

## The Development of Civil Laws in Balochistan

*Social Sciences and Humanities*

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### **Abstract**

*The Historical background of Act V of 1908 containing the provisions of Civil Procedure Code was enacted on 21st March 1908, its purpose being to consolidate and amend the laws relating to the procedure of Courts of Civil Judicature. Prior to this enactment three Codes held the field. First Code of 1859 (Act VIII of 1859) as amended in 1860, 1861 and 1874. Second Code of 1877 (Act X of 1877) as amended in 1878 and 1879 and the third Code of 1882 (Act XIV of 1882) as amended in 1882, 1883, 1892, 1894 and 1895. The code regulates civil proceedings involving the assertion or enforcement of civil rights as mentioned in (PLD 1970 S.C page-1). The provisions of the Code being procedural are intended to be interpreted liberally in the interest of adjudication of all the questions involved in a list and in order to avoid multiplicity of the proceedings. The inherent power of the Court should invariably be exercised generously and technical hurdles are always bypassed for consideration of effectual adjudication and inexpensive access to justice. (PLD-2002 SC-1111).*

*The above mentioned three different civil laws are being implemented in the province of Balochistan. The people belonging to tribal society having their own tribal pockets and they are enjoying their customs and traditions of their tribe, which are still intact and being decided by the religious persons they mostly accept the decisions of Islamic Jurisprudence and normally matters are being amicably decided out of courts to avoid wasting of time, money and very chronic litigation. So, according to need of the time, the laws were changed, modified and amended by the rulers of the time. Above-mentioned civil laws having their own affects in the different places of Balochistan province. It means that people are accepting the same from the core of their hearts.*

**Key Words:** Balochistan, Civil laws, Dasturul-Amal Diwani Kalat

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## **Demography of Balochistan**

The demography of Balochistan is very vast because area-wise Balochistan is approximately half of Pakistan and area of Kharan District is approximately equivalent to the area of the province of Khyber Pakhtoon Khawa (KPK) but with thin population and tribal balanced society. Every tribe is implementing their own Code of Ethics and minor disputes are being resolved by the elders of the tribes or the honest white-bearded persons, and decisions were accepted by the parties, disputes were resolved once for all. The area of Dasturul-Amal Diwanl Kalat is quite clear which means the former Kalat state consisting upon the following districts:

(1) Mastung (2) Kalat (3) Khuzdar (4) Awaran (5) Lasbella (6) Kharan (7) Panjoor,(8) Turbat (9) Gawadar (10) Bolan (11) Khachi (12) Nasirabad (13) Jhal Magsi. Dasturul-Amal Diwanl Kalat is a procedural law, the substantive law is Holy Quran and Sunnah which is mentioned in the Section I of the said law.

## **Dasturul-Amal Diwan-i-kalat, 1952**

1st document of Dasturul-Amal Diwani Kalat came out which was amended on 21st of Moharum 1345 Hijri approximately in the year 1925 by the consent of His Highness Khan of Kalat, and the same has been formulated in the light of directions passed by Khan Naseer Khan Noori in the year 1159 Hijri and published on 25th of Jamadi-us-Sani 1156 Hijri.

That the said FARMAN was issued from the office of Khan of Kalat again on 6th November, 1937 regarding civil disputes. Copy of the same is attached.

These both documents are in Persian language.

The Dasturul-Amal Diwani Riyasat Kalat having State of Mekran was implemented in 1950 which has been signed by AALA HAZART BAIGLER BAIGI KHAN OF KALAT on 13th of December, 1949 issued in March, 1950.

Dasturul-Amal Diwani Kalat was promulgated during the area 1951; later on the same was amended in 1952. The same law was dealing with the Civil matters in the areas of Baluchistan States Union consisting upon Riyasat-e-Kalat, Mekran, Kharan and Lasbella which is approximately 90% area of the present Baluchistan. The same law is so simple which consists upon 27 Sections only. It is a procedural law, because in this law it has been

mentioned in section 11 that all the Civil disputes will be decided according to the Sharia/Islamic (Laws) and in case of non-Muslims the same will be decided according to the Customs, tradition and Panchaiat. All the cases were being decided by the Qazis having the knowledge of Islamic Laws and appeal is being filed in the court of Majlis-e-Shoora through two senior most Qazis who are hearing the same and deciding the appeals. The District & Session Judges were declared as President Majlis-e-Shoora. In Gwadar, Dasturul-Amal Diwani Kalat was promulgated on 08th of September, 1958 when Gwadar became the part of Pakistan by Presidential Order of 1958 and other laws were also become applicable in Gwadar by the Federal Government. The Ordinance, 37 was promulgated in 1960. But in certain areas in Baluchistan like Hub Town including the Industrial Area was excluded on 07th of September 1986 and the powers were transferred to civil Judge and decided. It is very comprehensive law and since 1952 it is still applicable in the former Baluchistan States Union which was promulgated on 15th of August, 1955 by the Ruler of Kalat and Minister of Justice having Notification No.397 dated 21st of July, 1955 and two or more than two Qazis were mentioned as Member of the Majlis-e-Shoora for hearing of the Appeals.

