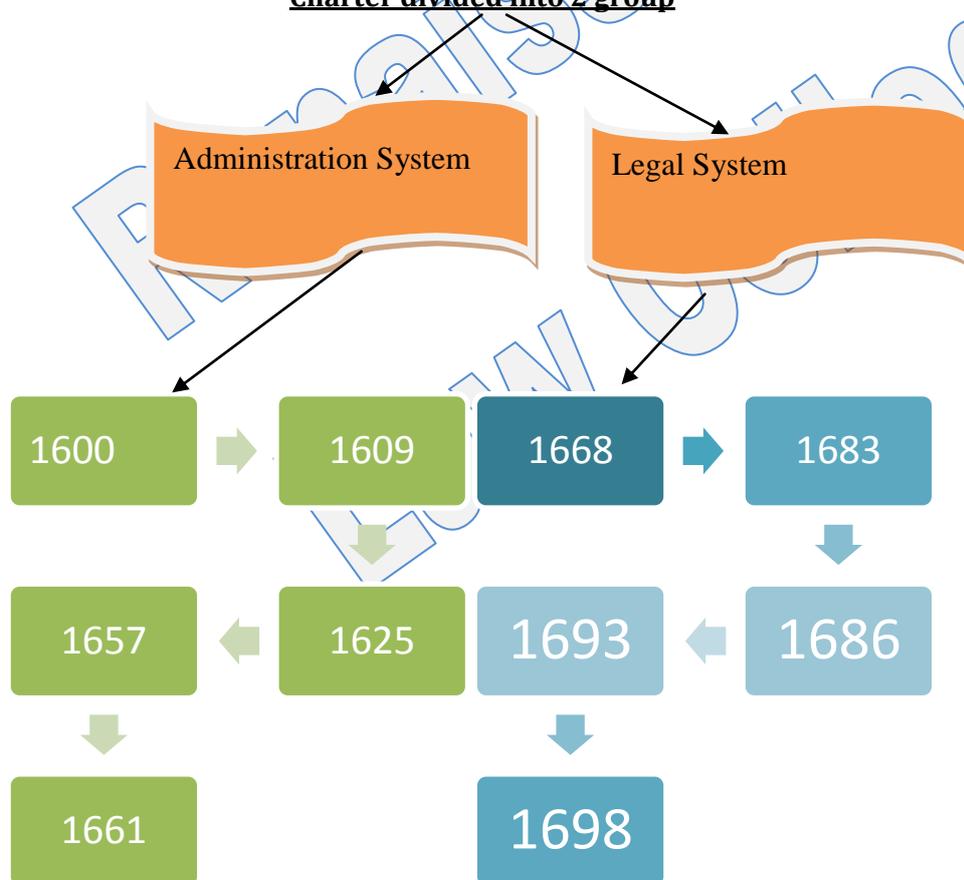


Unit I. Administration of Justice in Surat, Bombay, Madras and Calcutta

| | |
|----|--|
| 1 | <i>Emergence of the East India Company development of authority under charters</i> |
| 2 | Trading body to a territorial power : subsequent charters, |
| 3 | Administration of justice in Surat |
| 4 | <i>Madras 1639-1726</i> |
| 5 | <i>Bombay 1668-1726</i> |
| 6 | <i>Calcutta 1619-1726</i> |
| 7 | <i>Mayor Court</i> |
| 8 | <i>Charter 1726</i> |
| 9 | <i>Charter 1753</i> |
| 10 | Its defects |

The Governor Company of Merchants of London trading into the East Indies
Known as East India Company in Sort When Came to India

1. **East Indian Company¹ and its development**
Charter divided into 2 group



¹ 31 Dec 1600 came to India

Governor and 24 directors in company for managing company for 1 yr tenure and re-elect is common between them.;

Charter 1600: only connection with trade and were not intended for dominion of India. Legislative power given to company to regulate its own business and maintain disciplinary action against their servants.

Charter 1609: 31st May 1609 James granted a fresh charter to the company which given privileges in perpetuity². The company was also authorized to continue the enjoyment of all its privileges by Queen Elizabeth under Charter 1600. They can punish their servants for grosser offences on long voyages. The company secures the first Royal Commission in 1601. 1623 charter the add on of martial law power given to company. English people came to India in the reign³ Emperor Jahangir and settled at Surat 1612. It's a best place for trade and commerce in western coast of India.

Charter 1625: New trading body for the purpose of trading with East India Company with name "Courten Association" this continue till 1657.

Charter 1657: Oliver Cromwell granted a new charter amalgamated the various joint stock into one joint stock. The charter also ends the tussle between old company and Courten Associations.

Charter 1661: in reign of Charles II the company entered into a period of unpredicted prosperity. Now charter of company turn from trading into purely territorial power and has new line of company territories.

Now company punishes the servants and employee on the basis of disobedience and make trading centers {Madras, Bombay and Calcutta} solve both civil and criminal cases according to English law. If there is no governor than trial sends a man to a place where there was a governor.

2. Trading body to a territorial power : subsequent charters,

Charter 1668:

- ✚ Body of territorial power
- ✚ Charles II transferred to Bombay which he got as a dowry from Portugal to East Indian Company for a rent of 10 Euro.
- ✚ Making law, order, ordinances and constitution for good government.
- ✚ Court of judicatures and proper administration of justice.

Charter 1683:

- ✚ Company to raise military forces.
- ✚ Judicature court established 1 person and 2 merchants- all appointed by Company- decide on the basis of good, equity and consciences, laws and customs of merchant
- ✚ East India Company to established Admiralty Court.

Charter 1686:

- ✚ James II renewed the power and privileges of company by this charter
- ✚ Company appoints admirals and sea officers.
- ✚ Their power of naval force and martial Law.
- ✚ Authorised to established a municipality and Mayor court at Madras
- ✚ Sir Jasiah Child governor of Company and chairman of court of director established polity of civil and military power and create and secure a large revenue
- ✚ English dominance in India
- ✚ Company territorial in India

² Infinity

³ supremacy

Charter 1693:

- ✚ Old company jealous to English company.
- ✚ Whings to come in power in England and new company established 1693 to break old company monopoly
- ✚ New company name “General Society”.

Charter 1698

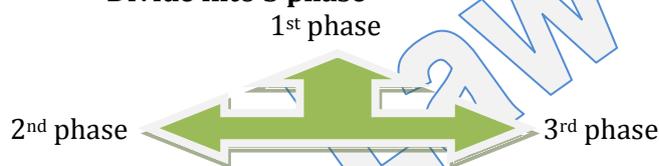
- ✚ William III granted a charter to the company certain advantages were made in the existing rule to improve the administration of company.
- ✚ Director created for control of company and sees the affair of the united company.
- ✚ Company work till passing of Regulating Act 1773⁴ which completely overhauled the constitution of company.

3. Administration of Surat: (1612-1687)⁵

- ✚ Most Important Factory Initially.
- ✚ Important Commercial Centre.
- ✚ Populous Town & International Port.
- ✚ 1612 Established Factory at Surat.
- ✚ The Governor and Company of merchant of London training into East.(15 year).
- ✚ 1615 mughal farmaan and special power to them.
- ✚ Governor and council (less knowledge of law)
- ✚ Qazi Court made by Muslim Ruler to solve cases
- ✚ Defects in Surat
- ✚ No knowledge of law
- ✚ Fight between them only
- ✚ Corruption
- ✚ Hindu and Muslim law applied on them.

4. Administration of Madras⁶ (1693-1726)

Divide into 3 phase



1st phase 1639-1665:- (Administrative set up, Judicial Set up, No Established Procedure)

- The Charters and courts: Company was under the administration of an Englishmen who called agent. They were authorized for civil and criminal cases.

⁴ Object of Passing the Regulating Act, 1773—British Parliament enacted the Regulating Act, 1773 in order to achieve the following purposes— (a) to impose greater control and supervision of Parliament over the affairs of the East India Company, (b) to democratise the structure of the East India Company itself, (c) to streamline the administration of India by East India Company, (d) to establish a Supreme Court at Calcutta, (e) to give greater

⁵ Point of trading of Company.

⁶ Presidency Town in 1666

- Charter 1661: for improving judicial system in madras governor and council appointed for Judge for civil and criminal law according to the laws of England
- Black and white town⁷.
- Black town Choultry Court(officer known as Adigaar⁸).
- On his corruption EIC appoint company to its post.
- On serious crime than permission by Hindu ruler and punish according to UK law
- No Diwani and Faujdari cases to this court
- No judicial system

2nd phase 1665-1688: (Delay in Justice)

- Judicial system-
- Appointed Streynsham Master as governor in 1678 the whole judicial system was recognized by him the court of governor and council was designated as high court of judicature.
- Court will twice a week and decide all civil and criminal cases with 12 jury man and also recognized old choultry court(small cases only) and Indian officer replaced by English officer and of company services.
- The number of Judge was increased to 3-out of at least 2 were required to preside the trial and sit two in a week i.e. Thursday and Friday.
- The Judge of choultry court will take care and clerk registers all the punishments. High court of judicature⁹ hears appeal of choultry court it's consist of governor and council.
- English as court language
- English is an official language of Madras court till 1680 and after that Tamil, Portuguese and Malayalam.
- Court of Admiralty(punish to illegal trader or sea matter).
- Governor and council neither they are regular nor they are ready to give justice in a manner.
- Tough to solve faujdari matter.
- Governor and council with 12 faujdari member to solve cases.
- Judicial power to governor not to agent .
- Petty Jury (6englishmen and 6 Portuguese)
-

3rd phase 1688-1725 (Admiralty, Mayor, Choultry Court and Corporation of Madras)

- **Court**
 - Choultry Court¹⁰
 - Mayor Court(end of the chapter)
 - Admiralty Court
 - High Court of Madras
- **ADMIRALTY COURT-**
- On August 9 1683, Charles II granted charter to the company to establish the courts which was to consist of person learned in the Civil law and 2 merchants appointed by the company.
- Court got the power to hear and try cases related to the mercantile, maritime, trespass, injury and wrongs etc.
- Again on April 12, 1686 Charles II issued a new charter with same provisions.
- Chief Judge of the Admiralty Court was known as the **Judge-Advocate**.

⁷ Agent and Council headed by.

⁸ Village headmen civil & Criminal cases.

⁹ 27/3/1678 small court & 50 pagoda

¹⁰ Petty cases

- In 1687 company sent from England Sir John Biggs a professional lawyer learned in civil law to act as the Judge advocate of Admiralty Court.
- After this the Governor and his Council stopped performing their Judicial Functions and the Admiralty Court bestowed justice in all cases civil, criminal as well as maritime.
- Sir Biggs Died in 1689 and Governor again took the charge of judicial function.
- In 1692 the Company sent John Dolben as new Judge advocate and in 1694 he was dismissed on the charge of taking bribes.
- In 1696 company directed that members of the council should in succession serve as the Judge advocate. After William Fraser, a merchant was appointed as Judge advocate later he resigned and no one was ready to become the Judge advocate, so company made the court registrar the Judge advocate.
- 1698 onwards, under the instructions of the company, the Governor and council started hearing appeals from the Admiralty court in cases involving less than 100 pagodas. After 1704 admiralty court ceased to sit on regular basis.
- Court dead and Corporation made and Mayor Court form headed by Mayor 1688.

- **Developments in Administration of Justice during this period.**

The realisation of the need to shift from a “common” to a “civil” lawyer. The Governor and his council relinquished their judicial functions which they had been exercising hitherto the charter of 1661 and ceased to sit as a court. This marked the separation of the Executive from the Judiciary. In 1683 the English Common Law was practically devoid of rules governing mercantile cases.

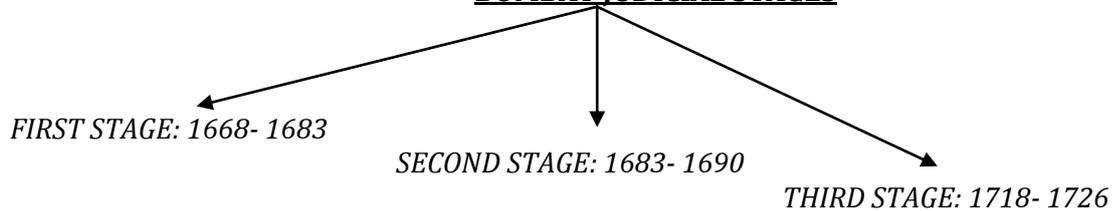
5. Administration of Bombay (1668-1726)

- ✚ Charter 1668:
- ✚ 1670 judicial plan
- ✚ 1672 new judicial plan
- ✚ 1684-1690 admiralty court conflicts
- ✚ Judicial machinery 1718-1728
- ✚ Court in Bombay
 - Court of judicature- civil and criminal
 - Court of conscience- small cases
 - Contract court- deputy governor and its council-serious matter
 - Admiralty court- according to charter 1648in bombay

Note in brief

- ✚ Portuguese were the first European to acquire the Island of Bombay in 1534, from the king of Gujarat.
- ✚ In 1661, Portuguese king, Alfonsus VI transferred the island to Charles II as dowry on the marriage of his sister Catherine with the British king.
- ✚ Charles II transferred it to the east India Company in 1668 for an insignificant annual rent of 10 pounds.
- ✚ before 1726, the judicial system in the island of Bombay grew in three stages:

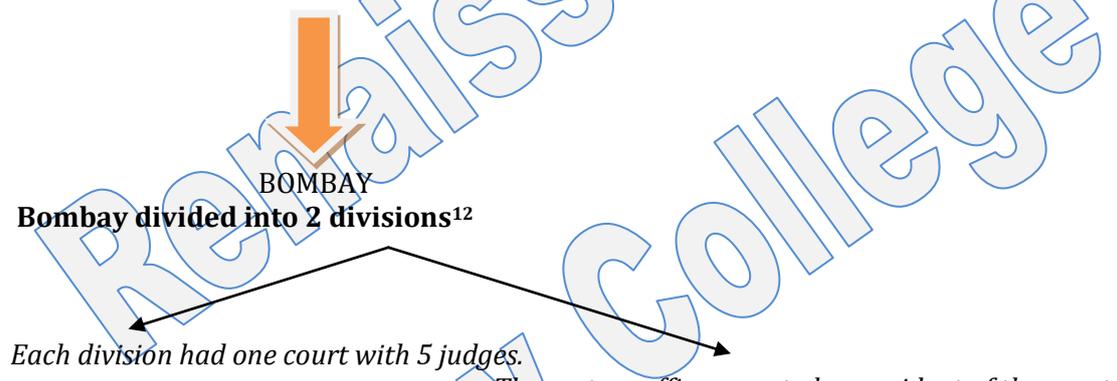
BOMBAY JUDICIAL STAGES



First stage 1668- 1683(Judicial system)

- ✚ Charter of 1668.
- ✚ judicial system
- ✚ Custom officer appointed in each divisions
- ✚ Jury system¹¹
- ✚ Deputy governor and council(judicial system 1670)
- ✚ Bombay in 2 parts each court has 5 judges. Custom officer has judicial officer
- ✚ Some Indian appointed as judge and sitting of at least 3 judges is necessary.

SURAT PRESIDENCY (GOVERNOR AND COUNCIL)



- ✚ *The custom officer was to be president of the court.*
- ✚ New system consisted of George Wilcox as judge.
- ✚ The court was to have jurisdiction in all cases civil, criminal, probate and testamentary.
- ✚ Bombay was divided into 4 sections.
- ✚ Justices of peace were appointed.
- ✚ court of conscience (small matter and once in a week)
- ✚ delay in judgment and jurisdiction is 20 ciraffin(Portugal coin)
- ✚ Bombay, Mahik, Majgaon, Sion (4 section of Bombay)
- ✚ Follow 125yr. Portugal system
- ✚ Each division has sanchalak and Justice of peace
- ✚ The deputy governor and council were constituted as superior court.

Second Stage 1683- 1690 (Admiralty Court)

- ✚ Dr. John St John was a person learned in the civil law.
- ✚ Charter of 1683.

¹¹ A **jury trial** or **trial by jury** is a legal proceeding in which a **jury** either makes a decision or makes findings of fact, which then direct the actions of a judge. It is distinguished from a bench **trial**, in which a judge or panel of judges make all decisions.

¹² First Division – comprised Bombay, Mazagaon and Girgaon and 2nd division Mahim, Parel , Sion and Worli The customs officer of each division ho was an Englishmen

- ✚ King's Bench of common pleas.
- ✚ 1690 Bombay attacked by admiral Siddi.
- ✚ 1690- 1718 is the dark period in legal history of island.
- ✚ 1687 Bombay became presidency.
- ✚ Appoint Dr. Saint John salary (200 pound/year) (knowledge of law)

Third stage 1718- 1726 (Indian Judges, Working of the Court)

- ✚ 30 year no court system in Bombay
- ✚ 15/03/1718 new court in Bombay
- ✚ 9 judge (5 British+4 Indian)
- ✚ In 1718, a court appeared again in Bombay with chief justice and nine other judges, of whom 5 were British.
- ✚ Indians were called black justices.
- ✚ Awarded imprisonment 'during pleasure', which meant indefinite period of custody.
- ✚ Seat once in a week
- ✚ Appeal to Governor general and Council
- ✚ Work till 1726 than 10/2/1728 royal charter issue Mayor Court.
- ✚ That court name has court of judicature

6. Administration of Calcutta (presidency town in 1699)

Historical Perception in Calcutta Town (1690-1726) (Zamindari Judicial, Kazi and Court, Nawab Court)

- ❖ Origin: In the year 1668, the grandson of Aurangzed, Azimush-shan, and the Subahdar of Bengal gave Zamindari of villages, Calcutta, Sutanati and Govindpur for annual revenue of 1195 Rupees to the East India Company.
- ❖ Collector post (Civil, Criminal and Revenue)
- ❖ Appointed: In the December 1699, Calcutta became Presidency Town and **Governor** was appointed to administer the settlement. As a zamindar company got all the powers just like other zamindars of that time. Bengal zamindars. In Moghul Empire, zamindars got judicial powers, but collected the revenue and maintained law and order in the zamindari area or villages. For judicial purpose that **time Kazis court were established in each district, parganah and villages. They handled civil and criminal matters.** Normally village Panchayat solved all problems, In Hindus, elders or Brahmins solved the problems. The judicial system was simple, as everyone knew each other and transactions of each other. Moghul Kings never paid any attention to judicial system that time nothing was organized.
- ❖ Post: The post of Kazi was sold many times , the highest bidder became the Kazi. Justice was purchased , corruption was rampant Kazi never got salary, so kazi court fined the criminal and earned money, after this demanded money from the complainant for giving him justice. The other Zamindars when gave death sentence , the appeal went to the Nawab but company never did this , the appeal from zamindar , collectors court went to the Governor and council In Calcutta that time Collector enjoyed all the powers up to the year 1727 With the charter of 1726 the new system was started in Calcutta Presidency. Before this charter the authority was given by company and zamindar, but the charter of 1726 was a royal charter.
- ❖ Important points of this charter: The importance of this charter is that this charter introduced Uniformity of justice system in all 3-presidency towns. The charter established civil and criminal courts in each presidency towns. The 2nd important point is that before 1726 the courts got authority from the company but after this charter the courts got their authority

from the royal British king , The courts enjoyed same status just like the courts which were present that time in England.

- ❖ 1726: With the charter of 1726, the appeals from courts in India went to the Privy Council in This way English law system became accepted to Indians, Indians did not find it foreign and Indians did not have any other judicial system as such. With this charter in each presidency town local legislature was established. Charter of 1726 is also known as judicial charter as this is the beginning of development of Indian law system and judiciary.

Important Fact in that Town

- ✚ Zamindari rights: three villages Calcutta, Sutanati and Govindpur to the English company and this town is different from the other two presidency town in 1699 it's became presidency town and its governor and council will look out the administration and judicial part in Calcutta. The collector was a company officer appointed by them only.
- ✚ Civil cases : collector will pass the civil court or court of cutchery and ordinarily civil cases solved by arbitration decision based on customs and usages with help of natural justice and equity if contradiction in customs or no customs he also collect the revenue arrears and their cases appeal to the governor and council.
- ✚ Criminal cases: Company adopt the existing Mughal pattern as a faujdari court presided by an English collector was decided criminal cases and punished by whipping, fines, imposing, and banishments. Capital punishments given only on the permission governor or president and council of Calcutta. Death sentence is by whipping not by hanging. For serious crimes the governor and council were authorised to try by the charter of 1661.
- ✚ Collector power:



- ✚ English law :
Use of English law with Hindu and Muslim law in judicial process.

Following are the few provisions of charter of 1726

Main Reasons or Aims of Issuing the Charter of 1726—The main reasons which necessitated the issuing of Charter of 1726 are as follows—

1. The judicial administration and the working of the courts, in the three Presidency towns of India was unsatisfactory.
2. With the growth in Company's trade and commercial activities in India, the population of British Settlements had increased considerably, and Leflore, more cases were coming to the courts for adjudication.
3. The Company desired that the power of courts should be derived from

a competent authority so that their decisions would have a binding force and Uniformity in judicial administration could be achieved.

4. Encouraged by the successful working of the Corporation at Madras, the Company wanted to establish similar Corporations at Bombay and Calcutta also.

Many Englishmen who settled in India died leaving behind them considerable movable and immovable property. This created problems before the Company relating to distribution and disposal of their assets. Although, the Mayor's Court of Madras established in 1687 was empowered to decide testamentary cases but its decisions were not recognised by the Court in England because it was a Court of the Company and not of British Crown. Therefore, the Company was involved in unnecessary litigation in England at the instance of the relatives of the deceased who died intestate in India. To avoid this, there was a need of a court in each Presidency which could take cognizance of testamentary and intestate succession cases deriving their authority from the British Crown. Thus, in order to solve the above mentioned problems and to establish an effective administration of justice in the Company's settlements in the three presidencies, the Judicial Charter was granted by the British King George I on September 24, 1726 at the instance of East India Company.

Provisions of the Charter of 1726—The main provisions of the Charter of 1726 were as follows—

1. Establishment of Corporation at Bombay and Calcutta—The Charter of 1726 provided for the establishment of a Corporation at Bombay and Calcutta like the one which already existed in Madras. Thus, each of the Presidency towns was to have a Corporation consisting of a Mayor and nine Aldermen. The Mayor and seven of the Aldermen were to be natural born British subjects while the two Aldermen could be of any nationality. The first Mayor and Aldermen were to be appointed by the Charter itself; thereafter, the Mayor was to be elected annually by the Aldermen. The Aldermen were to hold office for life or till their residence in the Presidency town. They could, however, be removed by the Governor-in-Council on a reasonable cause. An appeal against such a removal could be made to the King-in-Council in England. The Mayor and all the Aldermen had to take an oath of allegiance to the office before the Governor and Council.

2. Civil Administration and Establishment of Mayor's Court in Presidency Towns—The Mayor and nine Aldermen of each Corporation formed a Court of Record which was called the 'Mayor's Court'. It was empowered to decide all the civil cases within the Presidency town and the factories subordinate thereto. The Mayor together with two other English Aldermen formed the quorum. The Court also exercised testamentary jurisdiction. It could grant probates of will and Letters of Administration in case of intestacy. The Court was to hold its sitting not more than three times a week. An appeal from the decision of the Mayor's Court lay to the Governor and Council. But in cases involving the value of-subject-matter above 1,000 pagodas, a further appeal lay to the King-in-Council.

