

## **Administration of Justice in British India**

**By a Royal Charter granted by the Queen on 31 December 1600 the East India Company was established** and both the Indians and Britishers came under the jurisdiction of the Company. The Charter created a monopoly for the Company in the matters of business and the violation of the Charter was punishable with forfeiture of the ships and cargo of the violators. Bombay, Madras and Calcutta were three Presidencies during British India. **The Charter of 1687, issued by the Company itself and not the Crown, established a town corporation at Madras.**

### **ESTABLISHMENT OF MAYOR'S COURTS**

The East India Company expanded greatly in the over 100 years since its creation. It added new establishments to its jurisdiction, which brought new challenges to the Company. Therefore, the Company requested the King to issue a Charter by which special powers could be granted to it.

**On such a request, the Company was granted a 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 of the King of England. Mayor's Courts superseded all existing courts established in the above places. These courts were given the authority "to try, hear, and determine all civil suits, actions, and pleas" that may arise within the three towns or the factories of the Company. The composition of the Mayor's Court was such that most members were required to be naturally-born British subjects. It consisted of a Mayor and nine Aldermen, seven of whom, including the Mayor, were needed to be naturally-born British subjects. Alderman was**

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**a member of the municipal legislative body in a town or city in many jurisdictions. Aldermen were elected from among the leading inhabitants of the settlement to hold the position for life. The Mayor was elected from among the Aldermen.**

The Mayor's Courts, with their historical continuity, significantly contributed to the formulation of a uniform pattern of judicial functioning in India. The inhabitants of the settlement were governed by English Law, irrespective of their nationality. The Charter of 1726, while not specifying the law to be applied by the Mayor's Courts, did mandate the court to "give judgment and sentence according to justice and right". However, based on past practice and the 1661 Charter, the then existing English Law or principles of English Common Law and Equity were applied. This meant that the Mayor's Courts administered English Law, which was assumed to be the settlement's *lex loci* ("law of the land").

It is generally understood that the Charter of 1726 indirectly applied the laws of England- both common law and statute law- to the three British Settlements in India. This is one of the distinctive outcomes of the 1726 Charter. Decisions of the Mayor's Court were appealable. Appeals from the Mayor's Court were made to the Court of the Governor and the Council. The Governor and five members of the Council were appointed Justices of Peace and constituted a criminal court. The Court of Governor and Council were required to meet four times a year for the trial of all offenses except that of high treason. In cases valued at 1000 pagodas or more, a second appeal was available to the King-in-Council in England. The sheriff was the chief executive officer of the country's Crown. A Sheriff with jurisdiction within

Presidency Town and for 10 miles around was chosen annually by the Governor and the Council. Mayor Court was a court of record and could punish for its contempt. However, English law did not extend outside the settlements, so the Indians were subject to their own laws.

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 Chapelle. 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 Zamindars' courts and the Mayor's Court had disputes relating to jurisdiction on certain civil matters. Justices of Peace were appointed 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.

### **REGULATING ACT OF 1773**

By the late 18th century the Company was controlling a large territory and it was not easy to manage the governance of such large territories. The Company was enlarging its role from mere trading body to the administration of the territories. Also, the Company's financial position was getting worse after it suffered defeat at the hands of Haider Ali. However, the retired Company servants amassed a large fortune. There was a dual system of governance in Bengal and it had suffered famine. In the backdrop

of such circumstances the Regulating Act of 1773 was passed. By virtue of the Regulating Act of 1773, the East India Company was kept under control of the King of England. This Act made the Governor of Bengal the Governor General of Bengal and subsumed the Presidencies of Madras and Bombay under Bengal's control. It also established the Council of four (for a period of five years). The Governor General was bound by the majority decision of the Council. The casting vote in case of tie remained with him. The Supreme Court was established at Fort William, Calcutta. The Act empowered the Governor General in the matter of issuing of rules, regulations and ordinances, but they had to be registered in the Supreme Court. The servants of the Company were prohibited from engaging in any private trade or accepting gifts, bribes, etc. from the natives. A Secretary of State for India was appointed and qualification for a vote in court of proprietors was raised from £500 to £1000.