Another development was issued in 1984 in the Presidential Order No.32 of 1984 where all the Civil suits were authorized to be filed directly in the court of Qazis instead of filing the same in the court of Assistant Commissioner or Deputy Commissioner as per past practice who were empowered at the time to obtain the written Statement and to frame issues and after that sending the cases to the Qazis Court for further proceedings.

It was great development because in past lot of cases were pending with the Administrative Authorities like Assistant commissioners and Deputy Commissioners and deliberately they were avoiding for issuing summons/notices to the respondents and peoples were facing lot of difficulties for getting justice. It is also pertinent to mention here that the Civil Procedure Code 1908 is also applicable being Federal Statute and that override with Dasturul-Amal Diwani Kalat, for this reason where Dasturul-Amal Diwani is silent, all the proceedings are being completed in the light of Civil Procedure Code, 1908 which is very exhaustive Civil Law in our country. After amendment in Dasturul-Amal Diwani Kalat, they were empowered under section 122 CPC to decide the matters in accordance with law keeping in view the system of judicial justice and to remove Administrative difficulties. Dasturul-Amal Diwani Kalat since 1951 still exists in the area of Balochistan and it is not out of place to mention here that

on 14th of October, 1955, Kalat State was merged into West Pakistan and on 09th of June, 1960 the Federal Law which was called Law Reforms Ordinance, 21 of 1960 was promulgated. In this Ordinance it was mentioned in the Schedule -1 but in Dasturul-Amal Diwani Kalat was not mentioned in the said schedule so the same is still intact and through this Ordinance the Civil Procedure Code of 1908 was extended in the whole of Riyasat-e-Kalat.

In this connection, it is pertinent to mention here that a case Dost Muhammad Versus Rais Satak was filed in the West Pakistan High court and it was held that the Law Reforms Ordinance has not changed the entire Dasturul-Amal Diwani Kalat except the corresponding sections, which are identical to the Civil Procedure Code 1908. (PLD-1962-Quetta-Page-82).

After this decision, another case was decided in 1966, which was quite different decision from the above-mentioned case. Reference is invited to PLD-1966-Quetta-44. After these two conflicting judgments in 1973, through a Reference the same were referred to the Full Bench whether the Section 24 of Dasturul-Amal Diwani Kalat exists in the light of Law Reforms Ordinance, 21 of 1960 or otherwise? The Full Bench considering these points and after creation of one unit in West Pakistan, different laws were applicable and it was need of the time to be considered for uniformity so the Federal Law including CPC 1908 was also declared applicable in Riyasat-e-Kalat as mentioned in the former Balochistan States Union and in this connection first time in 1973 two parallel civil laws became enforceable in the Province of Baluchistan. The Civil Courts also decided that after implementation of Federal Law the Civil Court Ordinance, 1960, the Dasturul-Amal Diwani Kalat was not repealed, only two sections which were not corresponding sections of Civil Procedure Code, and in such circumstances CPC was declared to override the Dasturul-Amal Diwani Kalat. Considering the above mentioned discussion it is quite clear that Dasturul-Amal Diwani Kalat 1951 is purely in accordance with Civil Procedure Code, 1908 for this reason it was not repealed and being simple and comprehensive law and acceptable to the general public of the area for deciding their civil disputes according to their Customs, traditions and in the light of golden principles of Islamic /Sharia Laws.