Being a Court of Record, the Mayor's Court could punish persons for its contempt. The process of the Court was to be executed by the Sheriffs, the junior members of the court who were initially nominated but subsequently chosen annually by the Governor and Council. There was no specific mention in the Charter of 1726 as to the law which was to be applicable in the Mayor's Court but since the earlier Charter of 1661 provided that justice was to be administered in accordance with the English law, it was presumed that the same law was to be followed by the Mayor's Court in deciding the cases.

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4. Justice of Peace—The Governor and five senior members of the Council were appointed as Justice of Peace in each Presidency for the administration of criminal justice. They could arrest persons accused of crimes and punish them for petty offences. They also constituted a Court

5. Jury Trial in Criminal Cases—The Charter of 1726 provided that criminal cases in Presidencies be decided with the help of Grand Jury and Petty Jury. The Grand Jury which consisted of 23 persons, was entrusted with the task of presenting persons suspected of having committed a crime. Besides, before the commencement of trial, all the evidence of the prosecution, accusation or indictment was placed before the Grand Jury, who was to return a verdict whether there was a case for trial or not. In case the Grand Jury returned a verdict of 'no prima facie case', the accused was acquitted without trial.

Merits of Charter of 1726—Taking into consideration the above mentioned provisions of reforms, we can say that the following were the merits of the Charter of 1726—

(i) Establishment of Crown's Court—This Charter has, for the first time established the courts of Crown. The courts established so far were the courts of company.

(ii) Uniformity in Judicial System—This Charter has, for the first time, established Mayor's Court in all the three presidencies i.e., Calcutta, Bombay and Madras.

(iii) Provisions of Appeal to Privy Council for the First Time—For the first time a provision was made to appeal to Privy Council from the decisions of Mayor's Court.

(iv) Application of English Law in Indian Soil—This Charter has for the first time introduced English law into Indian soil. Where there was no express provision of law, the judges used to decide the dispute on the basis of "equity, justice and good conscience."

(v) Establishment of Legislative Councils—The Charter of 1726 for the first time, established local legislative councils in which the Governor with the aid of his council used to make bye-laws, rules and ordinances for the regulation of the corporations and inhabitants of the presidencies. Before 1726, the law making powers were vested in the company which could be exercised only by the "Court of Director" of the company in England.

On account of the above mentioned merits, the Charter of 1726 constitutes a landmark i.e., a turning point in the legal history of India and proved to be an important event on account of the great significance in the sphere of law and justice, the charter is usually characterised as the 'judicial charter'.

Demerits of Charter of 1726—In spite of the above noted merits of the Charter of 1726, there were two traditional defects of this charter—

- 1. Appointment of Non-lawmen Judges**—before 1726, the traders were to be appointed on the office of judges who were ignorant of law. As judges their main aim was to bring about the settlement between the contesting parties. Even after the establishment of Crown's Court, in 1726, justice continued to be administered by non-professional judges. Thus, the object of the Charter of 1726 could not be fulfilled.
- 2. No Separation of Judicial and Executive Powers is Made** — Although many attempts were made to separate judicial and executive powers from one another yet the policy of the company was not firm in this respect. The Charter of 1726 also did not admit this division and

an intimate relationship between executive and judiciary was maintained.

3. **Conferral of Legislative Powers on Governor and Council** —The Charter of 1726 empowered the Governor and Council of each presidency-town to make bye-laws, rules and ordinances for the regulation of the Corporations and inhabitants of the Presidencies, They would also prescribe punishment for the breach of such laws and rules. The bye-laws rules and ordinances so framed and the punishments prescribed for breach thereof, were to be reasonable and not contrary to the laws of England and they could not be effective unless approved and confirmed by the Company's Court of Directors in England.

Establishment of Mayors Court

- ❖ The mayor and two council members gave justice and appeal went to the Governor within 14 days. Further appeal could be made to the king in council if matter involved more than 1000 pagodas This way first time Indians got right to file appeal in the king in council.
- ❖ A sheriff was appointed for each ten miles of area by the Governor and council annually, in simple terms he was the police officer. When complained was given to the court, the court issued the summons in writing to the Sheriff and he brought the accused in the court, he handed the summons to the concern party. If party accused did not come on that day, the warrant was issued and Sheriff brought them before the courts, bail was granted sometimes.
- ❖ For criminal jurisdiction, justice of peace was established same like England Criminal jurisdiction system followed all the British criminal system and procedures. Charter of 1726 empowered the governor and his council to make by laws, rules and ordinances for the regulation of corporation. In Madras charter became effective from the 17th August 1727. In Bombay 10th February 1728 Calcutta December 1727 the implementation of charter started. The company directed the courts to maintain records and send them to England to know how they are working. With these establishments common Indians also start to file the more and more cases in the courts. Mayors Court, Governor, and Council always got disputes regarding jurisdiction in presidency towns. This fights resulted into the weakening of Judiciary in the future and executive became powerful. Company adopted policy not to get involved in the Indian customs and disputes but if the matter went to the Mayors Court they adopted English procedures.

MAYOR'S COURT-

- ❖ Mayor's Court under the Charter of 1687 — A Corporation was set up by the Company at Madras on 29 Sep, 1688, under the Charter of 1687. It was created with the purpose of associating natives with the Englishmen Its to fulfill this purpose, the Company wanted to undertake certain public fare activities for which funds were needed. The Corporation coters taxes and raised funds from the inhabitants of Madras. Composition—The Madras Corporation consisted of an English Mayor, 12 Aldermen and 60 or 120 Burgesses. Out of the twelve Aldermen, three were to be the covenanted English servants of the Company while the rest could be of any nationality. The Mayor was to hold office for one year and he was elected by the Aldermen from amongst themselves. The aldermen held office for life or till the residence in Madras, The vacancy of an Alderman was to be filled up by election from amongst the Burgesses. The Burgesses were to be elected by the Mayor and Aldermen while few of them were nominated by the Company from the heads of the various castes.
- ❖ Civil and Criminal jurisdiction—The Mayor and Aldermen constituted a civil court, while the Mayor and three senior Aldermen were Justices of Peace having criminal jurisdiction. The Mayor and two Aldermen formed the quorum. The Court held its sitting only once in a fortnight and decided criminal cases with the help of jury. The Court could award the sentence of imprisonment or fine. Appeals from the decisions of the Mayor's Court lay to the Admiralty Court in ease the value of the civil case exceeded three pagodas, and in criminal cases, where

the offender was sentenced to death or loss of limb.

- ❖ Court of Record—The Mayor's court constituted a Court of Records since a **Recorder** was also attached to the Court. As all the members of the Mayor's Court were lay persons without expertise in law. It dispensed justice "in a summary manner according to equity, justice and good conscience" and law enacted by the Company. Obviously, this was bound to result into uncertainty and lack of uniformity in laws.
- ❖ For the purpose of providing the services of a person having legal knowledge, the Company appointed Sir John Biggs, the Judge-Advocate of the Admiralty Court, as the Recorder of Mayor's Court in 1688. This appointment of Sir John Biggs as a Recorder of the Mayor's court created an anomaly because as a Judge-Advocate of the Admiralty Court, he also heard appeals from the Mayor's Court, with which he was associated as a Judge. However, this anomaly did not last long since Sir John Biggs died in 1689, and thereafter, the Company did not appoint any Recorder in the Mayor's Court.

Mayor's Court under the Charter of 1726 Working of the Mayor's Court of 1726. The Charter of 1726, adopted the principle of independence of judiciary to a considerable extent which was a fortunate development in the legal history of India. But the constant assertion of judicial independence by the judges of the Mayor's court proved irksome to the Governor and Council which resulted into constant conflict and hostility between the two. As rightly observed by Kaye, this made the Corporations, and consequently the Courts, largely autonomous but the Council at times sought to interfere with the functioning of the Mayor's Court and tried to dictate its terms which the Courts did not like. The strained relations between the Mayor's Court and the Governor and Council also led to the serious differences between the Government and the Corporation which are reflected in the following cases-

- ❖ that the Mayor's Court had no authority to decide cases involving disputes relating to caste or religion of natives and warned the Mayor's Court not to interfere in such cases. The Case of Arab Merchant—In 1930 a dispute arose between the Court and the Council. An Arab merchant brought a suit in the Mayor's Court for recovery of the valuable pearls which were alleged to have been extorted from him by the men who saved him from a burning boat from the coast of Gujarat. The defendants had already been tried earlier for piracy and acquitted. The Council made suggestion to the Mayor's Court against the validity of merchant's claim. But the Mayor's Court ignored the suggestion and decreed the suit. On appeal, this decision was reversed by the Governor and Council by casting vote of the Governor.
- ❖ The Oath Case of Bombay—In Bombay, a dispute arose in 1726 over the issue of form of oath to be prescribed for Hindu witnesses. The Mayor and Aldermen of Bombay were usually the members of the Grand Jury at a Quarter sessions. A conflict arose between the Bombay Council and the Mayor's Court as to the form of oath for Hindu witnesses. The Grand Jury held up two successive sessions by refusing to find and 'true bills', unless the Hindu interpreter and witnesses were sworn upon the 'Cow' instead of the holy 'Geeta'. This touched the sentiments of the Hindu natives and they felt aggrieved.

Comparisons of the Mayor's Court Established Under Charter of 1687 and 1726— Although the Mayor's Court of 1726 were established on the parallel lines to the Mayor's Court of 1687 yet the two differed in the following respects—

1. The Charter of 1687 being a Company's Charter, the Mayor's Court of Madras established under it was a Company's Court whereas the new Mayor's Court under the Royal Charter of 1726 was a Crown's Court.
2. The earlier Charter of 1687 conferred both, civil and criminal jurisdiction on the Mayor's Court but the new Charter of 1726 empowered the Courts to try and hear only the civil cases. Thus, the Charter

of 1687 had a wider scope as compared with the Charter of 1726.

3. Under the Charter of 1687 appeals from the Mayor's Court lay to the Admiralty Court while the Charter of 1726 provided that appeals from Mayor's Court lay to the Governor and Council and a second appeal to the Court of King-in-Council of England. There was, however, no provision for second appeals in the earlier Charter of 1687.

4. The Mayor's Courts established under the Charter of 1726 possessed testamentary jurisdiction which the Charter of 1687 had not provided for.

5. The Charter of 1687 provided for a 'Recorder' in the Mayor's Court who was to be a professional lawyer to advise the court in legal matters. But the Recorder of the Mayor's Courts established under the Charter of 1726 was not necessarily to be a legal expert and judges appointed in the Court were mostly lay persons without any legal training or experience. In this sense, the Charter of 1687 was more in tune with the imperatives of justice as compared with the Charter of 1726.

6. The Madras Corporation established under the Charter of 1687 consisted of twelve Aldermen out of which at least three were to be Englishmen. These Aldermen acted as judges of the Mayor Court, But the new Corporations set up under the Charter of 1726 consisted of nine Aldermen, out of which seven were to be Englishmen. Thus the new Mayor's courts were far more English dominated than the earlier one.

7. No specific procedure and technical rules of law were provided for administration of justice in the old courts but the Mayor's Court of 1726 was bound by the laws and procedure of English Courts of the Crown.

8. Under the Charter of 1687, the Executive Government had nothing to do with the administration of justice but the Charter of 1726 invested the Governor and Council with the power to appeals and decide criminal cases.

In what respect the Charter of 1726 was inferior to the Charter of 1687 ?—It may be noted that criminal justice in Madras was administered by the Mayor's Court and Admiralty Court established under the Charter of 1687 whereas the Charter of 1726 vested criminal judicature in the executive and this was certainly a retrograde step. Having once divested the executive of its judicial powers, it could not be regarded as a progressive step by any test or standard, to re-invest it with judicial powers. A cardinal principle of good government is to keep judicial and executive powers separate in order to secure liberty and property of the people. Form this point of view the .Charter of 1726 was inferior to that of 1687.

Besides, similar was the position with respect to the Indians, participation. The Madras Corporation of 1687 had a sizable Indians representation whereas the corporation of 1726 was to have only two non-English Aldermen and, in practice, none was ever appointed, The mayor's Court of 1726 was thoroughly an English Court with no Indian's participation and it compared unfavorably with the old Madras Mayor's Court of 1687 in this respect also.

FATE¹³ OF CHOULTRY COURTS¹⁴-

¹³ luck

¹⁴ The Choultry Court existed in Madras to decide the cases upto the value of 20 pagodas. This Court continued to decide cases upto 1774, when some temporary arrangements were made by the Company's Directors and the Choultry Court was temporarily abolished, but it began to work again in 1775 and continued till 1800 when it was finally abolished. After it a Court under a servant of the Company was created to decide the disputes

After the Mayor's Court came on the scene, the Choultry Court lost its importance and functioned as a court of petty jurisdiction trying offences and civil cases up to 2 pagodas. On criminal cases it gave fines, imprisonment, pillory¹⁵, whipping¹⁶ or slavery as punishment.

COMMON CRIMES AND PUNISHMENTS-

In the Initial years the Court was doubtful about his power to award the death sentence but in 1712, the Governor and the Council decided that it could award death sentence to natives only. There was a lot of delay in trials and several prisoners were found to be confined to jail for too long. Though capital punishment was to be awarded by hanging some Indians were executed or whipped to death. The governor and council had the power to stay a death sentence. Piracy was a capital offence and punishable with death or banishment. Robbery was punished with death. Witchcraft was punished with fine and pillory. Forgery was to be punished with imprisonment and banishment. Brahmins were not given death penalties in observance of the Hindu sentiments; they were banished instead. A principle called 'benefit of clergy' under the English Ecclesiastical Law was invoked by the Englishmen as defence in cases of manslaughter¹⁷; the accused was branded on the hand and then discharged.

FUTURE OF THE JUDICIARY-

- ❖ The British Parliament enacted the **Act of Settlement, 1781**. The Act directed the application of personal laws for Hindus and Muslims in matters regarding inheritance, succession, caste, marriage, adoption and the like while English Law was applied to others and in all other causes. Nandkumar's case illustrates the anomalous character of the impact of the application of English law on the Indians and depicts the difficulties that arise. The expansion of its establishments brought new challenges to the East India Company. The Company requested the King to issue a Charter by which special powers could be granted to it. The Company was granted Charter by King George I in 1726 to establish "Mayor's Courts" in Madras, Bombay and Calcutta (now Chennai, Mumbai and Kolkata respectively). Mayor's Courts were not courts of the Company, but courts of the King of England. Mayor's courts superseded all existing courts established in the above places. The Mayor's Courts were authorized **'to try, hear and determine all civil suits, actions and pleas'** that may arise within the three towns or within the factories of the Company. The Court consisted of a Mayor and nine Aldermen, seven of whom, including the Mayor, were required to be naturally born British subjects. Aldermen were elected from among the leading inhabitants of the settlement to hold the position for life. The Mayor was elected from the Aldermen.
- ❖ The Mayor's Courts contributed significantly to the formulation of a uniform pattern of judicial functioning in India. The Mayor's Courts administered English law, which was assumed to be the **lex loci ('law of the place')** of the settlement. The inhabitants of the settlement were governed by the English law, irrespective of their nationality. English law did not extend outside the settlements, and there the Indians were subject to their own laws.
- ❖ The Charter of 1726 did not specify the law to be applied by the Mayor's Courts. The Charter merely stated that the Court was required to 'give judgment and sentence according to justice and right'. However, based on the past practice and in the light of the 1661 Charter, the then existing English law, or principles of English Common Law and Equity were applied. It is generally understood that the Charter of 1726 indirectly brought into application the laws of England- both Common Law and statute law, into the three British Settlements in India. This is one of the distinctive outcomes of the 1726 Charter. Appeals from the Mayor's Court were

between the natives upto the value of 5 pagodas.

¹⁵ brand

¹⁶ Beating

¹⁷ homicide

made to the Court of Governor and the Council. The Governor and five members of the Council were appointed Justices of Peace and constituted a criminal court of Oyer and Terminer (a partial translation of the Anglo-French oyeretterminer which literally means 'to hear and determine'). The Court of Governor and Council were required to meet four times a year for the trial of all offences, except that of high treason. However, a second appeal in cases valued at 1,000 pagodas or more, was available to the King-in-council in England. The Mayor's Courts established under the Charter of 1726 had severe limitations. There was no clarity regarding the applicable law, although the Company made considerable efforts to apply the English Law. The jurisdiction of the Mayor's Court over natives was relatively uncertain. In several instances, the Mayor's Court annoyed the natives by applying the principles of English Law, completely disregarding their personal laws and customs. In 1746, the French occupied Madras, after which the functioning of the Mayor's Court was suspended in that City. However, the French surrendered Madras to the British in 1749 after the conclusion of the peace treaty of Aix-La Chappelle. Using this opportunity, the Company requested the King to remove some difficulties related to the 1726 Charter. King George II issued another Charter on 8 January 1753, which by and large left the 1726 Charter intact.

- ❖ By virtue of the 1753 Charter, the Mayor Courts were re-established in the three settlements with the same jurisdictions and powers as in the Charter of 1726. To avoid disputes between the Governor and Council, the Charter brought the Mayor's Court under the control of the Governor and the Council. The Mayor, instead of being selected by the Aldermen was to be selected by the Governor and Council. Furthermore, suits and other actions by natives were expressly excluded from the jurisdiction of the Mayor's Court unless both parties had submitted them to their determination. The jurisdiction of the Mayor's Court was restricted to suits of the value of over five **(5) pagodas**. It is notable that Courts such as the Mayor's Courts were established for deciding mainly the disputes of the British natives or other foreigners. Therefore, in all the three settlements, different types of courts existed to decide the cases of the natives. In Madras, the Choultry courts existed to decide cases up to the value of 20 pagodas. In other words, Choultry courts heard, by and large, petty cases and continued up to the year 1800. In Calcutta, the natives were subject to the Zamindars' courts. The East India Company as the Zamindar administered these courts. Zamindars' courts decided civil matters, viz, issues involving land, property and personal wrongs. It is also reported that the Zamindar courts and the mayor courts disputes relating to jurisdictions on certain civil matter. In Calcutta to decide criminal matters. However, in Bombay no separate courts were established to decide disputes among the natives. The reason was that the Company claimed complete sovereignty over the island and did not want to treat the natives differently.

9. Charter 1726 (24/9/1726)

This period mainly includes the charters of 1600, 1609, Firman of 1618 by Emperor Jahangir, Charters of 1635, 1657, 1661, 1668, 1683, 1686, 1693 and 1698, Till 1726 the administration of justice in three presidencies was haphazard and it became unified by the charter of 1726 When Mayor's court was established for all three presidencies. The Company participated in administration of justice in cooperation with the local Mughal authorities. some changes were brought in the administration of justice in three Presidency Towns with the intervention of some Charters issued from time to time by the Company though these changes were fringe and different in three Presidency Towns.

Main Features of Charter of 1726—the main features of the Charter of 1726 are as under—

1. The Charter for the first time established the Crown's Court in India.
2. The Charter brought about a uniform system in all the three Presidencies of Bombay, Madras and Calcutta and the different types of systems existing till then were abolished.
3. The judicial system established.

✚ **Establishment of corporations:**

- Bombay, Calcutta and madras
- Mayor and 9 Alderman (out of 9. 2 from any country)
- Mayor elect every year and by 9 alderman (lifetime)
- They remove by governor- in- council
- 1st subordinate legislation

✚ **Mayor Court:**

- Declared as court of record
- Hear civil cases
- Jurisdictions over presidency town and company factories

✚ **Procedure :**

- By charter
- Come on fix day if not than warrant issue
- Release on bail
- Sheriff to arrest and he is a officer of court tenure (1yr.)

✚ **Right of appeal :**

- 1st appeal to Presidency Town and 14 day of judgment to governor-in-council if 100 pagoda se less.
- 1000 pagoda to king-in-council.

✚ **Justice of peace**

- Governor and 5 member of council for criminal cases
- Arrest and punish in petty crime cases

✚ **Legislations**

- By governor and council but not contrary to English law.

10.1726-1753

✚ English law application :

- Use of English law and common law
- No Indian customs and tradition (ignorance of Indian laws)
- No specify in jurisdictions

✚ Jurisdictions

7. **Charter 1753**

✚ Court in charter:

- The court of request
- Mayor court
- Court of president and council
- Privy council

Critics

- ✚ Executive upper hand
- ✚ Ignorance of law by judge
- ✚ No limit in jurisdictions: restrict to Presidency court
- ✚ Appeals : to King
- ✚ Indian : no positions in judicial

No Mayor's Court

- ✚ Calcutta: till 1772 the House of Commons appointed secrecy. Conflict in zamindari court and ignorance of law the enacted "The Regulating Act 1773" turn into Supreme Court in 1774 in Calcutta only.

- ✚ Bombay: 1798 than its abolished and recorder court took place there are mayor, 3 aldermen and recorder who should be barristers and appointed for 5 year.
- ✚ Madras:1797 made recorder court same as Bombay

Mayor Court :

- In the year 1686 Madras government levied a house tax on the Madras city population to repair the city wall, but people of Madras, local people did not pay the tax and company faced problems and difficulties to collect the tax.
- After this company decided that to make the tax collection easy, a body should be formed consisting of English men as well as local Indian population so it will become easy for the Company officials to collect the tax.
- The corporation came into existence on September, 29, 1688 which consisted of a Mayor, 12 Aldermen and from 60 to 120 Burgesses.
- It was decided that every year new Mayor will be elected from Aldermen by aldermen and burgesses and retiring Mayor can be reelected by them.
- The aldermen and Burgesses got the power to remove the Mayor if he is unable to perform his duties.
- Only Englishman can become the Mayor .
- The Aldermen hold the office as long as they stayed in Madras city. Indirectly they hold the office for lifelong.
Mayor and Burgesses hold the power to remove the Aldermen from office also if he did not perform well.
Among the Aldermen¹⁸ minimum 3 were required to be British servants of the company and other 9 can belong to any nationality or religion.
- The first 12 Aldermen¹⁹ were as follows –
- The charter appointed 29 Burgesses and then remaining Burgesses were appointed by the Mayor and Aldermen.
- Among the first 60 Burgesses²⁰, the caste heads were selected as the Burgesses.
This was the nature of First Corporation.
- The Mayor and the 3 senior Aldermen were to be the Justices of the peace.
- The Mayor and Aldermen were to form a Court of record which was authorized to try civil as well as criminal cases.
- **This court was known as Mayors Court.**
- The Mayors court was authorized to give following punishments.
- Fine, imprisonment and corporal punishment.

¹⁸ **Meaning of the words –**

Alderman –

1. A member of the municipal legislative body in a town or city in many jurisdictions.

2. A member of the higher branch of the municipal or borough council in England and Ireland before 1974.

3. one of the senior members of a local council, elected by other councilors

¹⁹ Englishmen – 3

Hindus – 3

Frenchman – 1

Portuguese – 2

Jews and Armenians – 3

²⁰ Burgesses –

A magistrate of a borough; generally, the chief officer of the corporation, who performs, within the borough, the same kind of duties which a mayor does in a city. In England, the word is sometimes applied to all the inhabitants of a borough, who are called burgesses sometimes it signifies the representatives of a borough in parliament.

