judicial Council. These petitions were about delays in receiving justice and other bonafide complaints against the judiciary. Traditionally, these complaints were brought in person, or in the forum of petition drafted by professional scribes, to the High Judicial Council in Kabul. The Secretarial Department also handled the routine paper work of the Chief Judicial Administrator. Personnel Department of the judiciary, was responsible for administration of the employees of the judiciary. It handled the appointment, removal, promotion and retirement of judges and other administrative employees of the judiciary and formulation of policies for them. The Administrative Department handled the financial and procurement problems of the judiciary. It worked through accounting, servicing, building, mail, budget and comptroller sub departments, having various sub-divisions; it also prepared both current and capital budgets for the judiciary, with final approval of President of the republic.

**Court Structure**

**The primary courts:**
The primary trial courts were located in the principal populated centers of the country. Each sub-division or district of a province had at least one primary court. Total number of primary courts in Afghanistan was 225. Under Republican Decree No.3 these courts were empowered to try all cases except those clearly given by law to other courts. Traditionally the primary courts handled two types of cases, customary non-statutory criminal cases and customary personal law matters. In exercising criminal jurisdiction the primary courts would deal with theft, assault and murder cases. They did not handle cases involving statutory crimes such as crimes committed against the public interest, forgery, smuggling, embezzlement or bribery. In exercising civil jurisdiction the primary courts handled customary law cases involving inheritance, marital relations and land ownership. They did not deal with cases involving statutory matters such as disputes concerning commercial contracts, suits cases according to Shariah (Islamic law). Later on, primary courts outside the city of Kabul were also empowered to exercise jurisdiction over traffic offences, enforcing the Road Traffic Act. Decisions of the primary courts were not appealable in cases where value of the case was less than 5000 Afghanis or the case was about petty offences.

Each primary court consisted of a presiding judge, one or more member judges, depending on the population of the community, a clerk and one or more assistant clerks. The presiding judges and member judges were mostly graduates of the Faculty of Islamic Law of Kabul University and judicial training center. The presiding judge and the member judges was a panel in hearing almost all cases, with a decision made by a majority vote. The member judges participated non rendering decisions. Sign opinions and preside in the absence of the presiding judge. The clerks and assistant clerks had the responsibility of assisting the judges in processing the procedural matters of the court, docketing cases, setting trial dates and entering decisions in the records. The clerk received and replied correspondence, maintained records and statistics, levied court fees and prepared copies of the court’s decisions.

The Provincial Courts:

The provincial courts were the intermediate courts of appeal for customary law questions and were located in the capital of each of the Afghanistan’s 26 major and 6 minor provinces. Each provincial court handled the appeals from four to eleven or twelve primary courts depending upon the number of sub-divisions, which made up the
province in which the provincial court was located. While acting as appellate court the provincial court not only considered the question of law but also examined the evidence presented in the case. The provincial courts were also trial courts of exception, having original jurisdiction over certain types of cases governed by statutory law. Each provincial court was composed of a presiding judge and not less than three member judges. Traditionally, most of these judges had served as judge of lower courts for many years. Most of the provincial courts were divided into three chambers, the chambers of customary criminal and civil law, public law and public security. Typically, each of the chambers consisted of three member judges. In more populated areas with a greater workload, more than three judges could be assigned to a chamber. In such over populated provinces, judges could sit only in one of the chambers. In less populated provinces a judge could sit alternatively in more than one chamber.

The chamber of customary criminal and civil law handled only appeals from the primary courts, including the traffic appeals. The chamber of public law handled the original trial of cases involving the state as a party. Such cases also included condemnation cases and suit by government employees for retirement rights. In some provinces the chamber of public law also heard trials of commercial cases, while in other provinces there were specialized primary courts for commercial law problems. The chamber of public security handled statutory criminal matters other than customary crimes. Such crimes included embezzlement, fraud and crimes relating to official duties of the employees.

The presiding judge of each of the provincial courts was both a judicial and administrative officer. As a judge he participated in meetings of all the chambers and castled a vote. As an administrative officer he was responsible for the proper functioning of the provincial court and the primary courts located in the area of his jurisdiction. As such, the presiding judge had general supervisory duties including powers of appointment, transfer and disciplinary action against lower employees of the court. He was also to formulate the policy for the primary courts and administer the decisions and policy of the High Judicial Council and the Chief Judicial Administrator. The Kabul provincial court had two additional chambers, the chamber of Traffic Appeals and the chamber of Narcotic crimes. The chamber of traffic appeals was an appellate chamber only, handling appeals from the Kabul primary traffic court. The chamber of Narcotics crimes was a trial court having original jurisdiction over cases involving violations of Afghanistan’s Narcotics
laws. According to Abdul Bari Chairat, unlike other provincial courts’ the provincial court of Kabul had separate chambers of civil and criminal cases.
The Central High Court of Appeals:

The central high court was court of appeals from many of the special trial courts and the trial chambers of the provincial courts. This important court located in Kabul was comprised of a presiding judge and not less than five other member judges. It was divided into narcotics, penal division (public security) commercial and public law chambers. The Narcotics chamber of the Central High Court of appeals dealt with cases appealed from the Narcotics chamber of the Kabul provincial court and Narcotics cases appealed from the public security chambers of the other provincial courts. The public security chamber of the Central High Court of Appeals handled all appeals from the public security chambers of the provincial courts (Narcotics cases being an exception) from the Warehouse and specialized court for central civil servants. The commercial chamber of the Central High Court of Appeals had jurisdiction over appeals from all of the specialized primary courts of commerce and over appeals of all commercial cases from the public law chambers of the provincial courts. The public law chamber handled all appeals from the public law chambers of the provincial courts (commercial cases being exception). In its appellate jurisdiction, the Central High Court of Appeals was empowered to examine both questions of law and questions of fact. The court had the authority to reverse, modify, reject, amend or confirm cases referred to it. Besides the Central High Court of Appeals at Kabul, establishment of two more similar courts was proposed keeping in view inconvenience and expenses involved for the litigants in provinces far from Kabul. Later all these three courts were to cater for appeals from courts of Central Afghanistan, Southern and Western Provinces of Afghanistan, and western provinces of Afghanistan.

The High Court of Cassation (Tamiz):

It was the highest court of appeals in Afghanistan after dissolution of the Supreme Court under republican degree No.3. The court of Cassation located at Kabul had a President and 14 members. It was divided into three chambers, the chamber of customary criminal and civil law, the chamber of public law and Administration, the chamber of commercial law and the division of police appeals. The president of the court was ex-officio member of the high judicial council. He also participated in decision making by each chamber of the Cassation court. Each chamber of the court used to sit independently to hear cases within its own
Although the judges often consulted each other, all judges of the court did not join for decision making in ordinary cases. However, full session of the court was required to be held where the court wanted to over rule a point of law previously decided by the same court.

The chamber of customary criminal and civil law consisted of seven judges particularly skilled in interpretation of Islamic law. Any three of these judges could act as quorum in a case. This chamber was further sub-divided into civil and criminal sections. The cases handled by this chamber came to it on appeal from the customary civil and criminal law chambers of the provincial courts of appeal. This chamber also acted as highest court of appeals for traffic offences. The chamber of public law and administration of the Cassation court consisted of three members, any two of whom could act as a quorum in a case. It handled appeals from the Narcotics, public law and public security chambers of the Central court of appeals. The chamber of commercial law also consisted of three judges, any two of whom could sit as a quorum. It was the final court of appeal for all the commercials cases. The court of Cassation had no jurisdiction to reopen issues involving question of facts; it examined only question of law in appellate jurisdiction. In case of reversing decision of a lower court, the Cassation court did not sent back the case to the court whose decision was reversed but he case was referred to a ‘sister’ appellate court or chamber.

Courts of Special Jurisdiction:

1. **The Court of Central Civil Servants:**
The specialized court for central civil servants had original jurisdiction over criminal suits alleging malfeasance by members and employees of the national ministries, government enterprises and attached provincial projects. Matters of malfeasance by employees of provincial governments not related to the central government were not handled by this court but by the public security chamber of the provincial courts. Appeal from the specialized court for central civil servants lied in the penal division (public security chamber) of Higher Central Court of Appeals.

2. **The Juvenile Court:**
The Kabul Juvenile court had jurisdiction over offences committed by persons under the age of 15 years. Its proceedings were secret and its decisions were not subject either to publication or appeal. Persons sentenced by this court were not kept in prison but in special
juvenile locations. Outside Kabul a similar function was performed by a judge of the Provincial court specially assigned to juvenile matters.

3. **The Ware House Court:**
   The warehouse court dealt with claims against ware housemen and claims of theft or embezzlement of public property from public depots. Appeal from this court also lied in the penal division of the Central High Court of Appeals. The warehouse court was situated in Kabul.

4. **Kabul Primary Traffic Court:**
   A special court called the Kabul Primary traffic court decided cases involving traffic in Kabul. Appeals from the Kabul traffic court went to the section of traffic appeals of the customary criminal law chamber of the Kabul provincial court.

**Police Courts:**

The Ministry of Justice and the Ministry of the Interior, which had jurisdiction over the police, entered into a protocol relating to police courts in March 1947. This protocol provided for the establishment of a new court of special jurisdiction, the police courts with appeals to a new division of police appeals in the *Tamiz High Court*. Accordingly the police courts and the division of police appeals were established. Under the protocol the police courts had jurisdiction over cases involving crimes committed during the execution of their duty by police officers, employees of the police department, and jointly by police officers or employees and law officers of other departments.