That prior to these laws, all the Civil disputes were going to be decided according to the Customs and traditions but keeping in view the Sharia, and the Naib Tehsildars were empowered to decide the same and in case of decree, 5% was obtained for States expenses and that was deposited in the account of Khan of Kalat. It is quite long story but however in nutshell the civil matters decided separately and criminal matters were decided by

separate Jirga. Khan of Kalat in 1905 established its districts and subdivisions within the areas of State with the approval of the Agent to the Governor General present at Quetta. It is also not out of place to mention here that in 1839 after martyr of Khan Mehrab Khan Shaheed, the Britishers also kept their eyes vigilant upon the Kalat States and passing directions on time and again so Native Assistant were also appointed in 1905 and the Qazi Jalal-din was the prime Minister of the State. All the matters were being decided, Civil and criminal by the Political Agent including political, civil and criminal minor offences were being referred to the Political Agent and the court fees was 8 Anas on criminal complaints and 7 % % court fee on civil matters. The Shahi Jirga was also holding the session at Quetta in summer season, and in winter season in Sibi where the major crimes like murder, Zina, theft etc were being decided as referred by the Political Agent of the area.

In the history Khawaneen Kalat in 1530 when the Kalat State was established all the cases were being decided by the Local Jirga but in 1666, the forefathers of Khan of Kalat derived towards Islamic Sharia and Khan Naseer Khan Noori was a religious person and he has also written Holy Quran by his own hand writing and that is placed in Shahi Mehal Kalat. Actually he started appointing the Qazis for deciding the matters in between the parties of different areas so the Qazis were performing their duties without proper procedure at that time however, they were keeping in view the Islamic Laws and deciding the matters according to Sharia.

In 1905 levies force was also established in different areas of the State to control the law and order situation whereas in Dera Bugti the peoples were going to walk upon the live wooden coals for proving their guilt or innocence whereas in Jhal Magsi in a lake the peoples were crossing the water for the said purpose and it was presumed that if the person is guilty. he will not be able to cross the entire or some water. The same analogy is derived from the incident of Hazrat Ibrahim Alla-e-Islam because he was on truth and the fire had not given him any harm and second one precedent derived from the Hazrat Moosa Alla-e-Islam who crossed the water alongwith his companions because they were on right path.

In past thieves were going to be traced by the trackers according to the personal knowledge of the said kind of persons and they were tracing the same for controlling the crimes in the society, later on in each and every sub division the Qazis and Naib Tehsildars were appointed in different area of the State. Qazi court were mostly deciding the civil matters, family disputes and

the cases of inheritance and receiving the Mehrana that was the fee of the court.

In Province of Jhalawan the cases were also being decided in the same manner Khan of Kalat established the courts at Khuzdar, Sorab, Zehri and they were deciding the same according to the tribal norms of the society as well as in the light of Islamic justice. Khan of Kalat established levies thanas in Zehri, Saron, Khuzdar, Sorab, and Mashkay; in 1894 in Saron, in 1904 at Khuzdar, 1905 at Mashkay whereas in the Province of Sarawan, Thana at Mangoocher, Kalat, Mastung were also established.

In October, 1904 Native Assistant Jhalawan issued a directive that in all the Political, civil and criminal applications, the court fee will be 8 Anas per complaint and 7 % % on civil matters. According to the Notification No.FB-3471 and FB-1472 dated 9th of September, 1904 issued in the Government of India Foreign department published in Gazette of India Part-I page-655 dated 10th September, 1904, the Director Persian Gulf Telegraph Co-Assistant Political Agent Kalat and Baluchistan States Union was appointed as a Justice of Peace for the jurisdiction of Lasbella and the same cases were referred later on to Chief Court of Punjab. In the State of Lasbella two courts were functioning at that time one through Jaam and second was Tehsildar of the area. Tehsildar was hearing the matters recording the evidence and referring the matters, to the Jaam for decision but for confirmation of death sentence, the matters were referred to the Agent to the Governor General.

Actually, the Dasturul-Amal Diwani Kalat was unofficially started in 1936 amended in 1937 but legally enacted by the Rulers of Kalat in 1951 and amended in 1952, which is still in the same position except some amendments after creation of Pakistan.

At present Qazis courts are functioning in the following areas: -

District Mastung Mastung Dasht (Mastung)

District Kalat. Sorab

District Khuzdar. Mashkay Awaran

District Kharan. Kharan. Baseema Mashkail

District Lasbella. Uthal

District Kech. Turbat Tump

Dasht (Turbat)

District Gwadar.

That vide Notification No.Leg:s:6-63/Law/80/VI-780-889 dated 23rd of February, 2005 the jurisdiction of Jewaani Tehsil and Saint Sar, has been changed and the High Court has appointed a Senior Civil Judge as under:-

Pasni  
District Panjoor,  
District Sibi.  
Lehri at Dhadar.Bhag  
District Nasirabad  
Dera Murad Jamali.