- The convicted persons got right to file appeal at the Admiralty court.
- As Mayor and Aldermen did not have legal knowledge the provision was made for the appointment of the Recorder of the court.
- He helped the Mayor regarding the cases and he also got the power to vote just like Aldermen.
- The recorder of the court was required to be skillful in the law as well as the servant of the company.
- **The charter appointed the Judge Advocate Sir Biggs as the first Recorder.**
- Only in the year 1712 the court got power to give death sentence to native people.
- The Mayor Court did not follow uniform punishment for the same crime it depend on the judges discretion for this the reason was that the Mayor and his team did not have any legal knowledge.
- Sir Biggs got the experience of working as a recorder in the London but here in Madras the problem was that Sir Biggs sat in the Admiralty Court as Judge Advocate where appeals from the Mayors Court were went.
- But company ignored this fact.
- After the death of Sir Biggs no Recorder was appointed. Like this in the period of 1686 to 1726 in Madras city 3 Courts functioned. Mayors Court, Choultry Court and Admiralty Court. After 1704, Governor and Council heard the appeals from the Mayors court as Admiralty court stop to function. In this period also the criminals were so long kept in jails that even people forgot the crimes.
- Justice system was very slow and no one bothered. The capital punishment was given by Hanging. Robbery was punished with Death. Witchcraft was punished with fine and pillory.

Charter 1753

- ✚ In the year 1746, The French got the control of Madras Presidency. Because of this Madras Corporation which was created after the charter of 1726 was ceased to function. In the year 1749 Again British got the control of Madras. To establish again Madras corporation King George II again issued a new charter on the 8th January, 1753.
- ✚ The company officials utilized this chance and tried to remove all the disadvantages of the charter of 1726. The new charter of 1753 was made applicable to all the 3 Presidency Towns. New charter changed the method of appointment of Mayor and Aldermen. Governor and Council got the power to appoint the Aldermen.
- ✚ Regarding selection of the Mayor, the corporation selected the names of 2 people and Governor and Council selected one of them as the Mayor every year. This way Mayor became the puppet of the Governor and Council. This way Mayor as well as Aldermen became the nominee of Government. And Government got the full control of Corporation. This way Government got the power to appoint the judge of the Mayors Court and remove him also if he disobeyed the Government or Governor.
- ✚ Mayor's court lost all the autonomy and independence, and became secondary in nature. The court was allowed to hear the Indian cases only if both native Indian parties agreed and submitted the case to the Mayors court.
- ✚ Mayors court got the right to take action against the Mayor. No person was allowed to sit as a Judge if he was interested in the matter in anyway. Mayors court got the power to hear the cases against the Government and Government Defended them. Now suitors deposited money with the Government not to the Mayors Court.
- ✚ The new charter also created the new court called as Court of Request at each presidency town to decide, cheaply and quickly cases up to 5 pagodas. 1 Pagoda equals to 3 Rupees. This court was established to help poor Indian litigants who can not afford the expenses of the court. The court weekly sat once, and was manned by commissioners between 8 to 24 in number. The government appointed the commissioners and every year half of the commissioners got

retired and those places were filled by the ballot method by remaining commissioners. Commissioners sat in each court on rotation. For small claims, cognizable by Requests court if people, plaintiff went to the Mayors court, the rule was that Defendant was awarded costs, this way it saved time and money also. Requests court got the power to hear the Indian matters also.



Now there were 3 courts namely



- ✚ Court of Governor and Council – the court where appeal from the Mayors court went Regarding civil cases Privy Council in the England was the final authority
- ✚ This charter introduced many changes but this charter took away the Independence of Mayors Court , which was given to this court by the charter of 1726. The East India Company with this charter also always followed the policy not to break the customs of Hindus and Muslims. When both Indian parties agreed that time only Mayors court handled those cases.
- ✚ As executive enjoyed more powers they appointed company servants as the judges. The executives handled the cases in such a way it does not harm them or did not harm the company servants or friends. In 1772 House of Commons appointed a committee of secrecy to check the affairs of the east India Company. The committee in its 7th report gave adverse report regarding Calcutta Judicial system. The reported stated that Mayors court behaved as they wish in all the cases without following English law. As a result of criticism.
- ✚ Supreme Court was Established at the Calcutta in the year 1774. The supreme court of Calcutta was Independent court and does not work under company executive and consisted of professional lawyers who knew English law in depth.

Unit - II Adalat System

| | |
|----------|---|
| 1 | Grant of Diwani and Execution of Diwani functions |
| 2 | <i>Judicial Plan 1772 and Defects</i> |
| 3 | <i>1774 Plan</i> |
| 4 | <i>1780 Adalat</i> |
| 5 | <i>1781 and 1st civil code</i> |
| 6 | <i>Regulating Act 1773</i> |
| 7 | <i>Leading cases Raja Nandkumar, The Patna Case and The Cassijurah Case</i> |
| 8 | <i>1781 Act of Settlement</i> |
| 9 | <i>Its Defects</i> |

Sadar Diwani Adalat History

On 12 August 1765, Shah Alam II issued a Farman granting to the East India Company, the Diwani of Bengal, Bihar and Orissa in perpetuity, requiring it to pay 26 lakh rupees annually to the imperial exchequer. The balance of the revenue of these three provinces was to be spent on 'the expenses of the administration of Bengal and maintenance of the family of the Nawab of Murshidabad (fifty lakhs), and the cost of the military defence of the provinces. Thus it was essentially as revenue collectors that the English began their actual occupation of the country, and it was the exigencies of the revenue service that compelled them to elaborate a system of government, and extrude the native sovereignty by a long process of its function. Under the plea that they were acting within the constitution of the Mughal empire, the Company's servants built up a system of internal government, and 'when the walls of their building reached certain height, the sun of British Crown rose to its meridian, and the shadow cast by the setting constellation of the Mughal empire disappeared forever.² According to Firminger, 'the history of revenue administration is thus the backbone of the history of the English occupation of Bengal. the Company as revenue administrator of Bengal, Behar and Orissa, were attempted by the early 'reformers' in utter ignorance of the economic principles. The failure of two experiments to introduce bimetallism and to eliminate discount on coins of older mintage by issuing coins with fixed dates, prompted the Court of Directors of the East India Company to establish an official enquiry to diagnose the currency crises of Bengal. The recommendation of this enquiry laid the agenda of the currency reforms in Bengal. In Bengal too, Official committees were appointed and on the basis of their recommendations a number of measures to reform the existing currency were adopted. The Company Rule in Eastern India: The grant of Diwani of Bengal, Bihar and Orissa in 1765 confirmed and consolidated all the political and military advances that had been made by the East India Company during the previous decade. The new acquisition was seen as a panacea of all the financial problems lately faced by the Company. Clive even predicted that the 'gain' would be able to 'defray all the expenses of investments in good for export, furnish the whole of the China treasure, answer the demands of all other settlements in India, and leave a considerable balance in treasury.

Sadar Diwani Adalat was the Supreme Court of Revenue in British India established at Calcutta in 1793 by the British Parliament. Its judges were the Governor General and Council Members of the East India Company assisted by native judges and officers of revenue

It was established to allow Hindu Indians to be governed by Hindu law in matters of property, and not as before by Muslim law, although they were still subject to Muslim criminal law.

In each of the districts of British India subordinate courts of revenue, with definitive jurisdiction of up to 500 rupees, were established in which the judges were the "Collector" of that district (a covenanted servant of the East India Company) and his deputy and register, assisted by native officers. For cases exceeding 500 rupees appeals were allowed to the Sudder Dewanny Adawlut.

The court was abolished after the Indian Mutiny of 1857–58.

Importance of Diwani Adalat

- ✚ After the defeat of the confederate army of the Bengal Nawab, Nawab of Oudh and the Mughal Emperor the English East India Company was surely in an advantageous position.
- ✚ Robert Clive came to an understanding with the Mughal Emperor and agreed to return Kara and Allahabad to him.
- ✚ In return for this Shah Alam the II granted the diwani rights of Bengal, Bihar and Orissa to the English East India Company on an annual payment of 26-lakhs of rupees.
- ✚ Robert Clive, on behalf of the English East India Company received the grant of diwani from Shah Alam the II.
- ✚ The importance of the grant of diwani lies, firstly, in the fact that prior to this there was no legal recognition of the authority of the East India Company over the Nawab of Bengal.
- ✚ The Company had been enjoying the political and economic rights forcibly.
- ✚ But with the grant of diwani the Company's rights were now established on a legal basis.
- ✚ Secondly, since the English now came to control the finance of Bengal they no longer had to depend on the supply of money from England for trade in India.
- ✚ Thirdly, the partial takeover of the diwani functions by the East India Company resulted in immense suffering to the people of Bengal.
- ✚ Adalat system was introduced by the company to administer justice in the mofussil areas.
- ✚ In the beginning company started adalat system in the year 1772 in Bengal, Bihar, and Orissa. later it was introduced in the mofussil of Bombay and Madras when company saw the good results in the Bengal. First the experiment was made in the Bengal and when successful it was introduced into the Bombay and Madras Mofussils
- ✚ That time when Nawab Siraj –ud-daula saw the rising power of East India company in the Bengal , he attacked the Calcutta and captured the Calcutta in the year 1756
- ✚ After this east India company under the leadership of Clive attacked the Calcutta and recaptured Calcutta in the year 1757
- ✚ Same year Battle of Plassey was fought and Nawab was defeated.
- ✚ After this real power in Bengal went to the company but company made the Mir Jafar the Nawab and gave him civil government.
- ✚ When Calcutta council was dissatisfied with the performance of Mir Jafar as Nawab they replaced him , and Mir Kasim became the Nawab in the year 1760 In the year 1763, again Mir Jafar was made the Nawab. In the year 1765 the minor son of Mir Jafar, Najam-ud-daula became the Nawab. This way slowly east India Company increased its power in the Bengal. Nawab of Bengal was just a puppet in the hands of East India Company. When company wanted, company changed the Nawab. As company was supreme, why it did not declare itself was the ruler of Bengal
- ✚ There were few reasons. The first and most important reason was that that time British Constitutional law if No British Person can claim the sovereignty over any territory for himself, it must vest in crown and this way crown and parliament got the authority to legislate that area. The second reason that East India Company was afraid of French as well as Portuguese as they would create international problems for company as well as problems in the Bengal for company. Therefore, company took the easy way out, used Nawab as the Puppet, and controlled Bengal through him. In the year 1765 Moghul Emperor Shah Alam granted to the company the diwani of Bengal , Bihar and Orissa
- ✚ The company agreed to pay annually 26 lakh rupees to the Moghul Emperor and got right to keep the all-surplus amount of collected revenue.
- ✚ The grant of the Diwani gave to the company a de jure status of an official of the Moghul Emperor.

- ✚ The company was real controller but still company adopted this policy of not becoming direct ruler. During the time of Moghul administration, Moghul Emperor appointed two persons in the province that is Subah; one was called as Nawab and second was Diwani.
- ✚ Nawab or Nizam controlled the criminal justice system as well as military and maintained the law and order in the Province.
- ✚ Diwan or Diwani gave right to collect the revenue, and decide civil and revenue cases. Diwan send the collected revenue to the central authority or treasury
- ✚ This way the power of divided between Nawab and Diwan and both acted and controlled each other Nawab got the military but no money
- ✚ Diwan got the money but no military so this way Moghul Emperor kept his control on both as none of them can become powerful than the Moghul Emperor.
- ✚ Regarding Bengal, we can see that Nawab of Bengal was the Puppet of East India Company and Now East India Company became the Diwan of the Bengal.
- ✚ Now again company made the agreement with the Nawab that he will not maintain the army and company will pay him an annual allowance of 53 lakh rupees for his expenditure and criminal judicature.
- ✚ After this agreement, company became Supreme Authority regarding Bengal.
- ✚ The nawab of Bengal also agreed that a Deputy Nawab will be appointed by the Calcutta government and Nawab will work as per his advice and Nawab cannot remove him from his post. Thus East India Company got the responsibility of maintaining military, collecting revenue and civil justice, criminal justice was seen by deputy Nawab, and expenses regarding criminal justice were made through the allowance of Nawab. After getting, the Diwani in the beginning company did not make any changes in the procedure of collecting revenue or civil justice as company was not aware how it functioned. Moreover, they were less in numbers.
- ✚ The company appointed Mohammed Reza Khan at Murshidabad and Raja Shitab Roy at Patna to control the working of old system; they both were supervised by two English officers situated at Murshidabad and Patna.
- ✚ Mohammed Reza khan was appointed as the Naib Nazim and he look after the administration of criminal justice system on behalf of Nawab.
- ✚ As both these, two were reported to the East India Company they knew who the real master was so they never went against the Company servants.
- ✚ Using them company officials made lot of money in a short period. The east India company servants did the private business also and made more money. In the year 1765, Clive became the Governor of Bengal and he himself described the situation of Bengal as follows. 'I shall only say that such a scene of anarchy, confusion, bribery and corruption and extortion was never seen or heard of in any country but Bengal. In this way Bengal was ruin by Bengal officials as well as East India company officials, everyone became the criminal and robbed the Bengal.
- ✚ To improve these matters in the year 1769 Governor Verelst appointed company servants as supervisors in the districts. The supervisors were to collect information regarding condition of the soil, collection of land Revenue and administration of justice .They were to check the corruption and supervise the justice system. The supervision extended to practically on all the functions of Diwani
- ✚ The governor and council described the justice system as , corrupt bargain with the highest bidder The proper procedure of maintaining records was started. Kazis and Brahmins who administered the justice were given Sanads, which were duly registered so that non-authorized persons cannot give the justice.
- ✚ However, the scheme of Supervisors failed as they were in less numbers and has to look after more work. Majority times they also became corrupt.
- ✚ In the year 1771 Bengal face the acute Famine and in that one fifth of the population was swept away. That time company saw reduction in the revenue collection. In addition, company

officers blamed that Indian officers are doing more corruption. Therefore, Company as a diwan decided to take full charge of collection of revenue. The company officers just wanted to increase their corruption share so they brought this idea.

- ✚ After this, Governor and Council at Calcutta were to become responsible for providing solutions for administrative problems. This is the beginning of new judicial system in the Mofussil That time judicial officers kazis were appointed not on the merit but matter of official favor Zamindars were also corrupt and ruled the villages as they wished.
- ✚ Judicial officers did not get the salary so they use this power and did the corruption to make money. There was no procedure established that time. Corruption was everywhere and honesty was sold everywhere. To reform this entire situation Warren Hastings was called to formulate a scheme for the execution of functions of Diwani.

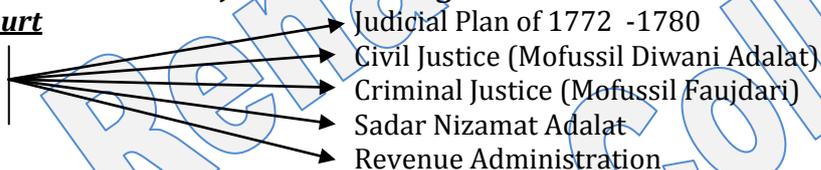
1. Warren Hastings Judicial Plan 1772-1774-1780

Court in 1772

| | |
|--------------------------|------------------------|
| Collector | Mofussil Diwani Adalat |
| Sadar Diwani Adalat | Small cause Adalat |
| Mofussil faujdari Adalat | Sadar Nizamat Adalat |
| Diwani Adalat | |

Administration Of Justice: First Stage

Court



Development of Adalat System during the time of Warren Hastings

Warren Hastings remained Governor of Bengal from 1772 to 1774; in 1774 he was promoted to the rank of Governor-General. He remained on this post till 1785. He was a competent and an efficient administrator. The Administration of justice at the time Warren Hastings took over as Governor of Bengal was in a bad shape. It was almost verging on a total collapse. The dual system of government proved very defective and unsatisfactory. The courts had become the instruments of power rather than of justice. Warren Hastings who assumed office of Governor of Fort William on April 13, 1772, made strenuous efforts to remove the evils in the existing judicial administration and revenue collection. For this purpose, he appointed a committee consisting of the Governor and four members of the Council called the 'Committee of Circuit'. The Committee prepared a Judicial Plan on August 15, 1772 to regulate the administration of justice and revenue collection. This plan was popularly known as the 'Hastings Plan of 1772.'

Hastings's Judicial Plan of 1772—This Plan consisted of 37 regulations dealing with civil and criminal laws. He divided the Diwani area of Bengal, Bihar and Orissa into several districts, each having an English officer called the 'Collector' as its head. Thus, district was the unit of administration for justice and revenue collection. The Collector was primarily responsible for collection of revenue. The main features of Judicial Plan of 1772 are as under—

I. Reforms Made in Revenue Administration I In- whole revenue system was re-organized. The Revenue Boards at Murshidabad and Patna were abolished and a supreme authority called the Board of Revenue was set up in Calcutta which consisted of the Governor and all the members of the Council.

The District Supervisors who were appointed in 1769 by Verelst were made Collector of their respective districts and were to look after the work of revenue collection. He was assisted by a native officer called the Naib Diwan who acted as a native revenue executive. All orders were to be issued by the Collector under the Company's seal and funds were to pass through him to the treasury at Calcutta. The Board of Revenue comprising Governor and his Councilors at Calcutta sat twice a week for issuing necessary orders and instructions to the Collectors of Districts and inspecting, auditing and passing the revenue accounts.

2. Reforms Made in the Administration of Civil Justice—The following three types of courts were established for the purpose of making reforms in the existing judicial system—

(i) **Mofussil Diwani Adalat**—In each district, a Mofussil Diwani Adalat was established which was presided over by the Collector as the Judge. The Court took cognizance of all civil cases including property, inheritance, succession, caste, marriage, contracts, accounts etc. The cases relating to caste, religion, marriage and inheritance of the native were to be decided according to their usages and customs of Hindu law for Hindus and Muslim law for Mohammedans was applied. The Collector being an Englishman, was ignorant about the personal laws of natives, hence he was assisted by native laws officers called Kazi and Pandits who expounded the law to him. The Court held its sittings twice a week in open court. The matters relating to succession to Zamindari and Taluqdari property could not be submitted to Mofussil Court as they were reserved for the Governor and Council. Appeals from these courts were to be heard by the Sadar Diwani Adalat at Calcutta where the subject-matter of the case exceeded rupees five hundred.

(ii) **Small Causes Adalats**—There were Small Causes Adalats headed by the Head Farmer of the Pargunnah decided cases upto the value of rupees ten.

(iii) **Sadar Diwani Adalat**—A Sadar Diwani Adalat was established at Calcutta which exercised appellate jurisdiction over Mofussil Diwani Adalats in all cases where the subject-matter of the suit exceeded Rs. 500/-. This Court comprised Governor as its President and at least two members of the Council aided by Diwan of Treasury and Chief Kanungos.

3. Reforms Made in the Administration of Criminal Justice—For the purpose of reforming the criminal administration of justice two types of courts were established—

- (i) **Mofussil Nizam Adalat**—A court of Criminal Judicature called the Fauzdari Adalat was established in each district. It tried serious offences including murder, robbery, theft, fraud, perjury etc. This Court was assisted by a Kazi or Mufti and two Moulvies
- (ii) who expounded the Mohammedan law of crimes. The Mufti was supposed to be a person well versed in the Mohammedan Law of crimes and his function was to expound the law and give 'futwa' after hearing the parties in evidence. But the Collector exercised overall supervision on the working of the Fouzdari Adalat. He was enjoined to see that all necessary witnesses were summoned and examined and the decision was fair and impartial in accordance with the well settled principles of law and procedure.
- (iii) **Sadar Nizam Adalat**—A superior court called the Sadar Nizam Adalat was established at Calcutta which exercised control over Fouzdari Adalats. It was presided by an Indian judge known as the Daroga-i-Adalat who was to be assisted by the Chief Kazi, Chief Mufti and three Moulvies. These persons were appointed by the Nawab on the advice of the Governor. The Court was to revise all the proceedings of the Fouzdari Adalats; and signify its approbation or disapprobation in capital cases with reasons, and to prepare the sentence for the warrant of the Nizam. The Governor and Council exercised general supervision over the proceedings of Sadar Nizam Adalat so that even handed justice could be ensured without fear or favour.

- (iv) Thus, Fouzdari Adalats were not empowered to award death sentence, but they were required to transmit the evidence in capital cases with their opinion to the Sadar Nizamat Court for final decision. Again, fines over one hundred rupees were to be confirmed by the Sadar Court, which alone could decree forfeiture or confiscation of property. The dacoits were to be executed in their own village and the entire village was fined. The family members of the dacoits were made State-slaves.

Contribution of Warren Hastings in the Preservation of Indian Laws—The Judicial Plan of 1772 safeguarded the personal laws of Hindus and Muslims. The cases relating to inheritance, marriage, caste etc. were to be decided according to the laws of Quran with regard to Muslims, and laws of Shastras with respect to the Hindus. Both, Hindus and Muslims were treated alike. This provision shows the foresightedness of Hastings as an efficient administrator. He even favored the compilation of a digest of Hindu Law for the guidance of Civil Courts. Thus, he tried to correct the defects of the preceding judicial and revenue system without interfering with the local traditions and customs of the natives. Although, the judges of the Adalats were Englishmen but they were assisted by the Native law officers who expounded personal laws of parties and enlightened them with the traditions, customs and usages of the natives. The participation of native law officers in the judicial system infused confidence and trust among the native inhabitants about the impartiality of English judges.

Thus, the Judicial Plan of 1772 paved foundation for sound judicial system in subsequent years. Prof. M. P. Jain said that the foundation of Anglo Indian Justice was laid down by Warren Hastings, over which the later administrators specially Lord Cornwallis built up the upper-structure of judicial administration.

Since the working of the judicial scheme under the Plan of 1772 resulted into a considerable loss of revenue earnings of the Company's Government. Consequently, in 1773 the Court of Directors directed the Governor and Council in Calcutta, to withdraw Collectors from Districts. Obviously, this needed a fresh Plan which Warren Hastings introduced in 1774 to be known as the "System of Provincial Council."

Judicial Plan of 1774 —The Abolition of the institution of collector in 1773 on the advice of the Court of Directors of the Company in England up-set the judicial arrangement of 1772 and a new Plan became an urgent need of the time. Warren Hastings prepared a new Plan on November 23, 1773 which was implemented in January, 1774. The new judicial reforms of Hastings can be discussed under the following three heads—

I. Establishment of Provincial Council for Civil Justice—Under the Judicial Plan of 1774 the entire Diwani area of Bengal, Bihar and Orissa was divided into six divisions with headquarters at Calcutta, Burdwan, Murshidabad, Dinajpore, Dacca and Patna. Each division consisted of several districts. A 'Provincial Council' consisting of five covenanted servants of the company was established in each of these divisions except Calcutta where a 'Committee of Revenue' was set up. These Councils supervised the revenue collection in the Division and heard appeals from the Mofussil Diwani Adalats from the districts within its territorial jurisdiction.

Recall of Collector and Appointment of Diwan—The post of Collector having been abolished in 1773 now each district was placed, in charge of an Indian officer called the 'Diwan' or the 'Amil'. His main function was to look after the work of revenue collection in his district. He also presided over the Mofussil Diwani Adalat of the District which was previously presided by the Collector.