5. **Kabul Commercial Court:**
   A specialized primary court of commerce, handling trials of commercial matters was located in Kabul. Specialized primary courts of commerce were also established in some provinces with large population and business activities. Appeals from these courts went to the Central High Court of Appeals in Kabul.

6. **Special Court of Government Property:**
   The specialized Primary Accountability Court had nation wide jurisdiction over persons who embezzled or otherwise
misappropriated government property. The accountability division of the Prime Ministry performed investigations. The court could award criminal sentences and restitution of the money or property. Appeals from this court went to the central high court of appeals and then to the court of the Cassation. Before formation of the special court of government property, trial of these cases was conducted by the specialized court or central civil servants. Da Imlaki Nehae Dewan (chamber of last resort in property cases) was proposed to be established in Kabul. So court of Government property had specialized jurisdiction over primary and Cassation level, with no specialized Murafia jurisdiction.

7. **Special Family Courts:**
   The special primary family courts were established in Kabul and Heart. These courts had jurisdiction over marriage, divorce, alimony, and dowry matters. Such cases used to be heard by the primary courts. The chamber of customary civil law of the provincial courts heard appeals. Usually, judges of the above special courts were appointed from graduates of the faculty of law and Political Science of Kabul University and the judicial training center.

8. **Da Qazyano Aali Mahkama (High Court of Judges):**
   It was established under clause 10 of the law of jurisdiction and organization of courts in Afghanistan. It adjudicated crimes of the judges relating to their official duties. This court consisted of all members of the High Judicial Council including its president. It was the highest court in a sense that it had no primary or appeal jurisdiction. It used to award punishments including imprisonment, declaring a person unfit for judicial duties and termination from service.

**Judicial Reforms**

During pre-Constitution period of Sardar Muhammad Daud Khan, following judicial reforms were worth mentioning:

1. **Judicial Statistical Reporting:**
   The research department of the judiciary under the direction of the chief judicial administrator, prepared series of questionnaires, to which the courts had to compile replies in their monthly progress report. Different forms for each type of court were first introduced in
June 1974. It was required to report on monthly basis, number and type of the cases under consideration, the number of cases in which trial has been delayed, time involved from entry to decision in each case, the nature of decision and whether the case was appealed. In criminal cases the courts were also required to report the time taken by the police and prosecutors to investigate the case, the length of time, if any, during which the accused was imprisoned prior to trial, whether the accused had been released on bail and the type of sentence awarded. Appellate courts were also required to report on the number of cases affirmed or reversed and the time taken to reach a decision. It was expected that the judicial statistics would be helpful in proper formulation of assignments for the judicial and administrative personnel, keeping in view the caseloads of the courts. It might also be helpful in detecting court congestion and delay, where it occurred. For achieving this objective, creating a uniform system of reporting similar statistics for the courts network, and educating hundreds of judges and court clerks in reporting methods were significant development of the year 1353 Hijri Shamsi (March 21, 1974 to Mar 20, 1975)\(^\text{29}\).

2. **Establishment of Re-Conciliation Tribunals:**

After investigating the problem of court congestion and delay, the research department of the judiciary concluded that much judicial time was being taken up by basically inconsequential cases. Therefore, the High Judicial Council adopted a plan, on the recommendations of the judiciary, to establish a system of reconciliation tribunals to mediate the disputes. The reconciliation tribunals were supervised and administered by the local reliable elders chosen with the assistance of the locals themselves. The elders used to perform these honorary duties in the local mosques and attempted to reconcile differences between conflicting parties in civil cases and solve the problems arising out of petty offences. Litigants could bring their disputes to the tribunals in the first instance or the local primary court judge could refer appropriate cases to the tribunals. A decision of the tribunal had no legal force, unless accepted by all parties to the case. In case of non-acceptance by any party, the matter was referred to the regular court system, but the court had benefit of initial issue framing and some judicial work by the re-conciliation tribunals\(^\text{30}\).
The re-conciliation tribunals were according to the temperament of Afghan society. Islam urges solving of disputes through mediation. So the Afghan judges have traditionally urged the parties to solve their disputes preferably out of courts. The tribal elders often settled disputes by bringing the parties together in conciliation meetings. Moreover, by making welders sit in a mosque, the judiciary hoped to put behind the tribunals the force of Islamic religious principles and the prestige of honest and pious local elders. Additionally, by giving the local people a major say in the choice of panelists, the judiciary was making the tribunals more democratic and decisions of the tribunals more acceptable by the people. An eventual objective of this exercise was to train the people in the practice of democracy and in solving their own problems. In May 1974, the tribunals were established on an experimental basis in two outlying localities of Kabul province. One of the tribunals was able to resolve 52 out of 59 disputes referred to it in a single month, only seven disputes were referred to the primary courts. Based on these results the judiciary quickly started establishment of such tribunals, by April 1975 more than 70 re-conciliation tribunals had been established with more than 300 members. Formation of such tribunals continued with the goal of eventually creating a nation wide system of tribunals.