The Regulating Act of 1773 was an important step in the history of India. It was the first step towards governmental control in India. It established Parliamentary control over the Company and curtailed powers of the Company. The Act for the first time recognised the political status of the Company. It unified the Company's territory in India. In many ways it was the beginning of the establishment of the British Empire in India. For the first time an attempt was made by the British Parliament to establish a government in India. It was also the first attempt to apply rules, laws and principles of justice in India and also addressed the issue of corruption as the Company forbade the servants from accepting bribes and gifts.

## LAW REFORMS IN BRITISH INDIA

The British administration brought many reforms in the Indian legal system. Policing and administration of justice, which was earlier done by the local rulers, was taken over by the Britishers. Effort was made to clearly identify and consolidate the laws that were existing in the form of customs. In the absence of clear legal rules the courts applied the principles of "justice, equity and good conscience". Also, many progressive legislations were passed. **On 4 December 1829, Lord William Cavendish Bentinck passed the Sati Regulation XVII A.D. 1829, of the Bengal Code.** This regulation declared the practice of sati, illegal and punishable by the criminal courts. **The Hindu Widows' Remarriage Act, 1856 was passed.** This Act enabled a Hindu widow to remarry validly. **The Hindu Gains of Learning Act, 1930 was passed allowing all the gains of learning to be kept as exclusive and separate property of the acquirer** even if his learning was, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds any member thereof. **The Hindu Women's Right to Property Act, 1937 was passed.** This legislation, for the first time, created ownership and inheritance rights in favour of women. The Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 was also passed which provided protection to women from abuse in their matrimonial home.

### CHARTER OF 1861

The Indian Councils Act, 1861, an Act of Parliament of the United Kingdom, made notable changes in the composition of the Governor General's Council for executive and legislative purposes.

On the executive side, the Council of the Governor General was expanded and a fifth member of law (Five members: Home, Revenue, Military, Law, Finance, and after 1874, 6th member of Public Work) was added. Also, for the first time the Portfolio system started. This Portfolio system was akin to the present Cabinet system. Each member of the Council of the Governor General was allocated a portfolio of a particular department.

On the legislative side the Governor General's Council was restructured and enlarged. By the Charter not less than 6 and not more than 12 members were now to be nominated by the Governor General and they were to hold the office for two years. Out of these, not less than half were required to be non-official (English or Indian). This was a beginning towards the establishment of a legislative system by adding legislative non-official members to the Council of the Governor General. However, the functions were limited to the legislation and it had not to do any other function except the consideration or enactment of legislative measures. The assent of the Governor General was required for passing of a Bill relating to the public revenue or debt, religion, military, naval or foreign relations. However, any such Act could be dissolved by the Crown acting through the Secretary of State for India. The Viceroy was allowed, under the provisions of the Act, to overrule the Council on affairs if he deemed it necessary. During the tenure of Lord Lytton in 1879 the position was the same.

Earlier the Governments of Madras and Bombay were deprived of their power of legislation by the Charter Act of 1833. The Indian Councils Act, 1861 restored the power of legislation to the Governor-in-Councils of Madras and Bombay in respective matters. The Legislative Council at

Calcutta was given extensive authority to pass laws for British India as a whole, while the Legislative Councils at Bombay and Madras were given the power to make laws for the "Peace and good Government" of their respective Presidencies. The Act also laid down the provision for the formation of Legislative Councils in other Provinces. The Governor General was given the power to create new Provinces for legislative purposes. He was also given the authority to appoint Lieutenant Governors. Though Sir Charles Wood, the Secretary of State for India, believed that the Act was of immense importance, it did little to improve the influence of Indians in the Legislative Council. Notably the Council had only an advisory role.

### **ESTABLISHMENT OF FEDERAL COURT**

In 1937, the Federal Court was established in India. The establishment of the Federal Court changed the structure of the Judiciary in India. Earlier the Judiciary's structure was unitary. After this change it became federal. The court was inaugurated in Delhi. Sir Maurice Gwyer was appointed as the first Chief Justice of the Federal Court. The primary purpose of the Federal Court was to grant easy access to the litigants as approaching the Privy Council was a huge burden during those days. Federal Court had original, appellate and advisory jurisdictions. However, the court was not supreme as there existed a right to appeal to the Judicial Committee of the Privy Council in London. The original jurisdiction of the Federal Court was in the disputes between the Central Government and the Provinces. Appellate jurisdiction was from the decisions of the High Courts of the Provinces involving interpretation of the Government of India Act, 1935. Later, from the year 1937 to 15 August 1947, the appellate jurisdiction was restricted to

constitutional cases. After the Independence Act of 1947, the Federal Court was empowered to have the appellate jurisdiction in civil and criminal matters also.