Gwadar was temporarily given to Ruler of Muscat Syed Sultan by the then Ruler Mir Naseer Khan Noori, in 1783 who was defeated at that time and got shelter in the Province of Baluchistan at Gwadar.

On 14th of October 1955, one Unit was imposed and Kalat State was merged into West Pakistan on 09th of June 1960, and the Federal Law Reforms Ordinance, 21 of 1960 was promulgated. It has been mentioned in PLD-1960-238 and the CPC 1908 was extended and Section 4 of Dasturul-Amal Diwani Kalat was repealed. The said Bill was prepared in 1963 having Bill No.54 which was published in West Pakistan Gazette Lahore on 10th of January, 1964 on Friday under Rule 75 of the Assembly but this Bill was not passed as an Act and this document has been ignored which is being reproduced herein below: -

THE GAZETTE OF WEST PAKISTAN LAHORE, FRIDAY, JANUARY 10, 1964  
PROVINCIAL ASSEMBLY OF WEST PAKISTAN  
NOTIFICATION THE 10  
JANUARY, 1964.

No.PAWP/Legis (185)/63/21. The following Bill which was introduced in the Provincial Assembly of West Pakistan on Friday, the 10th January, 1964 is hereby published for general information as required by Rule 75 of the National Assembly of Pakistan Rules of Procedure, as adopted for regulating the procedure of the Provincial Assembly of West Pakistan by the Governor of West Pakistan: -

BILL NO.54 OF 1963. THE WEST PAKISTAN (AMENDMENT AND REVIVAL OF CIVIL LAWS) BILL  
1963. A BILL.

To amend and revive certain civil laws in their application to the Districts of Kalat, Kharan, Lasbella and Mekran.

PREAMBLE: Certain civil laws in their application to the Districts of Kalat, Kharan,

Lasbela and Mekran.

It is hereby enacted as follows: -

Short title and extents:- . This Act may be called the West Pakistan. (Amendment and Revival of Civil Laws) Act 1963

(2). It shall extend to the Districts of Kalat, Kharan, Lasbela and Mekran. Notwithstanding anything to the contrary contained

Amendment and revival of certain laws: - in the certain Laws (Statute Reform) Ordinance, 1960 (XXI of 1960):-

(a). The following enactments, namely:-

- (i) . The Court fees Act, 1980 (Act VII of 1870);
- (ii) . The Evidence Act, 1872 (Act of 1872) in its application to civil cases.
- (iii) . The suits Valuation Act, 1887 (Act VII of 1887);
- (iv) . The code of Civil Procedure, 1908 (Act V of 1908); and
- (v) . The Limitation Act, 1908 (Act IX of 1908); and shall not be deemed to have been applied to the district of Kalat, Kharan, Lasbela and Mekran; and

(vi) . The following enactments, namely:-

(i) . The Majmooa Qanun-I-Shahdat Riyasat Kalat of 1952; in its application to Civil cases: -

(ii) . The Dasturul-Amal Diwani Riyasat Kalat of 1952; shall continue to be enforce until repealed or amended by appropriate legislature, or other competent authority and be deemed always to have been enforce in the Districts of Kalat, Kharan, Lasbela, and Mekran.

In the Dasturul-Amal Diwani Riyasat Kalat of 1952, as revived under section 2

### **Statement of objects and reasons**

The Code of Civil Procedure, 1908, alongwith the Court Fees Act, 1870, the Evidence Act, 1872, the Suits Valuation Act, 1887, and the Limitation Act, 1908, were made applicable to the Districts of Kalat, Kharan, Lasbela, and



Mekran under the Central Laws (Statute Reforms) Ordinance, 1960 which repealed Dasturul-Amal Diwani Kalat of 1952. The residents of the area represented against the trial of civil cases under the above-mentioned enactments. Keeping in view the wishes of the people it has been decided to revive the old civil procedure in the former Baluchistan States Union.

This Bill is designed to achieve this object.

Malik Qadir Bakhsh Minister Incharge.  
MUHAMMAD IQBAL  
Secretary,  
Provincial Assembly of  
West Pakistan.1906-pla-3136-201 -64-SGPWPLahore.

The Rules were framed and the qualifications of Qazis were mentioned on 24th of May 1977 by the Government of Balochistan. On 25th of June, 1977 the High court referred the matter to the Law department, which was issued in the official Gazette on 7th of April 1977, while the qualification and age of the Qazis were mentioned as Law Graduate having three years experience of advocacy was also mentioned.