3. Re-organization of Certain Courts:
   During this period some courts were re-organized to meet the judicial requirements of the country. The warehouse court was re-organized and made a permanent court. The police court and its corresponding police appellate section of the Cassation court were established. The traffic courts were re-organized with appellate jurisdictions. A seminar of judges from all over Afghanistan was held in Kabul to review traffic problems. The emphasis on traffic problems reflected the extremely rapid increase in the number of motor vehicles and length of paved roads in Afghanistan. Several new courts, including intermediate appellate courts for northern Afghanistan and western and Southern Afghanistan, and new trial courts for domestic relations and certain accountability cases were also established.

4. The Administrative Reforms:
   The Supreme Court was re-organized as a high judicial council. The Research department was re-organized to enable it to play an effective role in the administration of the court system. Rules and regulations and job descriptions were issued for each of the
departments of the central administration of judiciary. In late spring of 1974 offices of the judiciary were moved from its then antiquated headquarters, into far more spacious and better buildings at Darul Aman place. Besides other advantages, this measure resulted in providing sufficient spaces for the new central law library of the judiciary. The library established in October 1969, was one of the most modern libraries in Afghanistan.

The Constitution of 1977

The Republican decrees functioning as a Constitution remained in force for about three years. In 1977, the fourth Constitution of Afghanistan was promulgated. The Constitution of 1977 restored the Supreme Court of Afghanistan, earlier amalgamated in the High Judicial Council as per Republican Decree No. 3. The Supreme Court consisted of eight justices and one chief justice, all of them were appointed by the President for a renewable term of five years. All members of the Supreme Court were required to take oath prescribed in article 108 of the Constitution, before assuming their office. A judge of the Supreme Court was required to have the following qualifications:

1. Should have attained the age of 40,45 years in case of the chief justice.
2. Should have acquired Afghan citizenship, at least ten years prior to date of appointment.
3. Should not have been sentenced by a court with deprivation of political rights.
4. He should have sufficient knowledge of national objectives, legal science and the legal system of Afghanistan.

The Supreme Court had a power, equal (though theoretically) to the executive and legislative branches of the government, all courts of the country being subordinate to the Supreme Court. However, separation of power was actually non-existent. Virtually all the legislative, executive and judicial authority rested in office of the president. Chapter IX of the Constitution of 1977 elaborated the judiciary. According to the Constitution it consisted of the Supreme Court and other courts, the number of which was to be determined by law. The judges were to be appointed by the president of the republic and they could be dismissed on the ground of committing an offence, with the approval of the president of the republic, upon recommendations of the Supreme Court, according to provisions of the law. It may however, be
mentioned here that under the Constitution, the Supreme Court was to be established in Sartan 1357 Hijri Shamsi, but before reaching the above date, the Constitution was abrogated through a coup in April 1978. Hence Supreme Court could not be established during the period of Sardar Muhammad Daud.

CONCLUSION

President Muhammad Daud Khan had come to power, in July 1973, closing chapter of monarchy in Afghanistan, and promising justice and rights to all the Afghans. He abolished Constitution of 1964, implemented by ex King Zahir Shah, and judiciary lost its independence and impartiality as third organ of the state. Supreme Court was abolished giving all powers to the “High Judicial Council”, Minister of Justice became a powerful person, exercising all judicial powers including that of the Attorney General. Full executive control over the judiciary, instead of its previous independent status, de-powered the administration of justice. President Daud ran the administration of justice, according to needs of his government. Though he supervised some how effective system of justice including the special courts, he was not prepared to give independence to the judiciary, even the Supreme Court was not allowed to function. Through his Constitution of 1977, President Daud wanted to give fundamental rights to the people and re-establish the Supreme Court. But the Supreme Court was to be re-established in sartan 1357, whereas the Socialists in Afghanistan succeeded in bringing a coup, before the target date of the Supreme Curt, in April 1978. Daud Khan regime could not restore the Supreme Court or give any significant relief to the masses.

References:
1. Clauses 1, 2, 3, Republican Decree No. 3, July 26, 1973.
2. Ibid. Clauses 10 & 11.
4. Ibid. Clause 12.
5. Ibid. Clause 7.
8. Ibid. p. 4.
9. Ibid. p. 5.  
10. Ibid. p. 6.  
11. Ibid. p. 6.  
12. Ibid. p. 7.  
13. Ibid. p. 9.  
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25. Ibid. p. 15-16.  
30. Ibid. p. 21.  
32. Ibid. p. 22.  
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