Appeals from Mofussil Diwani Adalats were to be taken to the Provincial Council, which in this capacity was known as the Provincial Court of Appeal, the decision of the Provincial Court of Appeal

(Provincial Council) was final in all cases upto the value of Rs. 1,0007- but if the value of the subject-matter of the suit exceeded this amount, a further appeal lay to the -Sadar Diwani Adalat.

The Provincial Council also had original jurisdiction to decide all cases arising at the headquarters of the division, in the first instance. Thus, the Provincial Council had both, the original as well as the appellate jurisdiction over civil cases.

It was also empowered to hear complaints against the head farmers, Naib Diwans, Zamindars and other officers of the Government.

2. Establishment of Board of Revenue at Calcutta for Revenue Administration—

The head of the district, i.e., the Diwan was to collect revenue under the supervision of the Provincial Council. The Provincial Councils were to supervise revenue collection in their respective divisions. They were further subjected to overall control and supervision of the Board of Revenue at Calcutta.

3. Establishment of the Court of Naib Nazim or Diwan for Criminal Justice—

- (i) Under the Judicial Plan of 1774, the supervision of the Collector on the working of the Mofussil Fouzdari Adalats and that of the Governor and Council over the Sadar Fouzdari Adalat, came to an end. Now Sadar Fouzdari Adalat was shifted from Calcutta to Murshidabad and placed under the supervision and control of the Nawab; A new office of Haib Nazim was created who controlled the working of the Sadar Nizamat Adalat on behalf of the Nawab. Mohammad Raza Khan was appointed as Naib-Nazim.

First civil code

Preparation of 1st civil code by governor general Warren Hastings and CJ Elijah Impey for improving civil justice.

1. Sadar Diwani Adalat at Calcutta
2. Application of personal law recognized in 1772 for Hindu and Muslim proper process and rule of evidence, foundation of legal professions for judges and litigants
3. Separation of judiciary and revenue as CJ sadar Diwani Adalat established the independent and impartiality of judiciary. It included zamindar, talukdar and farmers employed in collection of revenue were also under jurisdictions of civil court.

1. ACT OF SETTLEMENT 1781

Act of Settlement came for removal of the defects of the Regulating Act. The conflict between the Supreme Council and Supreme Court reached to a very serious stage. A petition against the Supreme Court activities in Bengal was submitted to the British parliament by the Supreme Council. Besides a petition signed by Zamindars, the Company's Servants and other British subjects inhabiting Bengal was also sent to the British Parliament against the Supreme Court. British Parliament against the Supreme Court. The British parliament appointed a parliamentary committee to make inquiries into the matter and prepare a report. The committee prepares report on the conflict between the Supreme Council and Supreme Court in 1781. On the basis of this report, the British parliament passed an Act in 1781. This Act is known as settlement Act, 1781.

A survey of the history of 7 years from 1774 to 1780 shows that the provision of regulating Act 1773, and the Charter of 1774 created many problems and conflict. The chain of events and the trail of the Cossijurah case pointed a\out the serious growth of conflict between the judiciary and executive. Not only the Governor- General and Council and the inhabitants of Bengal, also submitted their petitions to the King in England.

SALIENT FEATURE OF ACT OF SETTLEMENT 1781 –

The Act of 1781 was passed in order to explain and amend the provisions of Regulating Act, 1773. Some important provisions of the Act of settlement may be briefly summarized as follows:

- i) The Act declared that the Governor-General and Council have immunity from the Jurisdiction of the Supreme Court for all things done or order by them in their public capacity and acting as Governor-General and Council.
- ii) The Governor-General and Council and any Person acting under their orders had no immunity before English Courts.
- iii) Revenue matters and matters arising out of its collection were excluded from the jurisdiction of the Supreme Court.
- iv) English law was not applicable to the natives. Hindu and Mohammedan personal laws were preserved in matters relating to succession and inheritance to lands, rents, goods and in matter of contract and dealings between parties.
- v) Where parties were of different religion their cases should be decided according to the laws and usages of the defendants.
- vi) The Supreme Court was empowered to exercise its jurisdiction in actions for wrongs of trespass and in civil cases where parties had agreed in writing to submit their case to the Supreme Court.
- vii) It was also provided that the Supreme Court would not entertain case against any person holding judicial office in any country courts for any wrong inquiry done by his judicial decision. Persons working under the authority of such judicial officers were also exempted.
- viii) The Parliament recognized Civil and Criminal Provision Courts. These Company's Courts were existing independently of the Supreme Court. It was one of the most important provisions of the Act of 1781 as it completely reversed the policy of the Regulating Act.
- ix) The Act provided that the Sadar Diwani Adalat will be the Court of Appeal to hear appeals from the country courts in civil cases. It was recognized as Court of Record. Its judgment was final and conclusive except upon appeal to the King-in-Council in civil cases involving Rs. 5000 or more. Sadar Diwani Adalat was presided over by the Governor-General and Council was also empowered to hear and decided cases or revenue and undue force used in the collection of revenue.
- x) The Act of 1781 authorized the Governor-General and Council to frame Regulations for the Provincial Council and Courts.

2. REGULATING ACT 1773²¹

The company servant made lot of money in India when they went to U.K started to live lavishly and even they bought the seals of house of commas. The population of U.K started to doubt the working of east India Company. The shareholders of the company voted and started to get the big dividends from the year 1676 it was the rule that the company will pay to the British exchequer, 4 lakh pounds every year to retain its territorial acquisition and revenues. The company servants made money started to become rich and company was making losses, so company approach to British government for loan. After this House of Commons appointed a select committee and a secret committee to probe the affairs of company before giving company the loan amount. The report suggested that company should be brought under the British parliament and reports mentioned the evils of company affairs. After the parliament enacted the regulating act 1773 to remove the prevailing evils. Parliament amended the

²¹ Object of Passing the Regulating Act, 1773—British Parliament enacted the Regulating Act, 1773 in order to achieve the following purposes— (a) to impose greater control and supervision of Parliament over the affairs of the East India Company, (b) to democratize the structure of the East India Company itself, (c) to streamline the administration of India by East India Company, (d) to establish a Supreme Court at Calcutta, (e) to give greater

constitution of company brought company under the British parliament with this era of parliamentary enactment started.

PROVISION OF REGULATING ACT:

The term of the directors of east India Company was increased from 1 year to 4 years and provision was made that every year one fourth directors were elected in rotation. The voting power of shareholders was restricted. The company directors were required to lay before the treasury all correspondence from India relating to revenue and before a secretary of state everything dealing with the civil and military affairs of the government of India. The act appointed a governor general and council of 4 at Calcutta.

They got all the powers civil and military regarding all the company acquisition as well as revenue in the kingdoms of Bihar Bengal and Orissa. Warren Hastings appointed the 1st governor general and pother came from England. All were to hold office for 5 years but king can remove them if courts of the directors recommended the removal. The Governor general got only one vote and casting vote in case of the Governor general did not get the power to overrule the majority vote because of this other council members always opposed the policies of warren hasting and the 1st 6 years warren hasting found it very difficult to introduced new laws or policy. In the year 1776 one member from the council died and warren became powerful because of casting vote only in the year 1786 Governor general got the right of vote to override the decision of council because of experience they knew that without vote Governor and council fails to show the results and implement policies. The regulating act put the madras and Bombay presidency under the supervision of Calcutta presidency in matters of war and peace. The subordinate presidencies were required send regularly all details of revenue and other important matters to the governor general only in emergency situations subordinate presidencies were allowed to take decisions if required because of necessity. This madras and Bombay presidency always took the decisions without fearing Governor General.

FEATURES OF REGULATING ACT –

- 1) Election for Directors
- 2) Control over correspondence
- 3) Appointment of Governor General and council
- 4) Extent of Governor General is power
- 5) Bombay and Madras under control of Governor General
- 6) Establishment of Supreme Court
- 7) Legislative power under the Act of 1773
- 8) Prohibition from engaging private trade
- 9) Power to punish English servants
- 10) Justice of peace

3. Cases

Raja Nand kumar 1775

The Cossijurah Case (1779-80)

Patna Case 1777

Raja Nand Kumar

Raja Nand Kumar a Hindu Brahmin was a big Zamindar and a very influential person of Bengal. He was loyal to the English company ever since the days of Clive and was popularly known as “black colonel” by the company. Three out of four members of the council were opponents of Hastings, the Governor-General and thus the council consisted of two distinct rival groups, the majority group being opposed to Hastings. The majority group comprising Francis, Clavering and Monson instigated Nand Kumar to bring certain charges of bribery and corruption against Warren Hastings before the council whereupon Nand Kumar in March, 1775 gave a letter to Francis, one of the members of the council complaining that in 1772, Hastings accepted from him bribery of more than one Lakh for appointing his son Gurudas, as Diwan. The letter also contained an allegation against Hastings that he accepted rupees two and a half lakh from Munnibegum as bribe for appointing her as the guardian of the minor Nawab Mubarak-ud-Daulah. Francis placed his letter before the council in his meeting and other supporter, Monson moved a motion that Nand Kumar should be summoned to appear before the Council. Warren Hastings who was presiding the meeting in the capacity of Governor-General, opposed Monson’s motion on the ground that he shall not sit in the meeting to hear accusations against himself nor shall he acknowledge the members of his council to be his judges. Mr. Barwell, the lone supporter member of Hastings, put forth a suggestion that Nand Kumar should file his complaint in the Supreme Court because it was the court and not the council, which was competent to hear the case. But Monson’s motion was supported by the majority hence Hastings dissolved the meeting. Thereupon majority of the members objected to this action of Hastings and elected Clavering to preside over the meeting in place of Hastings. Nand Kumar was called before the council to prove his charges against Hastings. The majority members of the council examined Nand Kumar briefly and declared that the charges levelled against Hastings were proved and directed Hastings to deposit an amount of Rs. 3,54,105 in treasury of the company, which he had accepted as a bribe from Nand Kumar and Munnibegum. Hastings genuinely believed that the council had no authority to inquire into Nand Kumar’s charges against him. This event made Hastings a bitter enemy of Nand Kumar and he looked for an opportunity to show him down.

Facts of the case:-

Soon after, Nand Kumar was along with Fawkes and Radha Charan were charged and arrested for conspiracy at the instance of Hastings and Barbell.

In order to bring further disgrace to Raja Nand Kumar, Hastings manipulated another case of forgery against him at the instance of one Mohan Prasad in the conspiracy case. The Supreme Court in its decision of July 1775 fined Fawkes but reserved its judgment against Nand Kumar on the grounds of pending fraud case. The charge against Nand Kumar in the forgery case was that he had forged a bond in 1770. The council protested against Nand Kumar’s charge in the Supreme Court but the Supreme Court proceeded with the case unheeded. Finally, Nand Kumar was tried by the jury of twelve Englishmen who returned a verdict of ‘guilty’ and consequently, the Supreme Court sentenced him to death under an act of the British parliament called the Forgery Act which was passed as early as 1728.

Serious efforts were made to save the life of Nand Kumar and an application for granting leave to appeal to the king-in-council was moved in the Supreme Court but the same was rejected. Another petition for recommending the case for mercy to the British council was also turned down by the Supreme Court. The sentence passed by the Supreme Court was duly executed by hanging Nand Kumar to death on August 5, 1775. In this way, Hastings succeeded in getting rid of Nand Kumar.

CRITICAL APPRAISAL:-

Chief Justice Impey in this case acted unjustly in refusing to respite to Nand Kumar. No rational man can doubt that he took this course in order to gratify the Governor-General. The trial of Nand Kumar disclosed that the institution of Supreme Court hardly commanded any respect from the natives as it wholly unsuited to their social conditions and customs. The trial has been characterized as “judicial murder” of Raja Nand Kumar which rudely shocked the conscience of mankind. Raja Nand Kumar’s trial was certainly a case of miscarriage of justice.

✚ **The Cossijurah Case (1779-80)**

Raja Surendra Rainn Zamindar of Cossijurah was under a heavy debt to Kashinath Babu. Though Kashinath Bab tried to recover the money from the Raja through the Board of Revenue at Calcutta his efforts proved in vain. He therefore filed a civil suit against the Raja of Cossijurah in the Supreme Court at Calcutta. He also filed an affidavit on 13th August, 1777 stating that the Raja being a Zamindar, was employed in the collection of revenues and was thus within the jurisdiction of the Supreme Court. The Supreme Court issued a writ of Capias for the Raja’s arrest. Being afraid of the arrest the Raja avoided service of writ by hiding himself. The Collector of Midnapur, in whose district the Raja resided, informed the Council about these developments. The Council, after seeking legal advice from its Advocate-General, issued a notification informing all the Landholders that they need not pay attention to the process of the Supreme Court unless they were either servants of the Company or had accepted the Court’s jurisdiction by their own consent. The Raja was also specially informed by the Council and, therefore, his people drove away the Sheriff of the Supreme Court when that official came with a writ to arrest the Raja of Cossijurah.

The Supreme Court issued another writ of sequestration on 12th November, 1779 to seize the property of the Raja in order to compel his appearance in the Supreme Court. This time the Sheriff of Calcutta. With a force of sixty or seventy armed force men, marched to Cossijurah in order to execute the writ, they imprisoned the Raja and it is said that the Englishmen outraged the sanctity of the family idol. In the meantime, the Governor –General and Council directed Colonel Ahmuty, commander of the armed forces near Midnapur to intercept and arrest the Sheriff with his party and release the Raja from arrest. Colonel Ahmuty sent Lieutenant Bamford with two companies of sepoy to arrest the Sheriff with his party. On 3rd December, 1779 Bamford, with the help of William Swanston, arrested the Sheriff and his party while they were returning and kept them in confinement for three days. Later on, they were sent to Calcutta as prisoners. Council released the Sheriff’s party and directed Colonel Ahmuty to resist any further writ of the Supreme Court.

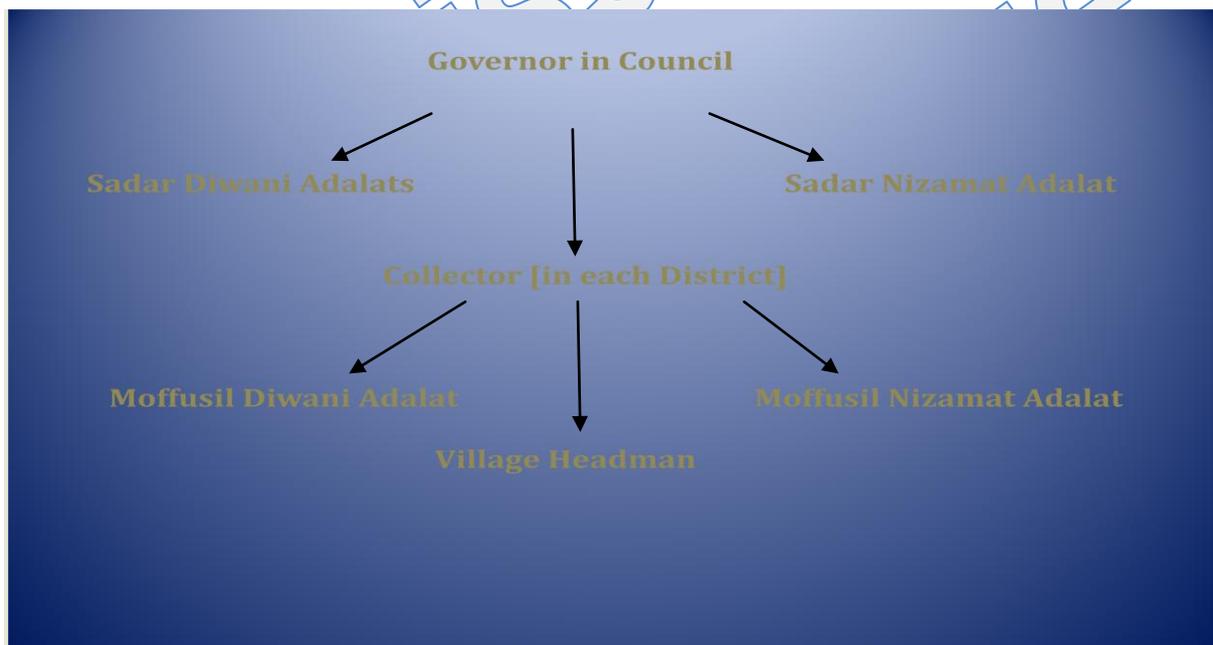
✚ **Patna Case:**

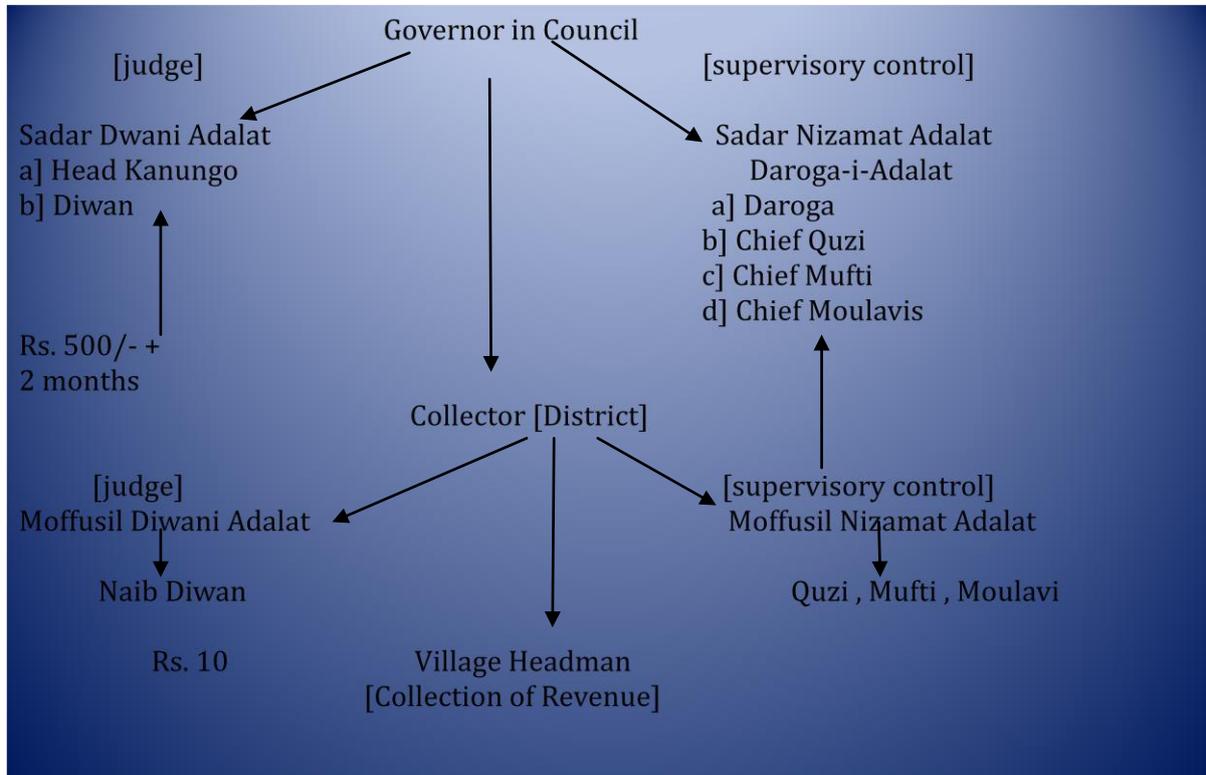
1777-1779 • Shahbah Beg Khan, native of Kabul came to India and settled down in Patna. • He married Nadirah Begum and acquired a large amount of money while in the service of company. • He had no issue, therefore he invited his nephew Bahdur Beg from Kabul to reside with him the intention to adopt him. But before he could do so he died in December, 1776. • Bahdur Beg took the first step and filed a suit against the Begum in the Patna Provincial Council for getting right over the property. In the provincial Court the case placed before Muhammadan law officers. • The officers after full hearing reported to the council that gift deeds were forged documents and no gift was made in favour of Nadirah Begum by deceased. • They also reported that the nephew, Bahadur Beg could not be adopted under Muslim law. •

Therefore, recommended that property be divided into four parts out of which three parts were to be given to Bahadur Beg on the basis of consanguinity (relationship by blood) and also heir of the diseased and the fourth part be given to the widow. Nadirah Begum was dissatisfied with the decision of the provincial Council, and she filed an appeal before the Sadar-Diwani-Adalat at Calcutta. • Due to their busy routine work they could not considered the matter for a long time. • With indifferent approach of the court, she filed a suit in the Supreme Court against Bahedur Beg, Kazi and mufti for assault, battery, unlawful imprisonment and claimed 6lakhs as damaged. • The Supreme Court issued ordered to arrest of Bahadur Beg, Kazi and mufti. Both the parties were Muslims to which the Mohammedan Law of inheritance was to apply, it was purely a matter of personal law to Moham means. • There were no written agreement between the parties to submit the case to the Supreme Court for a decision.

TERRITOTRIAL DIVISOION

- ✚ The Provinces of Bengal, Bihar & Orissa
- ✚ Governor in council at Calcutta
- ✚ Division of province into Districts





Merits

The plan provided for the hierarchy of the courts.

It provided for the grades of the court

It provided for the division of civil & criminal courts.

Criminal courts were totally independent of the executive.

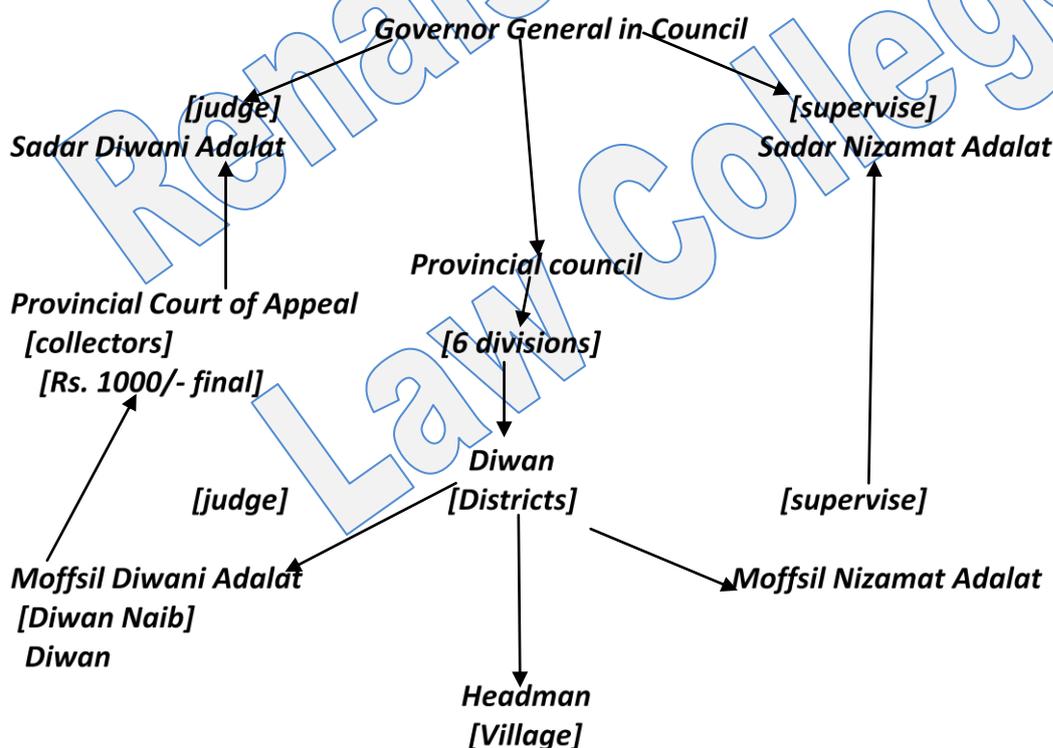
The courts constituted a separate system from the Executive.