On 19th of June 1980, the High court directed the S&GAD for establishing Qazi courts in the tribal areas of the Province and on 18th April 1983, the Qazis Courts having the powers of Rent Controller and Rent Restriction Ordinance, 1951 was made applicable by Notification No.Judl:1-7/(4)/59 dated 25.03.1964 and the entire Kalat States Union was governed by the said

Law except the Tribal area where Regulation No.2 of 1945 was promulgated.

The Rules of 1980 were amended and Balochistan civil disputes Shariat Application Ordinance of 1966 was also extended in the tribal area. On 20th of September, 1997 the word Government was deleted and High Court was mentioned as amended.

The civil disputes are still being resolved -- under the Dasturul-Amal Diwan Kalat,  
1952,

Civil Procedure Court with specific Relief Act - Balochistan Civil Disputes Shariah Application Regulation 1976. Dasturul-Amal Diwan Kalat is applicable in the former Kalat state consisting upon Kharan, Mekran, Lasbela and Kalat state including Khachi area, which was later on converted into

Balochistan States Union (BSU), the Civil Procedure Code and Specific Relief Act were applicable in British Balochistan (leased area) whereas the Balochistan Civil Dispute (Shariah Application Regulation 1976) is applicable in tribal areas of Balochistan.

It is unique province having three different Civil Laws, which are applicable at a time and people are still satisfied with the said system. Under the Shariah Application Regulation, Qazi Courts have been established at Dalbandin, Muslim Bagh, Killa Saifullah, Qamar Din Karez, Zhob, Sherani, Musakhel, Barkhan, Bori, Sanjavi, Kohlu, Kahan, Mawand, Kut Mandai, Dera Bugti and Sui. Appeals are being filed before the Majlis-e-Shoora, in respective Districts.

The Dasturul-Amal Diwanl Kalat is also governed through Qazi courts and appeal before the Majlis-e-Shoora, and their revision petitions before the High Court. No written law was available regarding the civil disputes in Kalat state before kingship of Mir Ahmad Yar Khan whereas in the history of Kalat in 1530 Kalat state was established, and the civil and criminal cases were decided by the local Jirga system but in 1666, forefathers of Khan of Kalat derived by Noori Nasir Khan, was the religious person who has also written Holy Quran by his own handwriting which was placed in the Shahi Mahal, Kalat at that time.

### **Sections of Dastur-Ul-Amal Diwani Kalat**

Section 1: In this section it has been mentioned that it is applicable to the former areas of Balochistan States Union including states of Kalat, Kharan, Mekran and Lasbela since 1952.

Section 2: In this section it was mandatory for the Plaintiff to appear in person in the court for filing the plaint and copy of the same for the defendant(s).

Section 3: In Section 3 there was very simple detail of plaint mentioned which is procedural only.

Section 4: In this section it is duty of the court to consider the paper and register the suit.

Section 5: In this section the responsibility of the court to issue Notices to the Defendant (s), mentioning the date and place of hearing and proceedings and sufficient time for appearance, sending the copy of the plaint along Notice.

Section 6: In this Section if the defendant (s) fails to appear on such date the Ex-parte proceedings will be started and within thirty days the defendant (s) appears and show sufficient cause for his absence the ex-parte proceedings will be set aside and court to proceed further in accordance with law.

Section 7: In this Section the defendant files written statement and the court frame issues.

Section 8: In this Section if the Plaintiff fails to appear and the defendant is present, if forth the parties failed to appear the suit will be dismissed but after the date of decision within thirty days the plaintiff appears and produce sufficient cause for this absence the suit is restored.

Section 9: In this Section if the Plaintiff fails to satisfy the court within thirty days from the date of dismissal of the plaint, then the Plaintiff has the right to file a fresh suit alongwith court fees.

Section 10: In this Section, if both the parties failed to appear then keeping in view the circumstances and in the larger interest of justice the court instead of dismissing the suit impose fine upto Rs. 200/- for continuing further proceedings.

Section 11: In this Section when both the parties are present in the court then the matter will be decided according to the Arbitration or Sharia and if the matter pertains to Customs or tradition then it will be decided through Jirga and if the parties are non-Muslim, or one party is Muslim and second party is non-Muslim, in such kind of circumstances, the matter is refer to Panchayat and Members of Panchayat will be nominated equally of both the parties.

Section 12: In this Section, it has been mentioned that the burden of proof lies upon the shoulder of Plaintiff and the court expenditure will be also liability of the Plaintiff except in case of insolvency.