**a. Advisory jurisdiction of Federal Court**

Under the advisory jurisdiction of the Federal Court the Governor General could approach the court on a question of law which had such a public nature and importance that it was expedient to obtain the opinion of the Federal Court upon it. There was a very transparent system followed in such advisory matters. The court was required to deliver its opinion in open before the public. Such an open court system and public scrutiny for advisory jurisdiction encouraged proper deliberation and care by the court. Private or secret advice could not be given to the Governor General.

**ESTABLISHMENT OF OTHER HIGH COURTS AND SUPREME COURT**

On 6 August 1861, the Indian High Courts Act was passed by the British Parliament. The main objective of the High Courts Act was to abolish the Supreme Courts and the Sadar Adalats in the three Presidencies and to establish the High Courts in their place. At that time the law required that each High Court should consist of one Chief Justice and as many puisne judges not exceeding 15 as Her Majesty might think it fit to appoint. The appointment of the judges of the High Court was during her Majesty's pleasure. For such appointment one was required to be:

1. a barrister/advocate with an experience of five years or more; or
2. a member of the covenanted civil service of not less than 10 years; or

3. a judicial officer not inferior to that of principal sadar amen or judge of small cause court for a period of not less than five years; or
4. a pleader of a Sadar Court or High Court for a period of not less than 10 years.

A Supreme Court of Judicature was established at Fort William, Calcutta by an Act of Parliament in the year 1774. This Supreme Court replaced the Mayor's Court and remained the highest court of British Raj in India from 1774 to 1862. The jurisdiction of this court extended to the residents of Bengal, Bihar and Orissa. With the establishment of the High Court of Calcutta this court was abolished.

After independence, the Supreme Court of India came into existence on 28 January 1950. Presently it is located on Tilak Marg in New Delhi. Before it moved to its present location, the Supreme Court of India functioned from the Parliament House. At the time of its inception the Supreme Court had one Chief Justice and seven other judges. Parliament had the power to increase the number of judges of the Supreme Court. As the work of the court increased and the backlog of cases began to cumulate, Parliament increased the number of judges. Presently, the maximum possible strength is 31 (including the Chief Justice of India). In the early years of its functioning, all the judges of the Supreme Court used to sit together to hear the cases presented before them. Now they sit in the groups of two or three; each such group being called a "Bench". Larger "Benches" of five or even more judges are also formed occasionally, mainly to hear the matter of high importance or to settle the difference of opinion among the smaller Benches. 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. A judge of the High Court may also be appointed as an ad-hoc judge of the Supreme Court. Practice and procedure of the Supreme Court is governed by the Supreme Court Rules, 2013 which are framed under Article 145 of the Constitution.

## **LEGAL PROFESSION IN INDIA**

First British courts were established in the year 1672 in Bombay. It was Gerald Aungier, the Governor of Bombay at that time, who established the first courts. There were no legal practitioners prior to the establishment of the Mayor's Courts in 1726 in Madras and Calcutta. It was only by the Regulating Act of 1773 that the Supreme Court could frame the rules of procedure as it thought necessary for the administration of justice and due execution of its powers. The Supreme Court was empowered to approve, admit and enrol advocates and attorneys-at-law. It could enrol such and as many advocates and attorneys as it deemed fit. It also had the power to remove them if a cause existed. At that time only the British attorneys or solicitors were covered under the expression "Attorneys". No other person could appear, plead or act before the court. The Legal Practitioners Act, 1846 allowed the qualified candidates from any nationality to appear or plead before the court. It allowed the Indian nationals to participate in the legal profession for the first time. Women were, however, not allowed to participate in the legal profession till 1932. They were allowed by virtue of

the Legal Practitioners (Women) Act of 1932. In modern India it is the Advocates Act of 1961 and the Bar Council of India Rules that govern the legal profession. The Advocates Act of 1961 has established the All India Bar Council. The All India Bar Council is the body that enrolls law graduates and admits them in the legal profession. It also has the power to deal with the cases of misconduct by the lawyers.

Primary Source (Legal Studies: NCERT)

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