The courts recognized the laws of the natives i. e; the personal law system of the Hindus & the Muslims.

DEMRITS

1. General administration of the functions of the company in his district.
2. To act as judge in Mofussil Diwani Adalat.

THE ADALAT SYSTEM 1774 :-



Conclusion; The system under the plan 1772 continued till 1774 the system under the plan 1774 continued till 1780. There was reorganization of the Adalats system in the Year 1780

Unit III Law and Administration in the Supreme Court

| | |
|-----------|--|
| 1 | Supreme Court Calcutta, Madras and Bombay |
| 2 | High Court |
| 3 | <i>Charter Act 1833</i> |
| 4 | Indian High Courts Act 1861 |
| 5 | Charter of Calcutta High Court |
| 6 | Allahabad High Court |
| 7 | <i>The Indian High Courts Act 1911</i> |
| 8 | <i>The Government of India Act 1915 : other High Courts</i> |
| 9 | <i>Government of India Act 1935 : more high courts created</i> |
| 10 | High Court Jurisdictions |
| 11 | Post constitutional developments – Emergence of federalism |

1. Charter Act 1833

The Charter Act, 1833 was the result of certain changed circumstances both in England and India. Policies of Warren Hastings and Wellesley created expansion of territory; administrative work and it lead to felt necessity of effective strong settlement. The laws in presidency town and Mofussil areas were not uniform also a Enlightened section of Indian society demanded reforms in educational sphere. On other hand the Parliament reforms were effected in 1830 in England which formed a new House of Commons with the ideals of liberalism, which felt that it was preposterous to leave the political government in the hand of Joint Stock Company. At the same time a move was initiated by Lord. T. B. Macaulay and James Hill in England for the reformation of law of India According to H. Cowell Parliament were directed to three leading vices (defect) in the process of Government of India.

Charter 1833 point

- Company got another **twenty years** the Company's political and administrative authority. (up to i.e. 1853)
- Company **lost his monopoly over all trade activities** and had only some administrative responsibilities.
- It invested the Board of Control with **full power and authority over the Company.**
- **Governor General of Bengal or East India Company, here onwards called Governor General of India.**
- A **centralized Government established** under the leadership of Governor General with full power and **authority in all civil and military matters.**
- Governor General and his Council had given rights to **prepare new laws depending on the west laws.**
- The governments of Madras and Bombay could make or suspend laws in case of urgent necessity.
- The Act increased the members of the Council from three to four. **The fourth member was the Law Member** specially appointed to **fulfill and legislative duties of the Governor General.**
- **Section 53** of the Act of 1833 empowered to Governor General in Council to appoint a **Law Commission** from time to time.
- The purpose was to **study, collect and codify various rules and regulations** prevalent in India. This laid the **foundation of codification of modern legal system** in India.
- A Law Commission was appointed under the leadership of **Lord Maculay** to create new law for India.
- Section 87, of the Act declared that no person can be disqualified for any place in the Company's service by reason of **caste, colour, creed or place of birth.**

- It was laid down that **merit was to be the basis for employment in Government Services** and the religion, birth place, and race of the candidates were not to be considered in employment.

Nature of law and regulation in India

Ill defined authority



The anomalous²² and conflicting Judicature

- ❖ This all circumstances, defects and conflicts lead to pass the Charter Act, 1833. In the year 1830, when the Whigs came into power in the political scenario of England, it opened a way of the triumph of the liberal principles. The Rights of Men was emphasized. Consequently the great Reform Act was passed in the year 1832. The concepts of laissez faire were duly emphasized. The liberal Whigs controlled the Parliament and it upheld the triumph of the liberal ideas. Though there were many supporters of the Company who did not advocate the transference of powers to the Crown, majority considered that the company should cease to be functioning as the political body. Maccualay the secretary of the Boards of Control and James Mill occupied a high position in the India House. Henceforth their influence was clearly evident in the Charters Acts of 1833
- ❖ The Charter Act of 1833 therefore came into existence after massive socio-political changes in England. The Act gave another lease of life to the Company for twenty years to administer the Indians territories. However their power was subjected to the trust of His Majesty, his heirs and successors. The company lost its monopoly of China Trade. The company was also asked to stop the commercial transactions as early as possible. However the interests of the shareholders were safeguarded by granting them a dividend of 10.5 % per annum till the company's stock was purchased. Henceforth all the restrictions on European immigration into India and acquisitions of land and property by them was removed. This clause removed the legal obstruction on the European colonization of India.
- ❖ The Charter Acts of 1833 centralized the administration in India. The Governor General of Bengal, according to the act was declared as the Governor General of India. The jurisdiction of the Governor General in council was extended considerably. The Charter Act of 1833 vested the Governor General in Council with the powers of control and superintendence of the civil and the military affairs of the Company. Bombay, Madras and Bengal and other territories came under the direct control of the Governor General in Council. All revenues were to be raised under the authority of the governor general in Council who had also to control the entire system of expenditure.
- ❖ The Charter Acts of 1833 emphasized the legislative centralization. The Government of Madras and Bombay were deprived of their powers of legislation. The state governments were only left with the powers of proposing the project of laws to the governor General in council.
- ❖ The charter Act of 1833 enlarged the Executive council by the addition of fourth member (Law Member) for legislative purposes. The fourth member was entrusted with the charge to give professional advice regarding the procedure of law making. Theoretically he was entitled to sit and vote at meetings of the Council only for the purpose of making law. The Boards of directors nominated Maccualay as the first Law Member of the Council. Also a Law Commission was

²² Irregular

constituted, following the recommendations of the Charter Act. The Law Commission looked after consolidating, codifying and improving Indian Laws.

- ❖ Apart from the judicial and the administrative procedures, the Charter Act provided some other general provisions. Among the general provisions envisaged by the Charter Act of 1833, the most important was the Section 87. Sections 87 provided that there would be no indiscrimination made between the Indian and the British residents in Indian provinces on the basis of caste, creed and religion. The Directors defined in clear terms that the motto of this provision was to remove disqualification. However the provisions declared in the Charters Acts of 1833 were ended up with the short-sighted and the ill-conceived policy introduced by Cornwallis. Cornwallis shut the doors of high military and the civil services to the Indians. Under Cornwallis the Indians could hold only the minor posts.
- ❖ Thus the Charters Act of 1833 did nothing good but took measures for the betterments of the condition of slaves and ultimate abolitions of slavery in India. By the Act V 1843, slavery was abolished in India completely. The Acts of 1833 undoubtedly brought about important changes in the constitutions of India. The Company was relieved of its monopoly of tea trade in India and trades with China. The Acts of 1833 authorized the governments of India to appoint a Law commission. Though the Charter Acts of 1833 introduced several schemes for the betterment of the administrative and judicial procedures in India, the Act did not have any far-reaching effect.

Main Provision of Charter Act, 1833

- 1) The company was allowed to continued territorial possession for period of 20 years i.e. from 1833 to 1853. The company was held in trust to the Crown.
- 2) Monopoly of East India Company to tread with India was brought to an end. The Company was required to close commercial business and allowed, political powers and administration.
- 3) All powers that had full complete and constantly to control, to replace supersede or prevent all proceeding and Act of Governor-General-in-Council were under the British Parliament.
- 4) All laws & regulations made in India should transfer to England laid before both the houses these laws could be disallowed by the Court of Directors.
- 5) The Governor-General-in-Council was empowered to make laws and regulation for all person or Court of British India.
- 6) The Council members were fixed, a 3 & 4th member known as law member was added to the Council. Law member was not company's servant and has to act only for legislative purpose.(Lord Macaulay was 1st Law member)
- 7) A provision was made for the appointment of the law Commission.(Lord Macaulay was 1st President)
- 8) Provisions were made for the representation of natives & their Educational Development.
- 9) All restrictions to European immigrants into India were removed.
- 10) The civil and military power were removed from the Company and its entire control and super tend were vested in Governor-General-in-Council.
- 11) The Act also provided measures for the abolition of slavery trough out in India
- 12) Prior to 1833, laws made were called as regulation here after the laws made to be called as 'Act'

2. High Court

➤ The Indian High Court 1861

Parliamentary committee for East India Company was desirous that the Supreme Court and Sadar Adalats in each presidency town with combine of English barristers. This act passed in 6th August 1861. The act of 1861 Crown to established by letter patent High Court of Judicature at Calcutta, Madras and Bombay abolish Supreme Court and Sadar Diwani Adalat and Sadar Nizamat Adalat. Each High Court empowered to have over all court subjects to its appellate jurisdictions.

➤ Calcutta High Court

The High Court to enroll and remove advocates vakils and attorney-at-law. It becomes a court of record.

Jurisdictions: originally civil jurisdictions the act XV of 1919 define its limits. The jurisdiction of small cause Adalat was in district. High Court having all the jurisdictions possessed by the Supreme Court. Consequently on its appellate side the High Court replaced company appeal court viz. Sadar Diwani Adalat and Sadar Nizamat Adalat.

Procedure: power to make rule and order to regulate civil proceedings and criminal proceedings and appeal goes to High Court to Privy Council if some is above 10000 rs.

➤ Allahabad High Court

17th March 1866 establishes High Court in Allahabad at Agra for north western provinces. There were three court Supreme Court, Sadar Adalat and Allahabad High Court was up gradation of Sadar Adalat. 1865 the Oudh a judicial commissioners court was established. Its appeal for the territory of Oudh civil court under Oudh court act 1925. Its bench is now in Lucknow.

➤ High court 1865

Governor in council was authorized by High Court Act 1865 to make necessary alterations in the territorial jurisdictions. The power of governor general was made subject to the approval of Crown.

➤ High court 1911

Empowered of this act in any territory within the Indian dominions. Under 1911 raised the maximum number of judges in each High Court from 16 to 20 which Chief Justice also.

➤ Government act 1915

Primarily focused at the establishment of High Courts which was in boom during this period: The Government of India Act 1915, re-instated the provisions provided for in the Indian High Courts Act of 1861 and 1911. By virtue of the powers conferred by Section 113 of the Government of India Act, 1915, the Crown by Letters Patent dated March 20, 1919 had established at Lahore, the High Court of Judicature for the provinces of Punjab and Delhi to be called 'the High of Judicature at Lahore'. The High Court of Judicature at Lahore was a court of record. The Government of India Act of 1915 brought about one firm reform and this was with regards to the jurisdiction of the High Courts. It was held in this act that no High Court could exert original jurisdiction over matters concerning---Revenue, or any act done concerning or relation to it. The act of 1861 had not provided for such provisions and it is unclear as to why it was re-instated. This author believes here that by taking revenue collection out of the original jurisdiction of these courts the British in India could enforce stronger and harsher revenue collection tactics without actually having to be questioned. The mystery lies in why the courts were allowed appellate jurisdiction of such matters but not original. The act also re-instated provisions provided for in the Regulating Act of 1773, and the Act of Settlement 1781. Under these provisions the Governor-general, Governor, lieutenant-governor, Chief Commissioner; members of the executive Council of the Governor-general, Governor or lieutenant-governor, and a minister would be exempt. Thus we see a clear attempt on part of the British to again escape the liability of these courts, and set up a ground of difference between themselves and the Indians. This further justifies the writer's belief as to the re-incarnation of the Revenue Collection changes being in connection to escape of liability for British Subjects. Further privileges seemed to be done upon the British Subjects as now the Chief Justices and other judges were also exempt from being held liable in the High Court. Surely, a clear indication as to the direction they were heading towards. The principle of natural

justice was clearly being flouted in their path towards establishing themselves as a strong power. The customs and traditions and laws of the parties were to be applicable, if both parties up front the Presidency high Court, were from the same custom group. Thus we see that the British are now going back in time. Retrospective laws are being introduced. In a time where development for the future was the key, we see old laws being reinstated and progress being hindered.

➤ **Government act 1935**



- ✚ Number of Judge: every high court would be court of record and chief justice and other judges as appointed as his majesty 20 Judge an which may change from time to time from king of council.
- ✚ Qualifications: barristers and advocate 10 year. Member of Indian civil services 10 year. High court tenure 3 year and age 60 year.
- ✚ Removal of judges :misbehave or infirmity (mind /body)
- ✚ Jurisdictions
- ✚ Salaries : fixed by majesty
- ✚ Administrative control: government act 1935
- ✚ Appeals : federal court
- ✚ High court at Nagpur: 1st nov 1936 after 1947 it become court of Maharashtra and for Madhya Pradesh Jabalpur become the High Court bench.

1947-1950 High Courts

- ❖ Punjab: Lahore remain in Pakistan its established in Shimla under Indian Independence Act 1947
- ❖ Orissa: at Cuttack 3rd April 1943
- ❖ Assam: Gauhati under Government 1935 Act
- ❖ Rajasthan: established in Jodhpur by Raj Pramukh 21st June 1949
- ❖ Mysore: Even before 1947 its exist Mysore High Court, 1884 now it is in Karnataka
- ❖ Jammu and Kashmir: By Maharaja in 1943 August 28th.
- ❖ Travancore-cochin (Kerala): Ernakulam buy ordinance 1948 repealed Travancore –Cochin High Courts Act 1949.

➤ **High Court Jurisdictions**

The high court jurisdiction administrations by the constitution of India to continue same as were immediately before the commencement of the Constitution. This jurisdiction and power of the high court is subject to the provision of the COI and its provision of any law of the appropriate legislature. The Supreme Court binding on all courts within the territory of India. High court on revenue matter restriction imposed in Government Act 1935.

➤ **Supreme Court**

The Supreme Court established under the 1774 Charter, became an institution which was disliked and dreaded equally by the officers of the government and especially Indians. Discuss the major cases which led to this situation. The East India Company became the dominant political power in the 18th Century and passed the Regulating Act 1773. The Present day Supreme Court knows as a federal court before independence. And its 1st sitting is on 6th dec 1937.

- The supreme court established under the 1774 Charter, became an institution which was disliked and dreaded equally by the officers of the government and especially Indians. Discuss the major cases which led to this situation
- The regulating act 1773 authorized the British crown to establish a Supreme Court at Calcutta by issuing a charter of 1774. Thus establishing the Supreme Court at Fort William, Calcutta. Composition-Chief Justice+ 3 judges- barristers of England with 5 years experience. Appointed by crown Sir Impey-Chief Justice of Supreme Court Jurisdiction of the Supreme Court Civil – Territorial in Calcutta and Personal in Bengal, Bihar and Orissa. Equity-administer justice in a summary manner Criminal-only to British servants Ecclesiastical-grant will Admiralty-all maritime cases Writ-writ of certiorari, mandamus
- Merits of supreme court-1. Derives its authority from crown 2. Civil and criminal jurisdiction 3. Rules now require approval from King in Council 4. Court fees was regulated 5. Empower to appoint advocates 6. Writ power 7. Enabled judiciary to control executive
- Defects-1. Relationship between governor general and council and supreme court not defined. Governor general and council rejected the authority of court. Thus it became source of annoyance. 2. Relationship between Mofussil Adalats and Supreme court not defined. Whether they were subordinate to the supreme court or not
- Jurisdiction beyond the Calcutta was not defined. Court could issue the summons even for people outside the Calcutta. Even people were detained in jail till decision. 4. Courts applied English Law in India. 5. Criminal Law applied in India was harsh. Adalats were not liable to Supreme court. In case of natives, personal law was applicable. No person employed by company was subject to supreme court. Revenue matters were taken out of Supreme court jurisdiction. Governor general and council were excluded from jurisdiction of the Supreme court. Act of Settlement 1781 • Was passed to remove confusions in Charter.

ON FEDERAL COURT

- On 1st October, 1937, the Federal Court was inaugurated at Delhi. Three judges were appointed in the Court of namely, • Sir Maurice Gwyer (who had association with preparation of 1935 Act) • Sir Shah Muhammad Sulaiman (He was the Justice of Allahabad High Court) • Mukund Ramrao Hayakar (Leading Advocate of Bombay)
- Appointment of the judges was purely based on the discretion of King. The Judges, they could hold their office till the age of 65 years. Qualifications: for judges Five years experience s Judge of a High Court, or A barrister or an advocate of ten year' standing or A pleader in High Court of ten years' standing For Chief justice 15 years experience of standing in a High Court as a barrister, advocate or pleader.
- Salaries: the Federal Court Order in council of 1937 fixed the salary of the Chief Justice at Rs. 7000 a month and other judges at Rs. 5000 a month. Jurisdiction of the Federal Court Under the Government of India Act, the Federal Court was given three kinds of jurisdictions namely: 1. Original Jurisdiction 2. Appellate Jurisdiction 3. Advisory Jurisdiction Section of 206 of the Federal Legislature to pass an Act enlarging the Appellate jurisdiction of the Federal Court in civil cases to its full extent.
- Original jurisdiction Section 204 of the Act of 1935 provided that the original jurisdiction of the Federal Court was confined to disputes between Units of the Dominion or between the Dominion and unites. The Federal Court had no powers to certain suits brought by private individuals against the Dominion. Section 208 provided for a right of appeal to the Privy Council from the judgments of the Federal Court in the exercise of its original jurisdiction.
- Appellate Jurisdiction The Federal Court exercised appellate jurisdiction unconstitutional cases under the Act of 1935, its appellate jurisdiction was extended to civil and criminal cases from 1948. No appeal was allowed to the Federal Court in the absence of a certificate from British Indian High Courts or State High Courts. Advisory Jurisdiction: Section 213 of the Act of

1935 empowered the Federal Court to give advisory opinion to the Governor General. Governor General was not to bound to accept the opinion of the Federal Court which was given under section of 213.

- Authority of Law laid down by Federal Court :Section 213 of the Government of India Act, 1935 provided that the law declare by the Federal Court and any judgment of the Privy Council will be binding on all the Courts in British India.It introduced the English Doctrine of precedent in India

Jurisdiction beyond the Calcutta was not defined. Court could issue the summons even for people outside the Calcutta. Even people were detained in jail till decision.4.Courts applied English Law in India.5.Criminal Law applied in India was harsh.

Objectives-

- 
- *Reform in constitution of the company*
 - *Reform in administration in India*
 - *To provide remedies against company's oppression in India.*

➤ **Features of the Act**

Even judges can be tried in King's Bench in England. All judges were prohibited from accepting gifts. Government of presidencies of Madras and Bombay were put under Governor-General at Calcutta Entire military and civil powers were vested in governor general. Governor was raised to power of governor general.

The regulating act 1773 the British crown to establish a Supreme Court at Calcutta by issuing a charter of 1774. Thus establishing the Supreme Court at Fort William, Calcutta. Composition-Chief Justice+ 3 judges- barristers of England with 5 years experience. Appointed by crown Sir Impey-Chief Justice of Supreme Court. Jurisdiction of the Supreme Court Civil –Territorial in Calcutta and Personal in Bengal, Bihar and Orissa. Equity-administer justice in a summer manner Criminal-only to British servants Ecclesiastical-grant will Admiralty-all maritime cases Writ-writ of certiorari, mandamus.

| Merits | Demerits |
|--|---|
| Derives its authority from crown | Relationship between governor general and council and Supreme Court not defined. Governor general and council rejected the authority of court. Thus it became source of annoyance |
| Civil and criminal jurisdiction | Relationship between Mofussil Adalats and Supreme Court not defined. Whether they were subordinate to the Supreme Court or not. |
| Rules now require approval from King in Council | |
| Court fees were regulated | |
| Empower to appoint advocates | |
| Writs | |

Supreme Court Establishment

By Indian High Courts Act 1861, the Supreme & Sadar Courts were amalgamated. The ‘Indian High Court Act’ of 1861, vested in Queen of England to issue letters patent to erect and establish High Courts of Calcutta, Madras and Bombay. It’s worth note that Indian High Courts Act, 1861 did not by itself create and establish the High Courts in India. The objective of this act was to effect a fusion of the Supreme Courts and the Sadar Adalats in the three Presidencies and this was to be consummated by issuing. The High Courts had an Original as well as an Appellate Jurisdiction the former derived from the Supreme Court, and the latter from the Sudder Diwani and Sudder Foudari Adalats, which were merged in the High Court.

Composition of the High Court’s:

The Indian High Courts Act 1861 had also spelled the composition of the High Court.

- The High Courts of Calcutta, Madras and Bombay were established by Indian High Courts Act 1861.
- Letter Patent. The jurisdiction and powers exercised by these courts was to be assumed by the High Courts.

- Each High Court was to consist of a Chief Justice and NOT more than 15 regular judges.
- The chief Justice and minimum of one third regular judges had to be barristers and minimum one third regular judges were to be from the “covenanted Civil Service”.
- All Judges were to be in the office on the pleasure of the

Charter 1853

- The law member was made a full member of the Governor General’s Council.
- The Charter Act of 1853 increased the number of legislative council members. The new legislative council was consisted of 12 members.
- 1.Governor General and his Council members (1+4)
- Commander-in-chief
- 4 representatives from providences
- Chief Justice of Supreme Court Justice and a judge from Supreme Court to be named by Governor General
- A separate Governor appointed for Presidency of Bengal and also given right to Board of control to change the boundaries of provinces.
- The number of Directors was reduced to 18 and 6 were to be nominated by the Crown.
- The Act authoresses the crown to appoint a Law Commission in England

The Charter Acts of 1833 centralized the administration in India

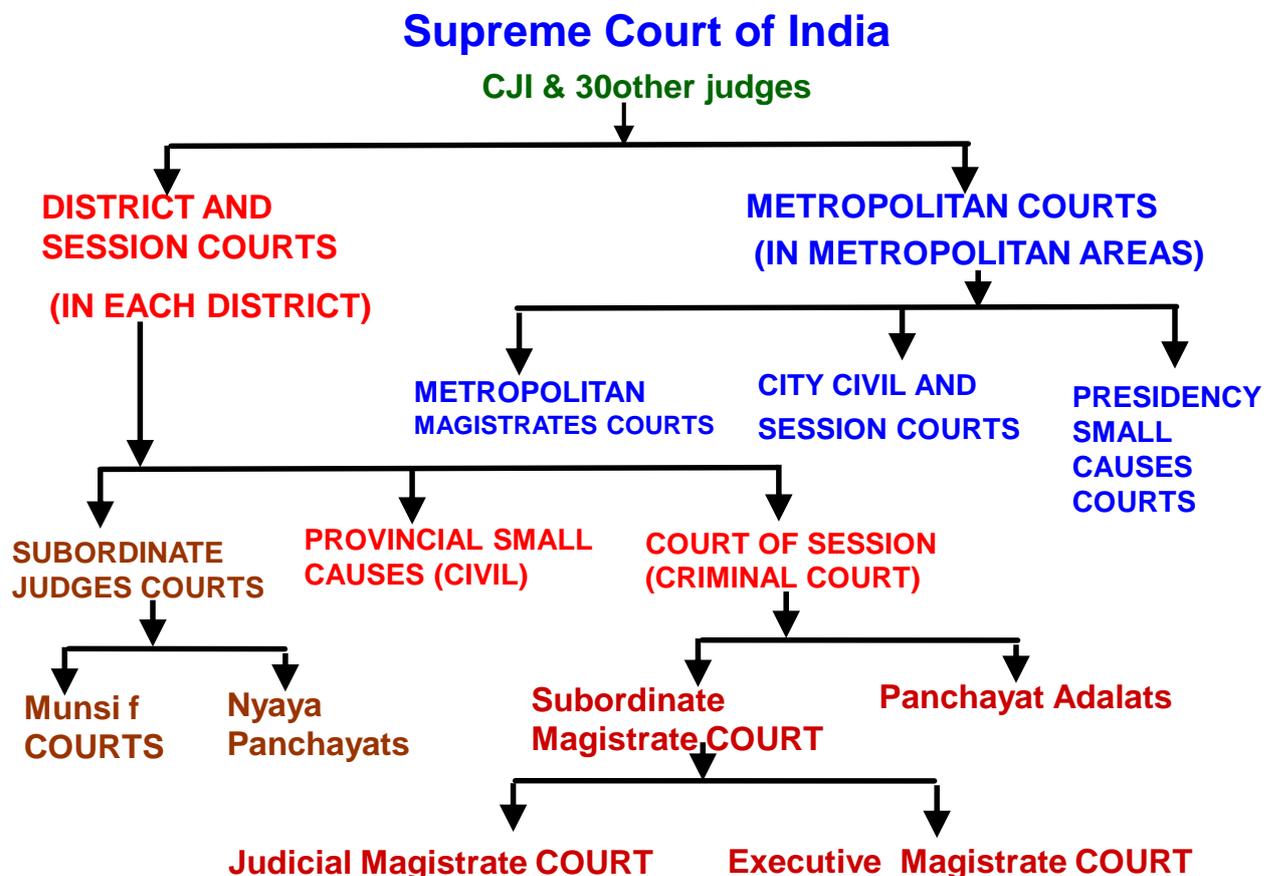
Features:

1. The Charter Acts of 1833 emphasized the legislative centralization. The Government of Madras and Bombay were deprived of their powers of legislation. The state governments were only left with the powers of proposing the project of laws to the governor General in council.
2. The charter Act of 1833 enlarged the Executive council by the addition of fourth member (Law

Member) for legislative purposes. The fourth member was entrusted with the charge to give professional advice regarding the procedure of law making. Theoretically he was entitled to sit and vote at meetings of the Council only for the purpose of making law. The Boards of directors nominated Macaulay as the first Law Member of the Council. Also a Law Commission was constituted, following the recommendations of the Charter Act. The Law Commission looked after consolidating, codifying and improving Indian Laws.