When the Dasturul Amal Diwani amended after 14 August 1951 Qanoon-e-Shahdat Kalat Article 112 was also become applicable alongwith the criminal procedure code Kalat and Penal Code Kalat, which were also enforce in 1951.

It is pertinent to mention here that since 1872, the Evidence Act was applicable and Section 101 is regarding the responsibility of the Plaintiff to proof his cause but the said law has been replaced by Qanoon-e-Shadat Order 10 of 1984 and the Article 117 Shahdat Act 1872 Section 101 of the Qanoon-e-Shadar Order are the same. Reference is invited regarding the case Abdul Hameed versus Sabzal and others PLD-1975-Quetta Page 52 in which the Evidence Act 1872 being Federal Law is extended in the light of Law Reforms Ordinance-1 of 1960 in the Kalat State.

Section 13: In Section 13 the parties are bound to produce their own witnesses and documents upon their own expense, if need be for appearance of the Government officials then they should have to deposit the cost of Rs.08-Annas per person in the court.

Section 14: In this Section, the fee of Arbitration or other expense will be equally upon the parties and cost of case will be upon the parties and cost of

case will be upon the Decree holder. It means that the Arbitration Act 10 of 1940 is also applicable being Federal Law and enforced since Ordinance 21 of '19690 in Balochistan sine Union.

Section 15: In this section the formal court fee/tickets according to the value of the suits and applications are also responsibility of the parties. In Riyasat Kalat court fee was 10% in 1955, but the same was enhanced upto 11 %% which was last degree in the light of Dasturul-Amal Diwani Kalat and people were paying lacs and lacs of rupees to the authorities of Kalat State. This was challenged first time in case Mir Jamal Khan versus Khair Jan PLD 1959 (West Pakistan) Quetta Page 3 and plea was taken that the court fees Act 1870 is applicable in Riyast Kalat since April 1955 and after that the court fees according to the said Act be paid later on another case was also filed in the High Court on the same ground Syed Qadir Dad Versus Muhammad Afzal which was decided and reported in PLD 1986 Quetta Page 179 to 181 in which it has been held that the Federal Ordinance of 1960 has been made applicable and in the light of Section 4of Dasturul Amal Diwani Kalat regarding court fees will be according to the Court Fee Act 1870 so in the light of Court Fees Act 1870, the Plaintiff should have to pay Rs.7.50% and maximum limit fixed Rs.15,000/- according to the Balochistan Finance Ordinance pf 1981 issued on 24th of June, 1981 (Ordinance IX of 1981) reported in PLDE 1981 Balochistan Statute Page-63 regarding Court Fee Act, 1870 amended and upto Rs.25,000/- the Court fee has been exempted.

In another case PLD-1984-Qta-p-101 Abdul Aziz versus Muhammad Hassan in which Order 14 of CPC alongwith Court Fees Act, 1870 section 9 & 10 was challenged and it became responsibility of the trial court to decide the issue of Court Fees in the first instance of the suit.

Section 16: This Section is regarding the law of Pre-Emption and clarification of settlement of Accounts and the Court Fees is also applicable in such kind of suits filed in the Qazi Courts.

Section 17: This Section is regarding the suits where the plaintiff is unable to deposit the Court Fees and file suit in the light of Order 33 of Civil Procedure Code of 1908, the Plaintiff is responsible for furnishing the Court fees but in case of insolvency if a person is unable to deposit the Court fees then he should file an application for exemption of Court fees and the proceedings of insolvency regarding confirmation whether the plaintiff is unable and having no substance and source for furnishing the court fees.

Section 18: This Section is regarding the Court fees upon applications and suits Rs.10/- and on the application for Execution of Rs.15/- in lower courts or before the Prime Minister of Kalat State and on each Agreement surety bond and personal bond 8-Annas court Fees ticket of the Riyasat will be

affixed. In 1955 the word Prime Minister was deleted and High Court was mentioned in the first Constitution of Riyasat Kalat in 1936. These Riyasati tickets were mentioned upon family matters but from 1.01.1961 new currency system introduced and 8-Annas means 50-Paisas and the Federal Ordinance 1960 section 4 of the Dasturul-Amal Diwani Kalat regarding the Court Fees was replaced with the Court Fees Act, 1870 as mentioned above that this was decided in case Mir Jamal Khan Versus Khair Jan PLD-1959-(WP)Qta-P-3 by Justice Ikhtlaq Hussain

Section 19: In this Section it was mentioned that any application being filed in the court of Prime Minister the court Fees of Rs.2/- must be affixed and whereas the application filed before the Ruler of Kalat, the Court Fees ticket of Rs.5/- must be furnished. This section was also repealed and replaced in 1955 after promulgation of Law Reforms Ordinance of 1960 and the High Court decided in the case Syed Qadir Dad and others Versus Muhammad Afzal and others, PLD-1986-Qta-P-179.