3. End of Company's monopoly even in tea and trade with China. Company was asked to close its commercial business at the earliest.
4. All restrictions on European immigration into India and acquisition of land and property in India by them were removed, legalizing European colonization of India.
5. Governor General of Bengal to be Governor General of India; all powers, administrative and financial, were centralized in the hands of the Governor - General - in - Council. (1st Governor General of India - Lord William Bentinck).
6. President of Board of Control became the minister for Indian affairs.
7. A law member (excluding power of vote) was added to the Executive Council of the Governor General.
8. Macaulay was the first Law member. This increased the Council's strength to four, with it began the Indian Legislature.

Present structure of Supreme court



Unit IV The Federal Court of India and privy council of India

| | |
|---|---|
| 1 | Foundation of the Federal Court, its jurisdiction and Authority of Law |
| 2 | Expansion of Jurisdiction |
| 3 | <i>Abolition of the Federal Court</i> |
| 4 | An Assessment |
| 5 | <i>Privy Council</i> |
| 6 | Jurisdiction, Reorganisation, Sui Generis body |
| 7 | Appeals from India |
| 8 | <i>Supreme Court : origin, constitution, jurisdictions and power</i> |
| 9 | <i>Doctrine of precedents and Supreme Court</i> |

Privy Council (England)

Federal Court (Supreme Court)

Federal Court

Public Opinion and early up to 1935

The Federal Court of India was a judicial body, established in India in 1937 under the provisions of the *Government of India Act 1935*, with original, appellate and advisory jurisdiction. It functioned until 1950, when the Supreme Court of India was established. The seat of the Federal Court was at Delhi. There was a right of appeal to the Judicial Committee of the Privy Council in London from the Federal Court of India. Sir Hari Singh Gour was the first in the legal history of India, who realized the necessity of establishing an all Indian court of final appeal in India in place of the Privy Council. So many times he moved resolutions in the Central Legislature Assembly between 1921-1925 regarding establishment of a Court of Ultimate Appeals in India. While introducing the resolutions, Sir Hari Singh Gour laid special emphasis on four important points.

1. The Judicial Committee of the Privy Council was not a tribunal or a Court, it was just an advisory body constituted and intended to advise the King.
2. The expenditure of an appeal to the Privy Council was too expensive.
3. The distance from India of the Privy Council resulted in unnecessary delay (four to five years in many cases).
4. Since Canada, Australia and South Africa had such a tribunal there was no Supreme Court of our own in this country.

Historical perception

During the period 1931-32 i.e. between the Second and third session of the Round Table Conference, the Central Legislature also passed a resolution for the establishment of Supreme Court India. The joint Select Committee of both Houses of Parliament in its report in November, 1934 recommended establishing a Federal Court in India. The Federal Court had exclusive original jurisdiction in any dispute between the Central Government and the Provinces. Initially, it was empowered to hear appeals from the High Courts of the provinces in the cases which involved the interpretation of any Section of the *Government of India Act, 1935*. From 5 January 1948 it was also empowered to hear appeals in those cases, which did not involve any interpretation of the *Government of India Act, 1935*

In India

The Government Act, 1935²³ changed the structure of the Indian Government from “Unitary” to that of the “Federal type” in India. A Federal Constitution, it must be noted, involves a distribution of powers between the Centre and the component units. Section 200 of the Act provided for the establishment of a Federal Court in India. For appointment of a Judges in Federal Court, the Chief Justice and not more than six judges, who were to be appointed by the King.

- On 1st October, 1937, the Federal Court was inaugurated at Delhi. Three judges were appointed in the Court of namely,
- Sir Maurice Gwyer (who had association with preparation of 1935 Act)
- Sir Shah Muhammad Sulaiman (He was the Justice of Allahabad High Court)
- Mukund Ramrao Hayakar (Leading Advocate of Bombay)

Appointment of the judges was purely based on the discretion of King.

The Judges, they could hold their office till the age of 65 years.

Qualifications: for judges

- Five years experience s Judge of a High Court, or
- A barrister or an advocate of ten year’ standing or
- A pleader in High Court of ten years’ standing
- For Chief justice 15 years experience of standing in a High Court as a barrister, advocate or pleader.
- Salaries: the Federal Court Order in council of 1937 fixed the salary of the Chief Justice at Rs. 7000 a month and other judges at Rs. 5000 a month.

²³ Provisions of Government of India Act, 1915—It contained the following provisions—(a) The Act deprived the High Courts of its original jurisdiction in any matter concerning revenue. The effect of this provision was that in its appellate side it could exercise its jurisdiction over matter concerning revenue but in its original side it could not. (b) Another important change was that the Act exempted the Governor General, the Governors, the Lieutenant Governor General, Chief Commissioners and the members of the Executive Council of the above and also the Minister from the original jurisdiction of the High Court for anything counseled, ordered or done by-any of them in their official capacity, (c) The Act also provided that a written order of the Governor- General in Council could protect any person for the act he has done according to the order in any civil or criminal proceedings in any High Court on its original side. However, this exemption was not extended to any European British subjects, (d) Under this Act, the High Courts were to apply in the exercise of their civil jurisdiction the personal laws or customs if both the parties were subject to the same personal laws or customs, otherwise, the law of the defendant.

Jurisdiction of the Federal Court



Under the Government of India Act, the Federal Court was given three kinds of jurisdictions namely: Section of 206 of the Federal Legislature to pass an Act enlarging the Appellate jurisdiction of the Federal Court in civil cases to its full extent.

➤ **Original jurisdiction**

Section 204 of the Act of 1935 provided that the original jurisdiction of the Federal Court was confined to disputes between Units of the Dominion or between the Dominions and unites. The Federal Court had no powers to certain suits brought by private individuals against the Dominion. Section 208 provided for a right of appeal to the Privy Council from the judgments of the Federal Court in the exercise of its original jurisdiction.

➤ **Appellate Jurisdiction**

The Federal Court exercised appellate jurisdiction in constitutional cases under the Act of 1935, its appellate jurisdiction was extended to civil and criminal cases from 1948. No appeal was allowed to the Federal Court in the absence of a certificate from British Indian High Courts or State High Courts.

➤ **Advisory Jurisdiction:**

Section 213 of the Act of 1935 empowered the Federal Court to give advisory opinion to the Governor General. Governor General was not to bound to accept the opinion of the Federal Court which was given under section of 213. Authority of Law laid down by Federal Court: Section 213 of the Government of India Act, 1935 provided that the law declare by the Federal Court and any judgment of the Privy Council will be binding on all the Courts in British India.

Authority of Federal Court:

The High Courts were subordinate to Federal Court. The law declared by the Federal Court and any judgment of the Privy Council will be binding on all the courts in British India. Expansion of

Jurisdiction:

From 1937 to 15-8-1947, the Federal Court entertained only the appellate jurisdiction in constitutional cases. After Independence Act, 1947, the Federal Court was empowered to have the appellate jurisdiction in civil and criminal matters also. But at the same time, geographical area was reduced, as the Pakistan was separated.

Abolition of Federal Court:

The abolition of the Privy Council Jurisdiction Act 1949 severed the connection of Privy Council with Federal Court with effect from 15-12-1949 by the Act of 1949, "Period of golden Age of Federal Court" began when lasted till the establishment of the Supreme Court of India on 26-1-1950.

➤ **Privy Council²⁴:**

The Privy Council was nothing but the judicial body, which heard appeals from various courts of the British colonies including India. The origin of Privy Council can be traced back to the Normans Period of English. There was a Supreme Federal Council of Normans. It was known as 'Feudal Curia' and it acted as the agency of Normans to rule England. gradually with the passage of time, Curia gets divided into 'Curia Regis' and 'Magnum Concillium'. '*Magnum Concillium*' was to deal with executive matters whereas '*Curia Regis*' performs judicial functions. The *Curia Regis* was a small body consisting of high officials of the State, members of the Royal household and certain clerks chosen by the Crown itself. Their duty was to advice the King in matters of legislation and to deliver a justice. In fact, the *Curia Regis* acted as a final Appellate Court for England and English Empire.

Gradually, the *Curia Regis* came to be considered as the advisory body of the King in the field of judicial administration.

- ❖ During the regime of Henry II, there was a tremendous increase in the judicial functions of *Curia Regis* and it lead to the formation of two different Common Law Courts in England. They are:
- ❖ King-in-Parliament i.e. Court of House of Lords
- ❖ King-in-Council i.e. Court of Privy Council
- ❖ the Privy Council was established during the middle of 16th century. It thus acted as the advisory body of the King with regard to the affairs of the State.

Composition of Privy Council

- ❖ Earlier, the Privy Council used to do its work by means of a system of committees and subcommittees.
- ❖ These committees did not have permanent existence and membership and mostly members were the persons with little judicial experience.
- ❖ Officially the Privy Council was created on permanent basis thorough the Act of 1833 Judicial Committee of British Parliament.
- ❖ The Act empowered the Privy Council to hear appeals from the courts in British Colonies.
- ❖ The quorum of judicial committee of Privy Council was fixed to be four. It composed of Lord President, Lord Chancellor and other eminent judges working in English courts.

²⁴ Privy Council and Its Brief History—The British administration of justice is based on the fundamental principle that the King is the fountain of justice. He is a fountain of justice in the sense that justice is conducted through him. He is not the spring from which the justice originates but he is the fountain through whom and through several channels of the Courts justice is conducted. Generally, justice is conducted through the Courts but yet there is a residuary prerogative power with the King. The authority of the Privy Council is based on this prerogative of the King, From the time of the Normans, the King-in-council has entertained jurisdiction to set aside injustice and to establish justice. The King-in-Council was supposed to advise the Crown in this matter it did in other affairs of the State. In course of time, the House of Lords emerged as the final Court of appeal from the Courts in England But yet the Jurisdiction of the King-in-Council continued over the possessions of the King outside Great Britain. To begin with this was a discretionary jurisdiction which the King in Council could exercise whenever it thought it fit. The petition to the King in Council was entertained only as matter of grace but with the development of the oversea colonies and the empire of India, the appeals to the king-in- Council became a privilege of the subject.

- ❖ Thereafter, the Appellate Jurisdiction Act, 1908 this membership of the judicial committee was extended two.
- ❖ According to that provision two Indian High Court judges were appointed in the Privy Council.

Appeals from Courts in India to the Privy Council

- ❖ Charters of 1726 and 1753
- ❖ The Charter of 1726 granted the right to appeal from the Courts in India to Privy Council.
- ❖ The Charter of 1753, which reorganized the Mayor's Courts reaffirmed the said provisions of Appeal to Privy Council from Mayor's Courts.
- ❖ The Regulating Act, 1773
- ❖ Section 30 of 1774 Charter granted a right to appeal from the judgments of Supreme Court to Privy Council.

Appeals to Privy Council from High Courts

- ❖ Under the Indian High Courts Act, 1861 the high Courts were established at three Provinces.
- ❖ This Act provided for the right to appeal from High Courts to Privy Council from all of its judgments except in Criminal matters.
- ❖ Appeals from Federal Court in India to Privy Council
- ❖ The Government of India Act, 1935 provided for the establishment of Federal Court in India.
- ❖ The provision was made for filing of appeals from High Courts to the Federal Court and from Federal Court to the Privy Council.
- ❖ Finally in 1949, the Abolition of Privy Council Jurisdiction Act was passed by the Indian Government.

1892 Indian Councils Act

- ❖ The number of additional members of the Central Legislative Council was increased to minimum 10 and maximum 16.
- ❖ Half of these members were supposed to be non-official i.e. persons not in the Civil or Military Service of the Government.
- ❖ In the case of Bombay and Madras it was increased to not less than 8 and not more than 20.

Supreme Court

Federal Court Turn into Supreme Court

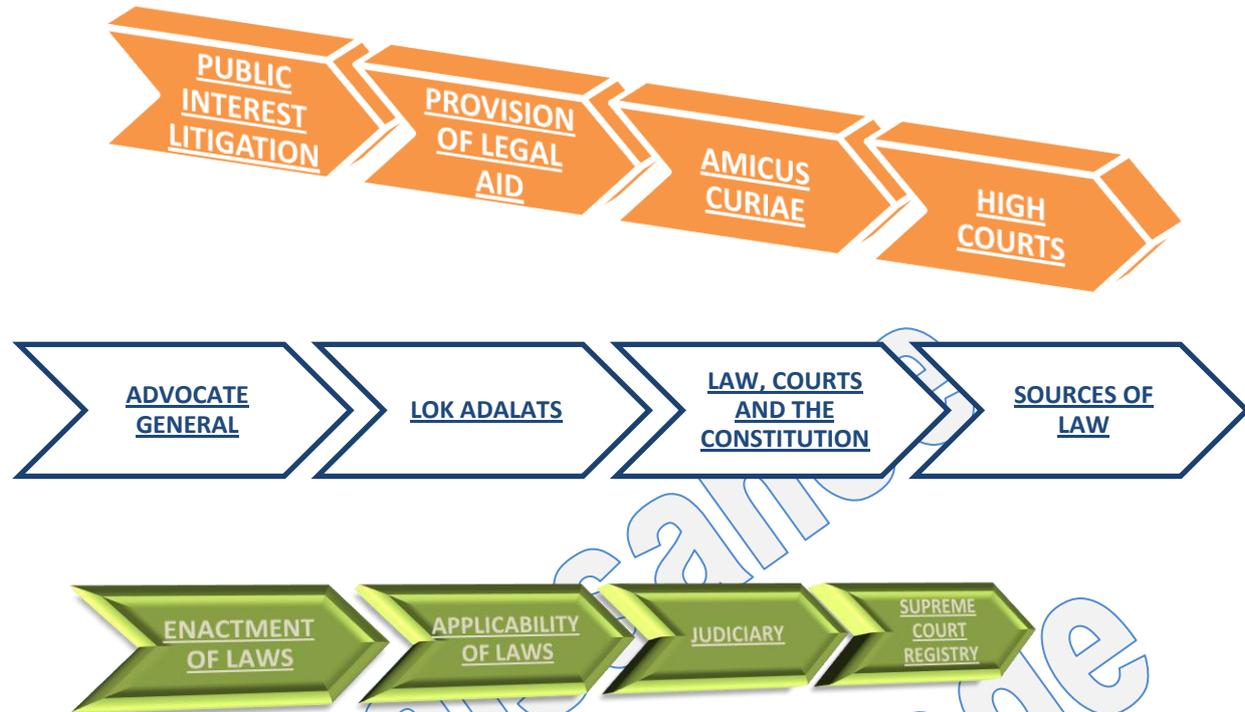
Supreme Court of India came into existence on 26th January, 1950 and is located on Tilak Marg, New Delhi. The Supreme Court of India functioned from the Parliament House till it moved to the present building. It has a 27.6 metre high dome and a spacious colonnaded verandah. For a peek inside, you'll have to obtain a visitor's pass from the front office. On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises. The inaugural proceedings were simple but impressive. They began at 9.45 a.m. when the Judges of the Federal Court - Chief Justice Harilal J. Kania and Justices Saiyid Fazl Ali, M. Patanjali Sastri, Mehr Chand Mahajan, Bijan Kumar Mukherjea and S.R. Das - took their seats. In attendance were the Chief Justices of the High Courts of Allahabad, Bombay, Madras, Orissa, Assam, Nagpur, Punjab, Saurashtra, Patiala and the East Punjab States Union, Mysore, Hyderabad, Madhya Bharat and Travancore-Cochin. Along with the Attorney General for India, M.C. Setalvad were present the Advocate Generals of Bombay, Madras, Uttar Pradesh, Bihar, East Punjab, Orissa, Mysore, Hyderabad and Madhya Bharat. Present too, were Prime Minister, other Ministers, Ambassadors and diplomatic

representatives of foreign States, a large number of Senior and other Advocates of the Court and other distinguished visitors. Taking care to ensure that the Rules of the Supreme Court were published and the names of all the Advocates and agents of the Federal Court were brought on the rolls of the Supreme Court, the inaugural proceedings were over and put under part of the record of the Supreme Court. After its inauguration on January 28, 1950, the Supreme Court commenced its sittings in a part of the Parliament House. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice. The Central Wing of the building is the Centre Beam of the Scales. In 1979, two New Wings - the East Wing and the West Wing - were added to the complex. In all there are 15 Court Rooms in the various wings of the building. The Chief Justice's Court is the largest of the Courts located in the Centre of the Central Wing. The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges - leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy. The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court. The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than **two-thirds** of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court

- The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo Warranto and certiorari to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself. Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

- The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution. Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies : (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. In criminal cases, an appeal lies to the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorized to confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court.
- The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.
- The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution. There are provisions for reference or appeal to this Court under Article 317(1) of the Constitution, Section 257 of the Income Tax Act, 1961, Section 7(2) of the Monopolies and Restrictive Trade Practices Act, 1969, Section 130-A of the Customs Act, 1962, Section 35-H of the Central Excises and Salt Act, 1944 and Section 82C of the Gold (Control) Act, 1968. Appeals also lie to the Supreme Court under the Representation of the People Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969, Advocates Act, 1961, Contempt of Courts Act, 1971, Customs Act, 1962, Central Excises and Salt Act, 1944, Enlargement of Criminal Appellate Jurisdiction Act, 1970, Trial of Offences Relating to Transactions in Securities Act, 1992, Terrorist and Disruptive Activities (Prevention) Act, 1987 and Consumer Protection Act, 1986. Election Petitions under Part III of the Presidential and Vice Presidential Elections Act, 1952 are also filed directly in the Supreme Court.
- Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish for contempt of Court including the power to punish for contempt of itself. In case of contempt other than the contempt referred to in Rule 2, Part-I of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, the Court may take action (a) Suo motu, or (b) on a petition made by Attorney General, or Solicitor General, or (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.
- Under Order XL of the Supreme Court Rules the Supreme Court may review its judgment or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding except on the ground of an error apparent on the face of the record.

Constitution of Supreme Court



PUBLIC INTEREST LITIGATION

Although the proceedings in the Supreme Court arise out of the judgments or orders made by the Subordinate Courts including the High Courts, but of late the Supreme Court has started entertaining matters in which interest of the public at large is involved and the Court can be moved by any individual or group of persons either by filing a Writ Petition at the Filing Counter of the Court or by addressing a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Such concept is popularly known as 'Public Interest Litigation' and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. A Writ Petition filed at the Filing Counter is dealt with like any other Writ Petition and processed as such. In case of a letter addressed to Hon'ble the Chief Justice of India the same is dealt with in accordance with the guidelines framed for the purpose.

PROVISION OF LEGAL AID

If a person belongs to the poor section of the society having annual income of less than Rs. 18,000/- or belongs to Scheduled Caste or Scheduled Tribe, a victim of natural calamity, is a woman or a child or a mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home, he/she is entitled to get free legal aid from the Supreme Court Legal Aid Committee. The aid so granted by the Committee includes cost of preparation of the matter and all applications connected therewith, in addition to providing an Advocate for preparing and arguing the case. Any person desirous of availing legal service through the Committee has to make an application to the Secretary and hand over all necessary documents concerning his case to it. The Committee after ascertaining the eligibility of the person provides necessary legal aid to him/her.

Persons belonging to middle income group i.e. with income above Rs. 18,000/- but under Rs. 1,20,000/- per annum are eligible to get legal aid from the Supreme Court Middle Income Group Society, on nominal payments.

AMICUS CURIAE²⁵

If a petition is received from the jail or in any other criminal matter if the accused is unrepresented then an Advocate is appointed as amicus curiae by the Court to defend and argue the case of the accused. In civil matters also the Court can appoint an Advocate as amicus curiae if it thinks it necessary in case of an unrepresented party; the Court can also appoint amicus curiae in any matter of general public importance or in which the interest of the public at large is involved.

HIGH COURTS

The High Court stands at the head of a State's judicial administration. There are 18 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories Delhi alone has a High Court of its own. Other six Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne Judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be eligible for appointment as a Judge one must be a citizen of India and have held a judicial office in India for ten years or must have practised as an Advocate of a High Court or two or more such Courts in succession for a similar period.

Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo Warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or residence of such person is not within those territories.

Each High Court has powers of superintendence over all Courts within its jurisdiction. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept. The following Table gives the seat and territorial jurisdiction of the High Courts.

ADVOCATE GENERAL

There is an Advocate General for each State, appointed by the Governor, who holds office during the pleasure of the Governor. He must be a person qualified to be appointed as a Judge of High Court. His duty is to give advice to State Governments upon such legal matters and to perform such other duties of legal character, as may be referred or assigned to him by the Governor. The Advocate General has the right to speak and take part in the proceedings of the State Legislature without the right to vote.

LOK ADALATS

Lok Adalats which are voluntary agencies are monitored by the State Legal Aid and Advice Boards. They have proved to be a successful alternative forum for resolving of disputes through the conciliatory method.

The Legal Services Authorities Act, 1987 provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State and District levels. These authorities will have their own funds. Further, Lok Adalats which are at present informal agencies will acquire statutory status. Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute. It also provides that in respect of cases decided at a Lok Adalat, the court fee paid by the parties will be refunded.

²⁵ An impartial adviser to a court of law in a particular case.

LAW, COURTS AND THE CONSTITUTION

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

SOURCES OF LAW

The fountain source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Statutes are enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned. The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognised and taken into account by Courts while administering justice in certain spheres.

ENACTMENT OF LAWS

The Indian Parliament is competent to make laws on matters enumerated in the Union List. State Legislatures are competent to make laws on matters enumerated in the State List. While both the Union and the States have power to legislate on matters enumerated in the Concurrent List, only Parliament has power to make laws on matters not included in the State List or the Concurrent List. In the event of repugnancy, laws made by Parliament shall prevail over law made by State Legislatures, to the extent of the repugnancy. The State law shall be void unless it has received the assent of the President, and in such case, shall prevail in that State.

APPLICABILITY OF LAWS

Laws made by Parliament may extend throughout or in any part of the territory of India and those made by State Legislatures may generally apply only within the territory of the State concerned. Hence, variations are likely to exist from State to State in provisions of law relating to matters falling in the State and Concurrent Lists.

JUDICIARY

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

SUPREME COURT REGISTRY

The Registry of the Supreme Court is headed by the *Secretary General* who is assisted in his work by seven Registrars, and twenty one Additional Registrars etc. Article 146 of the Constitution deals with the appointments of officers and servants of the Supreme Court Registry.

SUPREME COURT ADVOCATES

There are three categories of Advocates who are entitled to practice law before the Supreme Court of India:-



(i) SENIOR ADVOCATES

These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

(ii) ADVOCATES-ON-RECORD

Only these Advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

(iii) OTHER ADVOCATES

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

Doctrines

- ✚ **Ratio decidendi** is a Latin phrase meaning "the reason" or "the rationale for the decision". The ratio decidendi is "the point in a case which determines the judgment or "the principle which the case establishes". In other words, ratio decidendi is a legal rule derived from, and consistent with, those parts of legal reasoning within a judgment on which the outcome of the case depends. It is a legal phrase which refers to the legal, moral, political, and social principles used by a court to compose the rationale of a particular judgment. Unlike obiter dicta, the ratio decidendi is, as a general rule, binding on courts of lower and later jurisdiction—through the doctrine of stare decisis. Certain courts are able to overrule decisions of a court of coordinate jurisdiction—however, out of interests of judicial comity, they generally try to follow coordinate rationes. The process of determining the ratio decidendi is a correctly thought analysis of what the court actually decided—essentially, based on the legal points about which the parties in the case actually fought. All other statements about the law in the text of a court opinion—all pronouncements that do not form a part of the court's rulings on the issues

actually decided in that particular case (whether they are correct statements of law or not)—are obiter dicta, and are not rules for which that particular case stands.

- ✚ **Stare decisis** is a legal principle by which judges are obliged to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.
- ✚ **Obiter Dictate** Judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an obiter dictum. The binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases. Where there is no direct authority in the form of decided cases, persuasive authority may be found in legal writings in textbooks and periodicals. In modern times many authors have been cited frequently in court, both by counsel and by judges in judgments. **OBITER DICTUM** - The Judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an obiter dictum. The binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases. A difficulty arises in that, although the Judge will give reasons for his decision, he will not always say what the ratio decidendi is, and it is then up to a later Judge to "elicit" the ratio of the case. There may, however, be disagreement over what the ratio is and there may be more than one ratio. In a judgment delivered by a court, what part is a binding precedent is relevant so as to be precise as to what is ultimately binding proposition to other courts. What the court decides generally is ratio decidendi or rule of law which it is authority. As against persons not parties to suit or proceeding general rule of law i.e ratio decidendi is binding. The rule of law or ratio decidendi is that what is applied and acted upon by the Court. The rules of law or ratio decidendi are developed by courts and are thus creatures of courts. The ratio has to be developed by judges while deciding cases before them. Statement made by judges when giving lectures are statements made in extra judicial capacities and are therefore not binding. In the course of judgment a Judge may make observations not precisely relevant to decide the issue. These observations are obiter dicta and are having no binding authority but are none the less important. These obiter dicta are helpful to rationalize law only to suggest solutions to problems not yet decided by the Court. Any ratio decidendi are amenable to distinction on different facts and thus where the meaning thereof are widened, restricted, distinguished or explained, the latest interpretation of ratio decidendi in later cases becomes authority to these state of facts and in that sense. The rule of law based on hypothetical facts is mere obiter dicta and thus not binding. Not infrequently it is difficult to find out what is the ratio decidendi in the judgment when several propositions are considered by the Court. In short ratio is general rule without which the case would have been decided otherwise. The application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

- ✚ **SUB SILENTIO:** Precedents sub silentio or not argued: A decision passes sub silentio when the particular point of law involved in decision is not perceived by the court or present to its mind. When a decision is on point A upon which judgment is pronounced but there was another point B on which also court ought to have pronounced before deciding the issue in favour of the party, but that was not argued or considered by the Court. In such circumstances although point B was logically involved in the facts and although the case had a specific outcome, the point B is said to pass sub silentio. It is rightly said that an hundred precedent sub silentio are not material. Where a judgment is given without the losing parties having been represented, there is no assurance that all the relevant consideration have been brought to the notice of the court and consequently the decision ought not be regarded as absolute authority even if it does not fall within sub silentio rule. A precedent is not destroyed merely because it was badly argued, inadequately considered and fallaciously reasoned. Total absence of argument vitiates the precedent. A decision is an authority only for what it actually decides and not for what may logically or remotely follows from it. Decision on a question which has not been argued cannot be treated as precedent.
- ✚ **PRINCIPLES OF PROSPECTIVE OVERRULING:** Prospective overruling implies that an earlier decision of the same issue shall not be disturbed till the date of the later judgment. It is resorted to mould relief claimed to meet the justice of the case. It means that relief though the Petitioner may be entitled to in law because of interpretation of the law made by the Supreme Court, the same shall not be applicable to past transactions. Frequently such situations arise in service matters or tax matters where in the person already appointed for a long time based on interpretation of a law by the Apex Court in its earlier judgment, but the same is overruled in the later judgment, and therefore the person already in public employment need not be directed to vacate the post or the tax already imposed and collected is not directed to be refunded. In normal course, a law declared by Supreme Court is the law assumed to be from the date of inception and prospective overruling is only an exception when the Supreme Court itself makes the applicability of the ratio of the judgment prospectively to do complete justice to the parties or to avoid chaos. It is therefore necessary that if a law is to be made applicable prospectively, the same is required to be so declared in the judgment when it is delivered. *M.A.Murthy v/s State of Karnataka* (2003) 7 SCC 517. If Supreme Court does not exercise such discretion to hold that the law declared by it would operate only prospectively, High Court can not of its own do so. *Sarwan Kumar v/s Madanlal Agarwal* AIR 2003 SC 1475; (2003) 4 SCC 147.

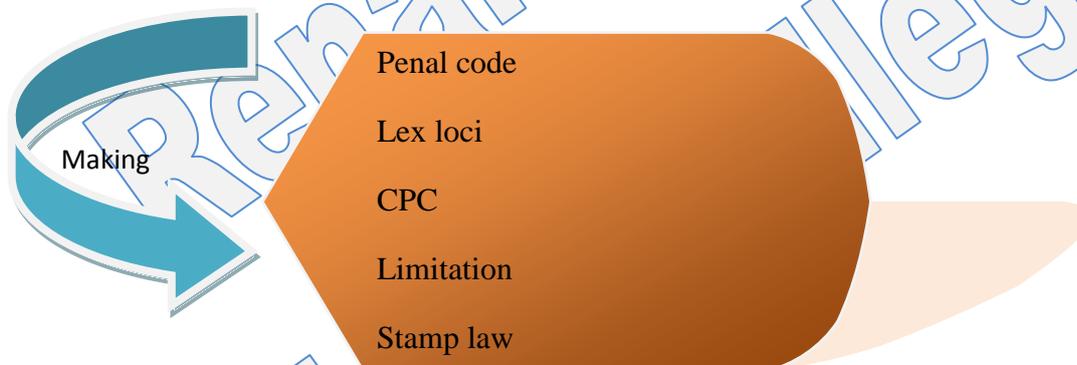
Unit V Growth of Legislature, Constitutional History

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| 1 | Development of legislative authorities in India from 1861-1935 |
| 2 | <i>Criminal Law</i> |
| 3 | <i>Hindu and Muslims personal Law</i> |
| 4 | <i>Writs</i> |
| 5 | Racial Discriminations |
| 6 | English Law |
| 7 | Growth of justice, equity and good conscience |

Law commission India (bef. 1947)



First Law Commission 1834



History

India's first Law Commission was established in 1834 via Charter Act of 1833 under the Chairmanship of **Lord Macaulay** which recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. After that, three more law commissions were established in British Era. The Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act. etc. are products of the works of Law Commissions of British Era. The origin of the first Law Commission of India lies in the diverse and often conflicting laws prevailing in the local regions and those administered by the East India Company, which was granted Royal Charters and also conferred powers by the various Indian rulers to administer and oversee the conduct of the inhabitants in the local areas where the Company exercised control. During this period of administration by the Company, two sets of laws operated in the areas; one which applied to and in relation to British citizens and the second which applied to the local inhabitants and aliens. This was considered as a major stumbling block for proper administration by the British Government during the times which is now known as the British Raj. In order to improve the law and order situation and also to ensure uniformity of legal administration, various options were looked for. Until then the British Government had been passing various enactments to deal with particular situations, such as the Prohibition of Sati in 1829 by Lord William Bentinck under the influence of Raja Ram Mohan Roy. However it was for the first time in 1833 that the idea to establish a Law Commission for a

comprehensive examination of the existing legal system prevailing in the British administered areas and its overhaul was instituted.

The First Law Commission was established in 1834 by the British Government under the Chairmanship of Lord Macaulay. It suggested various enactments to the British Government, most of which were passed and enacted and are still in force in India. Few of the most important recommendations made by this First Law Commission were those on, Indian Penal Code (first submitted in 1837 but enacted in 1860 and still in force), *Criminal Procedure Code* (enacted in 1898, repealed and succeeded by the *Criminal Procedure Code of 1973*), etc. Thereafter three more Law Commissions were established which made a number of other recommendations the Indian Evidence Act (1872) and *Indian Contract Act* (1872), etc. being some of the significant ones.

The contribution of these Law Commissions can be enumerated as under

| | First Independence Law Commission | Pre-Independence Law Commission | Second Independence Law Commission | Pre-Independence Commission | Third Independence Commission | Pre-Law | Fourth Independence Law Commission | Pre-Independence Law Commission |
|--------------------|--|--|---|------------------------------------|---|----------------|---|--|
| Established | 1834 | | 1853 | | 1861 | | 1879 | |
| Chairman | <u>Lord Macaulay</u> | | <u>Sir John Romilly</u> | | <u>Sir John Romilly</u> | | Dr. Whitley Stokes ^[4] | |
| Members | (1) J.M. Macleod, (2) G.W. Anderson, and (3) F. Millet | | (1) Sir Lord Jervis, (2) Sir Edward Ryan, (3) R. Lowe, (4) J.M. Macleod, (5) C.H. Cameron, and (6) T.E. Ellis | | Initially (1) Sir Edward Ryan, (2) R. Lowe, (3) J.M. Macleod, (4) Sir W. Erle, and (5) Justice Wills. Subsequently Sir W. Erle, and Justice Wills succeed by Sir. W.M. James and J. Henderson. Later J. Henderson replaced by Justice Lush. | | (1) Sir Charles Turner, and (2) Raymond West | |
| Reports | Penal Code (2 May 1837) | | Code of Civil Procedure and Law of Limitation (1859) | | A code for Succession and Inheritance for Indians other than Hindus and Muslims (1865) | | Code of Negotiable Instruments (1881) | |
| | <i>Lex Loci</i> (role and authority of English law in India) (31 October 1840) | | Penal Code (1860) | | Draft Contract Law (1866) | | Code on Trusts Law (1882) | |
| | - | | Code of Criminal Procedure (1861) | | Draft Negotiable Instruments Law (1867) | | Code on Transfer of Property and Easements (1882) | |
| | - | | - | | Draft Evidence Law (1868) | | Revised Code of Criminal Procedure | |

| | | | |
|---|---|---|--|
| | | | (1882) |
| - | - | Revision of Code of Criminal Procedure (1870) | Revised Code of Civil Procedure (1882) |
| - | - | Draft Transfer of Property Law (1870) | - |
| - | - | Draft Code on Insurance (1871) | - |

Second Law Commission 1853 of British era was Sir John Romilly



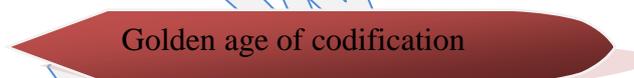
For 3 year and ended in 1856 and submitted 4 report

1. Plan to form judiciary and court
2. Agree with Lex Loci
3. Judicial system for north western provinces.
4. Judicial plan for presidencies of Bombay and Madras.

Enactment of some code

1. CPC VIII 1859
2. Limitation Act X 1859
3. CrPC 1861 XXV 1861
4. Revised IPC
5. Punjab civil code than turn into Punjab Laws act 1872

Third Law Commission 1861 of British era was Sir John Romilly



1. Discussion on policy, certain bills

| No | Act | Year |
|----|--|------|
| 1 | The Indian Succession Act | 1864 |
| 2 | The Contract Bill | 1866 |
| 3 | The Negotiable Instruments Bill | 1867 |
| 4 | The Evidence Bill | 1868 |
| 5 | The Transfer Of Property Bill | 1870 |
| 6 | Revised Draft Of Criminal Procedure | 1870 |
| 7 | The Religious Endowments Act | 1863 |
| 8 | The Official Trustees Act | 1864 |
| 9 | The Carriers Act | 1865 |
| 10 | The Indian Succession Act | 1865 |
| 11 | The Parsi Intestate Succession Act | 1865 |
| 12 | The Parsi Marriage And Divorce Act | 1865 |
| 13 | The Native Converts Marriage Dissolution Act | 1866 |
| 14 | The Trustees And Mortgagees Power Act | 1866 |
| 15 | The Public Gambling Act | 1867 |

| | | |
|----|---|------|
| 16 | The Press And Registration Of Books Act | 1867 |
| 17 | The Indian Divorce Act | 1869 |
| 18 | The Court Fee Act | 1870 |
| 19 | The Female Infanticides Prevention Act | 1870 |
| 20 | The Hindu Will Act | 1870 |
| 21 | The Indian Evidence Act | 1872 |
| 22 | The Special Marriage Act | 1872 |
| 23 | The Punjab Law Act | 1872 |
| 24 | The Indian Contract Act | 1872 |
| 25 | The Indian Trustees Act | 1865 |

Forth Law Commission 1879 by Dr. Whitley Stokes

- a. The process of codification of substantive laws should continue.
- b. The English law should be made the basis of the future code in India and its material should be recast
- c. Combination of general part as a code and borne in mind.
- d. The form of code should be simple, broad and readily intelligible.
- e. Uniform legislation(except local and special customs)
- f. Law should not be expanded by codification except European British minor Act 1874
- g. Negotiable, TPA, Trust, easements and bills should be suggested for amendments.
- h. Insurance, carriers and lien act should be codified.
- i. Actionable wrong also be codified.
- j. Legislature for law of property.
- k. Preparation should be done with chapter of interpretation.

Before independence

Criminal Law in Hindu, Muslim and English

Criminal Law

Hindu

Muslim

Muslims:

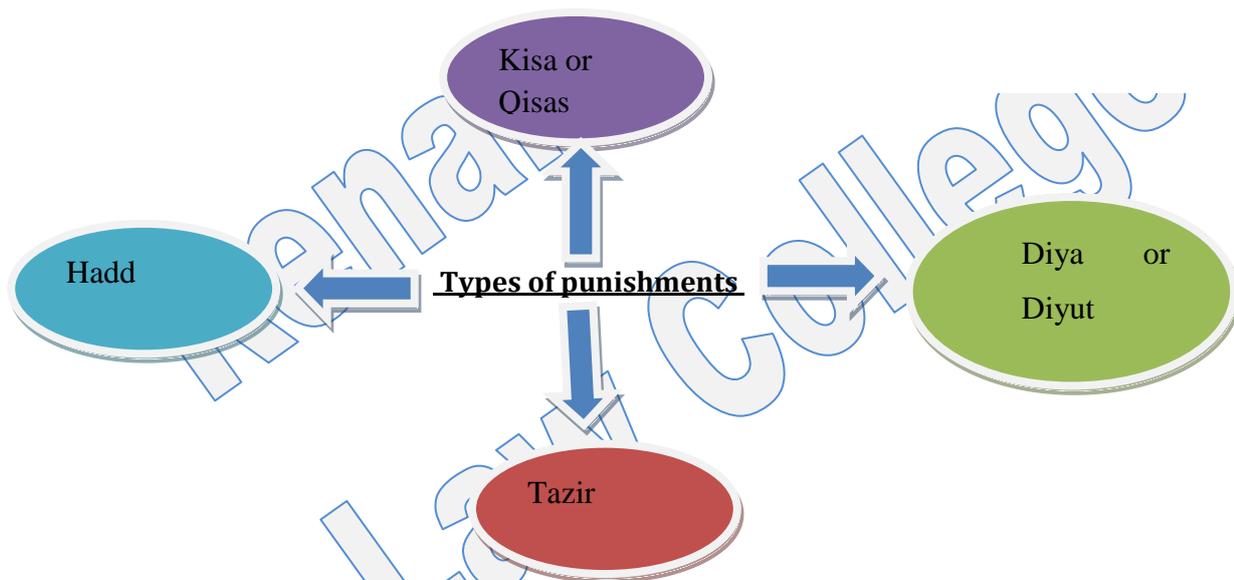
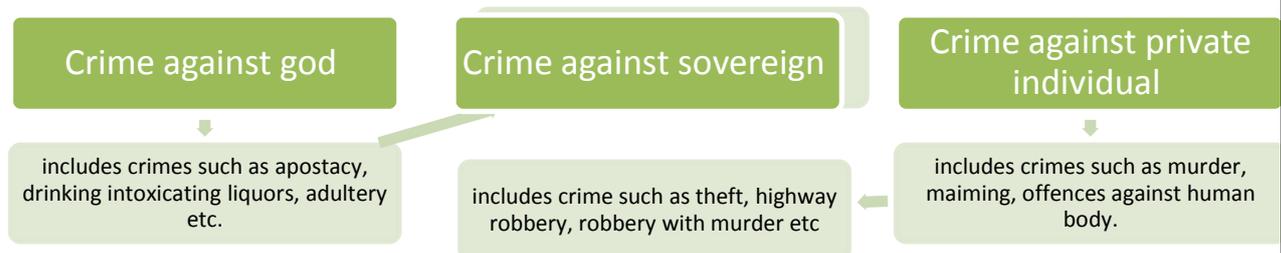
Before the rule of British king on India, India was ruled by the Muslim kings who were also outsiders. As king was the Muslim, Muslim criminal law was the law of the land for administration of criminal justice in India. More than 100 years East India Company [Period of Diwan] also did not change the criminal law system in India, they also followed Muslim criminal law. Criminal law in India started to change with the introduction of Indian Penal Code in 1860. Please Note – Today also in 2010 we are using same Indian Penal Code.

An Indian Penal Code is a law given by a king for his slave nation called as India.

- **Let us understand Muslim law in India between 1772 to 1860**-The Judge under Islamic Law is not bound by precedents, rules, or prior decisions as in common law exception is Hadd. When we talk about the Muslim law please understand that in Islam God is law and law is God , Islam does not have theory of Separation of church and state .So Muslim criminal law in short we can say is that nothing but obeying the Quran , surrendering to the will of Mohammad , God. Islamic law is known as Shariah Law, and Shariah means the path to follow God's Law. The first

and primary element of Shariah Law is the Qur’an. The second element of Shariah Law is known as the Sunna, the teachings of the Prophet Mohammad. The Sunna contain stories and anecdotes, called Hadith, to illustrate a concept. The third element of Shar'iah Law is known as the Ijma. The Muslim religion uses the term Ulama as a label for its religious scholars. When the Ulama's reach a consensus, agree on an issue, it is interpreted as Ijma. In Muslim law Qazi performed all the duties of Judge.

Qazi or Kazi means Judge. The traditional Muslim law is classified under following 3 categories.



- Kisa (life for life)
- Hadd(penalties)
- Diya(injuries and exception of kisa)
- Tazir(offended against sovereign- exile²⁶, corporeal, or any other humiliating)

Let us understand Hadd Punishment –

- Hadd crimes have fixed punishments because they are set by God and are found in the Qur’an. Hadd crimes are crimes against God's law and Tazir crimes are crimes against society.
- Hadd means limit or boundary
- Hadd crimes are the most serious under Islamic Law, and Tazir crimes are the least serious.
- When offence or crime of person was against god or against public justice, anti social and anti religious that time this according to the Hadd Principal the punishment was given to the

²⁶ Caste out

criminal. In this type the punishment was fixing and no one was allowed to increase or decrease or change the punishment. Once the crime was proved then punishment was given without any change. The Judge did not enjoy any discretion. No Judge can change or reduce the punishment for these serious crimes.

Only eye-witness testimony and confession were admitted. For eye-witness testimony, the number of witnesses required was doubled from Islamic law's usual standard of two to four. Moreover, only the testimony of free adult Muslim males was acceptable. The purpose behind Hadd Punishment is to deter people; people should fear the law to do act against the religion or God or go against Quran.

Example of Punishment –

1. Death by stoning - crime zina that is illicit intercourse. The pregnancy of an unmarried woman can be sufficient proof against her.
2. Death by scourging - crime zina that is illicit intercourse
3. Amputation of limb like hand or leg or limbs - crime theft, cut
4. flogging
5. stripes - for falsely accusing a married woman of adultery eighty stripes

Any person who is not liable for the hadd punishment for zina because of any of the limitations may still be prosecuted under the criminal law of discretionary punishment that is ta'zir. Let us understand Tazir Type of Punishments – when offence is against the sovereign –

Tazir punishment corporal punishment up to death Under the principal of Hadd, kisa or diya very few offences or crimes are mentioned thus Tazir becomes very important in the Muslim criminal law system and majority nearly all crimes come under Tazeer. Indirectly every crime came under the Tazir, if Judge found that he cannot punish the criminal using the hadd or kisa the he punished that criminal using Tazir doctrine.

Tazir means discretionary punishment. Judge was free to decide the nature of punishment is not fixing in this type of crime. These punishments include imprisonment, exile, and corporal punishment, boxing on ear, humiliating in public place. Tazir Punishments change as per place and state, they are not written or codified. Siyasatan means exemplary punishment imposed on habitual offenders or dangerous characters.