Section 20:- In this Section the Naib Tehsildars have the jurisdiction of Rs.1000/-Tehsildars Rs.2000/- Nazims of the Province Rs.10,000/- to receive the suits and to issue Notices to defendant (s) for filing written statement (s) and more than Rs.10,000/- the suit was going to be filed in the court of Minister of Justice.

Court Rules and Order No.1515-VO dated 15.08.1955 the word Minister of Justice was changed as Deputy Commissioner, later on in section 20 Federal Government Ordinance 32 issued on 01.08.1984 and the new section is as under: -

On 1st of August, 1984 the Federal Government issued Ordinance, 32 in which new section has been inserted and the former section 20 regarding powers of the Naib Tehsildars, Tehsildars, Nazim/Assistant Commissioners and Minister of Justice/Deputy Commissioner was repealed and directly all the powers have been granted to the Qazis of all the courts functioning in the light of Dasturul-Amal Diwani Kalat.

It is pertinent to mention here that previously the Qazis were functioning and deciding the suits and for Execution of Decrees in the light of section 38 of CPC 1908 and they were sending the matters to the Executing Authorities for implementation. The Balochistan High Court Acting Chief Justice Mr. Ajmal Mian decided the case Naz Bibi Versus Mst. Aroze Khatoon PLD-1987-Qta-P-1 and declared that the Naib Tehsildars, Tehsildars, Assistant

Commissioners and Deputy Commissioners are not the courts under section 38 and 39 of the Civil Procedure Code 1908, so the Decree passed by Qazis should not be transferred to the Execution authorities and that should be implemented through their own orders with the help of above mentioned execution authorities, so all the civil courts became empowered for implementation of the civil proceedings where Dasturul-Amal Diwani Kalat is silent that they were taking help from the CPC 1908 which is overriding the fact and being law of Federal Government.

Section 21: In this Section the Prime Minister of Balochistan States Union was empowered to decide the matters amicably according to the need of the Administration of State. The said section was amended in 1955 and the word Prime Minister was deleted and the word High Court was inserted. After amendment of this section and the section 20 of the Dasturul-Amal Diwani Kalat, now the Chief Justice of Balochistan High Court has empowered for the appointment of Qazis and in the light of new amended Rules, Balochistan Public Service Commission Quetta having the powers for the appointments of the Qazis who will recommend the same to the High Court and procedure is going to be completed.

The High Court of West Pakistan Delegation of Powers Rules, 1960 sub section 2-H regarding Qazi and Members of Majlis-e-Shoora the Notification was issued on 22nd of April, 1970 and the same was repealed but No.2-H was not changed and the Government of Balochistan issued a Notification on 6th April, 1989 where the Hon'ble Chief Justice Balochistan High Court having the powers from grade-17 and above regarding judicial officers for appointments.

Section 22: In this section all the proceedings will be in the light of Sharia between Muslim, in case of non-Muslim there will be Jirga or otherwise, in case of a Muslim and non-Muslim the same will also be referred to the Jirga and Members of both the parties will be equal.

This section was tabled before National Assembly having Bill No.54 of 1963 under Rule 75 of West Pakistan Assembly Rules, in the Gazette of West Pakistan and having No.PAWP/LEGIS (185) 63/21 dated 10th of January 1964 was published which was not passed.

Section 23: In this Section it has been mentioned that after decision of Naib Tehsildars or Tehsildars the appeal lies before the Nazim and in case of a

decision of Nazim before the Minister of justice and after the decision of Minister of justice the appeal lies before the Prime Minister of State.

In 1955 the word Prime Minister and other Administrative Courts was substituted to the word High Court and instead of Minister of Justice the Deputy Commissioner and at the place of Nazim, the Assistant Commissioner was mentioned.

On 1st of August 1984 according to the Presidential amendment this section has entirely been changed and all the powers has been granted to the Qazis courts.

Section 24: In this Section, after the decision of Qazi Courts, first appeal lies before the Minister of Justice, then Revision before the Prime Minister of Kalat Stat but the same were amended on 29.07.1995 instead of Minister of Justice the word inserted the Majlis-e-Shoora and then in Revision instead of Prime Minister the word inserted High Court. Later on a section 24 (1) was also inserted. According to the Notification issued for amending Dasturul Amal Diwani Kalat 1952 two Members were nominated as a Member of Majlis-e-Shoora being Appellate Court of Qazis and first time Qazi Moulvi Abdul Samad and Moulvi Taj Muhammad Shahwani were appointed on these posts. This section was further amended that appeal period from the decision of the Qazis to the Majlis-e-Shoora was fixed 90 days and period for Revision was fixed for 60 days. On 1st of August, 1984, through Ordinance, 33 this section 24 (D) was inserted:-

(i) . If there is difference in between the opinion of Majlis-e-Shoora or the President of Majlis-e-Shoora (district Judge) the opinion of President will be superior.

(ii) . If there are two Members of the Majlis-e-Shoora and there is difference of opinion then the matter will be referred to the third Member and majority opinion will prevail.

In section 24 the Appeal period and the period of Revision has been specifically mentioned which was further strengthened in PLD-1977-Qta-79, in case Moulvi Muhammad Murad Versus Jangi Khan in which the Limitation Act of 1908 was discussed and the section 29 of the Limitation Act was thoroughly examined by late Mr. Justice Zakaullah Lodhi and it has been mentioned that in any case of a special law if the Limitation has been clearly mentioned the same will be implemented. In civil appeal No.09/1956 Shakar Khan Versus Mustafa and others and in civil appeal No.22/1956 Arbab Muhammad Bakhsh and others Versus Abdul Malik, in civil appeal

No.23/1958, Nazar Muhammad Versus Dur Muhammad Mr. Justice Qadeer Ahmed and Justice Inamullah, decided the matter in PLD-1959-Qta-11 regarding Civil Procedure Code of 1908 Order 41 Rule 27 this point was decided that the Majlis-e-Shoora during the hearing of appeal having no powers to record evidence of any party. In PLD-1983-Qta-8 Mr. Justice Muhammad Naeem decided that in the Dasturul-Amal Diwani Kalat under section 24 which is corresponding section of Civil Procedure Code, 1908 and for Revision in the light of civil Procedure Code the section 115 CPC is relevant section according to which Revision is being filed and so no specific period has been mentioned, however, the same be dealt with according to the Central Statute of CPC. In PLD-1985-Qta-92 it has been held that the Appeal could be treated as a Revision. In section 152 CPC regarding the decision and Decree, in-advertently if any mistake was pointed out by the parties, that could be rectified by the concerned court. In Dasturul Amal Diwani on 1st of August, 1984 through Ordinance, 32 of 1984 it has been amended that after the decision of Qazi if there is difference of opinion between the Members then the matter will be referred to the President Majlis-e-Shoora /District and Session Judge and his decision will be final.

Section 25: In this section every higher authority has been empowered to call for the record and for the larger interest of justice to pass directions. This section has been amended because the powers of Naib Tehsildars, Tehsildars and Nazims were withdrawn and directly suits are being instituted in the Qazi Court and the same are being decided in accordance with law.

Section 26: In this section, the Prime Minister was empowered to call for record of any case from any court and to pass any reasonable order according to the circumstances of the case.

In 1955 the word Prime Minister was substituted to High court and now the High court is empowered for calling for record of the case from any court and to pass any order. Section 26-A , the President Majlis-e-Shoora call for the record of any lower court and to pass any proper order for transfer of the same to any other court. This section is still intact on 08.01.1990 and it has been amended in Dasturul-Amal Diwani Kalat and the amended Act 1989 empowered to President Majlis-e-Shoora/ District and Session Judge for calling of record and transfer of the case from one court to another court.

Section 27: In this Section, the Prime Minister of Kalat State was empowered to pass orders time to time regarding proceedings and other relevant directions. In 1955 the word Prime Minister was substituted to High Court



and now the same powers are lying within the jurisdiction of the Hon'ble High Court.

### **Conclusion**

The other Civil Laws which were enacted in Riyasat-e-Kalat since 1936 up to 1951 are Dasturul Amal Diwani Kalat, which is civil Procedure Code of 1951, the Criminal Procedure Code 1956, Qanoon-e-Shahdat Kalat of 1951. In 1936 the Dasturul Amal Aiwani Kalat which was published first time as the first Civil and Criminal Code and briefly the procedure of Criminal and Civil Cases have been mentioned and the punishment also mentioned of different crimes in the said book. The history of legal system is very vast, keeping in view the circumstances and topics of the thesis it has been concised and shrunk according to the present research work.

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