For which crime punishment was given according to Tazir below are few examples

| | | |
|--------------------------------|------------------------------|----------------------------|
| Use of abusive language | Forgery of deeds | Forgery of letter |
| Bestiality | Sodomy | Offence against human life |
| Property disputes | Public peace and tranquility | Decency |
| Morals | Religious crimes | |

Let us understand Kisa or Qisas and Diya Type of Crimes and Punishment-Kisa or Qisas - meaning retaliation, and following the biblical principle of "an eye for an eye." A Qesas crime is one of retaliation. If you commit a Qesas crime, the victim has a right to seek retribution and retaliation. The exact punishment for each Qesas crime is set forth in the Qur'an. If you are killed, then your family has a right to seek Qesas punishment from the murderer. Punishment can come in several forms and also may include "Diya."

Diya is paid to the victim's family as part of punishment. Diya is form of restitution for the victim or his family. The Qesas crimes require compensation for each crime committed. Each nation sets the damage before the offence and the Judge or Qazi then fixes the proper Diya. The family also may seek to have a public execution of the offender or the family may seek to pardon the offender. Traditional Qesas crimes include:

Murder (premeditated and non-premeditated)

Premeditated offences against human life, short of murder

Murder by error

Defects in Muslim Law

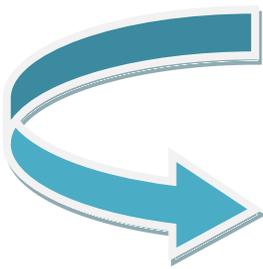
- Incomprehensibility of principle
- Unscientific classification
- Public and Private law
- Blood money and pardon
- No diff. In murder and homicide
- Tazir absolute
- Irrational evidence

- Type of Punishments
- Qisas: killing
 - Diya: blood money
 - Hadd: penalties
 - Tazir: discretion

Hindu Law:

Before invade India the Hindu law prevail and existed with a systematic and well defined criminal law

Purpose of Danda



- Incapacitation
- Deterrence
- Rehabilitation

Type Of Punishments



- Admonition and censure
- Fines
- Fines and caste
- Fine for first offender
- Imprisonment
- Mutilation
- Death
- Whipping
- Branding
- Banishment
- Confiscation of property

Writs

- Habeas corpus
- Quo warranto
- Mandamus
- Prohibition
- certiorari

Historical Background

The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High courts and these High Courts had analogous power to issue writs as successor to the Supreme Court. The other courts which were established subsequently did not enjoy this power. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under section 45 of the Specific Relief Act, 1877.

Writs

Habeas Corpus
Certiorari
Prohibition
Mandamus
Quo Warranto

Constitutional Remedies

A writ means an order. A warrant is also a type of writ. Anything that is issued under an authority is a writ. In this sense, using the power conferred by Article 32, the Supreme Court issues directions, orders or writs.

As we know that Article 32(3) confers the power to parliament to make law empowering any court to issue these writs. But this power has not been used and only Supreme Court by Article 32 (2) and **High Courts (Article 226)** can issue writs.

Meaning of habeas corpus, mandamus, prohibition, quo warranto and certiorari

Habeas corpus, mandamus quo warranto and certiorari are Latin words. They have different meaning and different implications. Let's understand one by one:

Writ of Habeas corpus

By Habeas corpus writ the Supreme Court or High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be **physically brought** before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

Is body (physical presence) compulsory?

Ordinarily yes, but in *Kanu Sanyal v/s District Magistrate* (AIR) (1974) case the Supreme Court laid down that the physical presence is NOT a part of the writ.

When the writ of Habeas corpus is issued?

- When the person is detained and not produced before the magistrate within 24 hours
- When the person is arrested without any violation of a law.
- When a person is arrested under a law which is unconstitutional
- When detention is done to harm the person or *is malafide*.

Who can file the petition?

A general rule of filing the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception to that. This is because, a person detained or imprisoned may be severely handicapped. So anybody on behalf of the detainee can file a petition.

Is it applicable to Preventive Detention?

Yes, it is applicable.

What is the core philosophy of Habeas corpus ?

To set at liberty a person who is confined without legal justification.

Can Habeas corpus issued against state and individuals?

Yes, the writ can be issued against authorities of states or individuals or organizations.

Writ of Mandamus

Mandamus means “we order”. The Supreme Court or High Court orders to a person, corporation, lower court, public authority or state authority.

What order?

The order to do something. It’s a command or directive to perform something or some act.

What kind of act?

Performance of the ministerial acts or public duty. The Mandamus is also called a wakening call. It awakes the sleeping authority to perform their duty. It demands an activity and sets the authority in action.

Who can file a writ petition?

A person can file a writ petition against anybody who seeks a legal duty from that person.

What is legal duty?

Legal duty means some duty which is by a law viz. constitution, act, subordinate, legislation etc.

But did the person move to the authority?

Yes, the petition requires that the person moved to the authority and the authority refused to do this duty. This is demand and refusal.

What is the core philosophy of Mandamus?

The core philosophy is that a person or authority despite of fulfillment of such conditions which demand an action refuses to act then, the Supreme Court or High Court can ask the person or authority to perform that duty.

For example, if a person fulfills all the preconditions & formalities to be issued a license but still the authority refuses to issue a license even after that person approaches to that particular authority, the person may seek writ petition.

What are essential conditions to file to request the court issue Mandamus writ?

- The person must have a real or special interest in the subject matter.
- The person must have specific legal right
- No other equally effective remedy is there.

The third condition can be understood by the example:

A person fulfills all the conditions of an appointment and the authority has completed the selection procedure then he must be issued an appointment letter. But when the authority refuses to do this duty, the person is eligible to file a writ petition under Mandamus.

Writ of Prohibition

The writ of prohibition means that the supreme court and High Courts may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice.

This implies that if a judicial officer has personal interest in a case, it may hamper the decision and the course of natural justice. Writ of Prohibition means to be issued in this case.

Writ of Certiorari

Certiorari means a writ that orders to move a suit from a inferior court to superior court.

Quo Warranto

Quo warranto means “by what warrant”?

This means that Supreme Court and High Court may issue the writ which restrains the person or authority to act in an office which he / she is not entitled to. This writ is applicable to the public offices only.

| 1. Habeas Corpus | 2. (meaning - you may have the body) : | To release a person who has been detained unlawfully, whether in prison or in private custody. |
|---------------------|--|--|
| Mandamus | (meaning - we command) | : To secure the performance of public duties by a lower court, tribunal or public authority, which they fail to do on their own. |
| Certiorari | (meaning - to be certified) | To quash an order already passed by a lower court, tribunal or quasi-judicial authority. |
| Prohibition: | | To prohibit an inferior court from continuing the proceedings in a case when it is outside their jurisdiction |
| Quo warranto | (meaning - what is your authority) | : To restrain a person from holding a public office to which he is not entitled. Example: removal of CVC of India PJ Thomas by SC. |

Racial Discriminations

1st January 1877, Queen Victoria was proclaimed **Empress of India** at a *Durbar* (assembly of notables and princes), in Delhi. The Viceroy Lord Lytton represented the Sovereign, who incidentally never visited her Indian Empire. In 1878 Vernacular Press act was introduced in India that imposed severe limitations on the rights of the press. In the same year there was ‘Rendition of Mysore’ and Mysore was returned to its original **Wodeyar** rulers. In 1883 the Ilbert Bill Act was passed which allowed Indian magistrates to try Europeans. This angered the Europeans and the bill was withdrawn. Indians suffered from growing unemployment while most well paying jobs were reserved for the British. Racial discrimination against Indian’s forced the Indian nationalists into organizing themselves for getting their demands accepted.

Racial Arrogance of the British:

Another important factor that aroused discontent against the British rulers was the policy of racial discrimination adopted by the British in their dealings with the Indians. In fact, the British rulers treated their Indian subjects as sub- humans. Thus when discontent of the Indians loomed large the British government imposed various restrictions one after another curbing the rights Indians had been enjoying for long. As a consequence the Indian people gradually built up a strong anti-British movement that eventually led to their expulsion from the country.

White Racism:

Racial discrimination and brutality were major cause in uniting the highest of the natives with their lesser brethren. The racial discrimination was quite evident in the business field also. The white British business was well placed vis-à-vis Indian businessman. The English administrative machinery was sympathetically inclined towards the British businessman in face of competition with Indian businessman.

Britishers divided the Hindus and Muslims on the grounds of racism. They created bullet pellets covered with the skin of cows and pigs, which had to be removed by teeth before using. And Hindus worship cow and don't eat it, similarly Muslims don't eat pigs.

It is very difficult to imagine today the tone of racial superiority the British practiced, particularly after 1857 in India. In fact, the British rulers treated their Indian subjects as subhuman. The British people living in different parts of the country developed exclusive societies for themselves. The British people also lived in places particularly demarcated for the white-skinned people where no 'native' were allowed to enter. In Calcutta, for example, the habitation area was particularly divided into two parts, namely, the 'black' and the 'white' areas, obviously discriminating between the Indians and the Europeans. No Indian was allowed to enter the areas exclusively marked for the white-skinned people. Likewise there were parks, gardens and play gardens where no Indian was allowed to enter. All this made the Indians conscious about the national humiliation and accelerated the pace of disillusionment with the foreign rule which eventually turned them anti-British. The centralised administration of the British Government and modern methods of rapid communication like the railways fostered a sense of Indian unity. Some of the evils of British rule to the contemporary Indians appeared as blessings in disguise in the long run.

One such evil was the naked racial arrogance of the British. Racial discrimination among Indians which was unmistakably present in the Cornwallis code at the end of the 18th century rapidly crystallised in the 19th century. Racial doctrines openly preached the predestined superiority of the whites and the permanent subjugation of the non-whites like Indians to the white supremacy. As a result not only did the British enjoy numerous exemptions and privileges but also they were so far brutalised as to insult, assault and even murder Indians with impunity. This naturally moved self-respecting Indians to challenge the odious alien rule. Secondly, in 1826, a Jury act was passed which introduced religious discrimination in the law courts. Under it Hindus and Muslims could be tried by European or Indian Christians, but no Christians whether European or Indian, could be tried by Hindu or Muslim jurors. Rammohan submitted a petition against the Act submitted both by Hindus and Muslims to the British parliament. In Bombay and Madras also there was public protest against the act. Under the pressure of the Indian public opinion the Jury act was amended in 1832, abolishing the discriminatory provision of the Act of 1826. When Rammohan Roy visited England (1830), he submitted before the Parliamentary Select Committee, to consider the question of renewal of the East India Company's Charter, a number of important demands like the separation of the Judicial and executive functions of the in the administration of criminal justice and the consultation of Indian public opinion before enacting legislation. Although his demands did not bear fruit immediately, they surely focused public attention on important public issues. He also keenly aware of the miserable condition of the peasants and the serious drain on India's economy.

The act of 1833 sec 85 laying down a positive obligations on the government to provide for the protection of the native from insult and outrage in their persons, properties, religions and opinions.

Social Class in India

Indian Society is obsessed with white skin and it could be because of colonisation from British Empire that Indians want to look like their former master. If we look in Indian society the darker colour of skin the person is then more likely the person to be treated as a lower class in Indian society that it's colonial mentality that Britain left for Indians to discriminate among themselves This reflects the class system in India. British Army Social class determined the way of life for the British Army in India. Upper-class men served as officers. Lower-class British served at lesser rank and did not advance past the rank of sergeant. Only men with the rank of sergeant and above were allowed to bring their wives to India. Each English officer's wife attempted to re-create England in the home setting. Like a general, she directed an army of 20 to 30 servants. Indian Servants Caste determined Indian occupations.

Castes were divided into four broad categories called varna. Indian civil servants were of the third varna. House and personal servants were of the fourth varna. Even within the varna, jobs were strictly regulated, which is why such large servant staffs were required. For example, in the picture here, both servants were of the same varna. However, the person washing the British officer's feet was of a different caste than the person doing the fanning.

Some points are as follow:

- ✚ Prisons rule
- ✚ Company and India
- ✚ Trade
- ✚ Equality
- ✚ White and Black Town
- ✚ Divide and Rule

English Law:

Important codification in English law

- ✚ Indian Succession Act 1885
- ✚ Indian Contract Act 1872
- ✚ Indian penal code 1860
- ✚ Indian evidence act 1872
- ✚ Transfer of property
- ✚ Law of torts

Codification and native Laws

- ✚ Indian penal code
- ✚ Slavery
- ✚ Age of majority
- ✚ Pre – emption
- ✚ Case law
- ✚ Wakfs
- ✚ Sale
- ✚ Marriage

Justice, equity and good conscience

“The system of equity includes that portion of natural justice which is judicially enforceable but which for various reasons was not enforced by the courts of common law.” The common law courts which developed in English jurisprudence by the end of the thirteenth century were The King's Bench, the Court of Common Pleas, and The Exchequer. Although each of these courts had jurisdiction over different subject matters, they were all regarded as "common law" courts, that is, courts governed by strict rules of law, a formalized procedure and bound by judicial precedent. At that point in time, the common law courts had no equity jurisprudence, and the Court of Chancery did not yet exist.

Growth Of Equity

“A dual system of rights and interests, namely – legal and equitable, came to the fore due to the double system of the administration of justice in England before the Judicature Act, 1873 – 1875.”

Evils Of The Common Law

The inflexibility of the writ system, and the consequent expense that if a writ had a minor drafting error, it would be thrown out, for example, in Pinnel's Case, where Pinnel won as a result of Cole's drafting error, even though Cole was legally in the right.

- ✚ Many cases were lost on technicalities.
- ✚ The common law did not allow oral evidence.
- ✚ There was no power of enforcement.
- ✚ It was easy to avoid the consequences of one's actions.
- ✚ The wayer of law system was unfair.
- ✚ There was no recognition of trusts.

Important Developments In Equity

As a result of the inadequacies of the common law courts, people petitioned the King through his Chancellor. This developed into a full legal system, and the Chancellor, as petitions increased, set up the Court of Chancery (1474), the rules of which became equity.

The Earl of Oxford's Case 1615, which decided that if equity and the common law were in conflict, equity would prevail (codified in the Judicature Act 1873 and currently contained in the Supreme Court Act 1981)

Advantages Of Equity Over The Common Law

The Court of Chancery succeeded in stopping unconscionable writs through the injunction, by which the common law claimant was restrained from continuing his action. If the claimant defied the order he would be imprisoned for contempt. It was said that there existed two legal systems - one to do injustice, and the other stop it, and that equity was the conscience of the law.

“Equity in U.S. law can be traced to England, where it began as a response to the rigid procedures of England's law courts. Through the thirteenth and fourteenth centuries, the judges in England's courts developed the common law, a system of accepting and deciding cases based on principles of law shaped and developed in preceding cases. Pleading became quite intricate. If a complaint was not dismissed, relief was often denied based on little more than the lack of a controlling statute or precedent.

Frustrated plaintiffs turned to the king, who referred these extraordinary requests for relief to a royal court called the Chancery. The Chancery was headed by a chancellor who possessed the power to settle disputes and order relief according to his conscience. The decisions of a chancellor were made without regard for the common law, and they became the basis for the law of equity.

Remedies Discovered By The Chancellors

The Chancellor developed new remedies that were able to compensate plaintiffs more fully than the Common Law remedy of damages.

- ✚ Injunction
- ✚ Specific performance
- ✚ Account of profits
- ✚ Rescission
- ✚ Declaratory relief
- ✚ Rectification
- ✚ Estoppels
- ✚ Certain proprietary remedies, such as constructive trusts or tracing
- ✚ Subrogation
- ✚ In very specific circumstances, an equitable lien

Equity In Indian Legal System

“Most of the equitable principles and rules have, in India, been embodied in the statute law and has been made applicable to the extent of the provisions made therein. The provisions of equity in Indian statute books might have their source in common law or in equity or in an adjustment between the two, is immaterial.

Statutory recognitions of the principles of equity are found in:

- ✚ The Indian Contract Act, 1872;
- ✚ The Specific Relief Act, 1877;
- ✚ The Indian Trust act, 1882;
- ✚ The Transfer of Property Act, 1882; and
- ✚ The Indian Succession Act, 1925.

“The point primarily relates to the section 28 of the Indian Contract Act, 1872. The subject is of great importance from the point of view of economic justice, avoidance of hardship to consumers and certainly and symmetry of the law. The equitable doctrines featuring in the Indian Contract Act are mainly, the doctrine of penalties and forfeiture, stipulations as to time in a contract, equitable relief on the ground of misrepresentation, fraud and undue influence. In a case which went to the Supreme Court, a clause in an insurance policy provided that all the benefits under the insurance policy shall be forfeited if the suit was not brought within the specified period, the clause was held to be valid.”

“Trust and trustees is a concurrent subject [Entry 10 of List III of Seventh Schedule to Constitution]. Thus, the Act will apply all over India except when specifically amended / altered by any State Government.

The Indian Trusts Act was passed in 1882 to define law relating to private trusts and trustees. A trust is not a 'legal person'. Property of trust is held in name of trustee for benefit of beneficiary. The rules administered by the English Courts of equity under the head of justice, equity and good conscience are contained in the Indian Trust Act.”

Many doctrines of equity are contained in the Transfer of Property Act. The English doctrine of part performance has been drawn in section 53 of the Act. Section 48 and section 51 are also based on the equity principles. Equity of redemption in England was codified to Right of redemption in India as in the case of Gangadhar v. Shankar Lal and Prithi Nath Singh v. Suraj Ahir the codified law was followed. Section 180-190 of the Indian Succession Act deals with doctrine of election in cases of will and section 35 of the Transfer of Property give effect to this doctrine in general.

It is important to bring to the notice for the researcher that though the English rules of equity have been substantially incorporated by the Indian Legislature, yet, there are many other rules of English Equity are either not been followed in India or are adopted only in a modified form, keeping in view the different ground realities of the country.”

“In India the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the "Specific Relief Act" was passed by the Parliament of India following the recommendation of the Law Commission of India and repealing the earlier "Specific Relief Act" of 1877. Under the 1963 Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. The rights codified under the 1963 Act were as under;

- ✚ Recovery of possession of immovable property (ss. 5 - 8)
- ✚ Specific performance of contracts (ss. 9 - 25)
- ✚ Rectification of Instruments (s. 26)
- ✚ Rescission of Contracts (ss. 27 - 30)
- ✚ Cancellation of Instruments (ss. 31 - 33)
- ✚ Declaratory Decrees (ss. 34 - 35)
- ✚ Injunctions (ss. 36 - 42)



Who is he?

Different name to a single Identity

- ✚ An **advocate** is one who speaks on behalf of another person, especially in a legal context. Thus, it can be said that he represents the knowledge, skill, ability, or standing to speak for them.
- ✚ A **barrister** is a lawyer found in many common law jurisdictions which employ a split profession in relation to legal representation. In split professions, the other type of lawyer is the solicitor. Solicitors have more direct contact with the clients, whereas barristers often only become involved in a case once advocacy before a court is needed by the client. Barristers are also engaged by solicitors to provide specialist advice on points of law. Barristers are rarely, if ever, instructed by clients directly (although this occurs frequently in tax matters). Instead, the client's solicitors will instruct a barrister on behalf of the client when appropriate. A British or Canadian lawyer who speaks in the higher courts of law on behalf of either the defence or prosecution.
- ✚ A **lawyer**²⁷, according to Black's law dictionary, is "a person learned in the law; as an attorney, counsel or solicitor; a person taught to practice law. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who retain/ hire lawyers to perform legal services.
- ✚ A **solicitor**²⁸ is a term for Lawyer in many Common law jurisdictions that may make a distinction regarding the type of work done; it is also a title used by government attorneys in

27 A lawyer is a general term that covers both solicitor and barrister. A solicitor is usually the first person that a member of the public will go to with their legal problem. A solicitor will often refer the work to a barrister for specialist advice or to appear in court to represent the client. It is also possible for certain solicitors to appear in court as advocates, if they have higher rights of audience. The judiciary is drawn from both branches of the profession.

28 Solicitor

When people talk about going to see their lawyer, it is usually a solicitor that they will contact. Solicitors can work for a big range of organizations, including commercial or non-commercial law firms, the government, private businesses, banks and corporations. They have specialist knowledge of different areas of the law such as family, crime, finance, property and employment. Most of the time solicitors advise clients, undertake negotiations and draft legal documents. It is primarily a desk job, but does involve travelling to see clients and representing them in court. In the past, a solicitor's advocacy work was restricted to magistrates' courts (where less serious cases are dealt with) and minor cases in county courts, but now there are a few solicitor advocates who work in higher levels of the court.

Barrister

some government agencies in the United States. In some common law countries the legal profession is split between solicitors who represent and advise clients, and a barrister who is retained by a solicitor to advocate in a legal hearing or to render a legal opinion.

- ✚ In English Law a **pleader** is also a legal practitioner who is specialized in drafting pleadings.
- ✚ **Attorney at law or attorney-at-law**, usually abbreviated in everyday speech to attorney, is the official name for a lawyer in certain jurisdictions, including Japan, Sri Lanka, South Africa, Brazil and the United States. In Canada, it is only used in Quebec. The term has its roots in the verb *to at torn*, meaning to transfer one's rights and obligations to another.
- ✚ **Vakil** an agent or representative.

Difference between pleader and advocate

There is not much legal difference between an advocate and a pleader. An Advocate is a person who is compulsory a law graduate and Registered or enrolled with the Bar Council of India and entitled to practice in any court of law in India. An advocate is entitled to appear before a court of law.

In literal sense a pleader is actually a person who drafts pleadings and pleads in the court of law on behalf of his client. You may also find a term Government pleader under section 2 (7) in Civil Procedure Code 1908, who is appointed by the State Government to perform all or any of the functions expressly imposed, by Civil Procedure Code 1908, on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

Supreme Court



High Court



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| <p>1. This is the union court and the apex institution of the united court system.</p> | <p>1. The High Court is constituted in every State.</p> |
| <p>2. All the Judges of the Supreme Court, retire on attaining the age of 65 years.</p> | <p>2. The Judge of the High Court retires after attaining the age of 62 years.</p> |
| <p>3. The Judges of the Supreme Court cannot do their practice after retirement. These are also restricted during their tenure.</p> | <p>3. The Judge of the High Court cannot do his legal practice during his tenure but we can do this after his tenure in any High Court or Supreme Court. He cannot do his legal practices in courts below High Court.</p> |
| <p>4. The Judges of the Supreme Court cannot be</p> | <p>4. The Judges of the High Courts are transferrable</p> |

Barristers can be distinguished from a solicitor because they wear a wig and gown in court. They work at higher levels of court than solicitors and their main role is to act as advocates in legal hearings, which means they stand in court and plead the case on behalf of their clients in front of a judge. They also have specialist knowledge of the law and so are often called on to give legal advice. Barristers do not come into contact with the public as much as solicitors. They are given details of a case by a solicitor and then have a certain amount of time to review the evidence and to prepare what they are going to say in court (a pleading). Most barristers are self-employed and work in Chambers with other barristers so they can share costs of accommodation and administrators. They can also be employed in-house as advisors by banks, corporations, and solicitors firms.

transferred and cannot be promoted.

to the other high courts. They can be promoted upto Judge of the Supreme Court.

5. The Supreme Court is not bounded to obey the decisions of the High Courts or any other courts.

5. The High Courts are bounded to obey the decision of Supreme Court.

6. The Supreme Court only has the power to take decisions regarding constitutions.

6. The High Court has no power to take decisions regarding constitution.

7. The Chief Justice of the Supreme Court draws a salary of 1.5Lac Rupees per month

7. The chief Justice of High Court draws a salary of Rs. 90000/-

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