

Ahmednagar Zilha Maratha Vidya Prasarak Samaj's

New Law College,Ahmednagar.

Notes on Indian Legal and Constitutional History.

Class : B.A.LL.B . III Sem. V.

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Aknoledgement.

We are,today,living in e-era wherein everyone is experiencing magic of computer based technology. There is no place where this technology has not entered. Home, cities are surrounded by computer technology.

Education is not away from its impact. However to be familiar with it assistance from someone is always inbuilt.

Present subject-notes are prepared wirh the use of computer technology with which I was not well versed. However i was pushed to use and learn this technology by Prof.M.M.Tambe,Pricipal.And hence I am very much thankful to him.

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Module 01 .

Early Administration of Justice in Bombay, Madras and Calcutta.

- European Settlements in India.

Account of European Settlements in India is considered for general awareness.

The period of European Settlements start with the Portuguese navigators. Prince Henry ,the Navigator started a maritime school in Portugal. The result of this technical and scientific discoveries led Portugal to develop the most advanced ships, like the Caravel, the Carrack and the Galleon. So for the first time in history maritime navigation was possible.

The Portuguese Empire led the Portuguese Kingdom to discover and map most of the Globe.And find sea routes for the East and West. This is remarkable voyage to find the sea route to India via the Cape of Good Hope.

Advent of Europeans

It was the Portuguese who first discovered a direct sea route to India. Portuguese sailor Vasco da Gama arrived at Calicut, an important sea port located on the South-West India on May 20, 1498 AD.

King Zamorin, the local ruler received him and granted him certain privileges. After staying in India for a period of three months Vasco da Gama returned with a rich cargo which he sold in the European market at an exorbitant price- 60 times the cost of his voyage.

But soon Vasco da Gama came back to India for the second time in 1501 AD. He set up a trading factory at Cannanore. With establishment of trade links, Calicut, Cannanore and Cochin emerged the significant Portuguese centers in India.

Arab traders became jealous of the rise and success of the Portuguese. And created enmity between the Portuguese and the local king Zamorin. The hostilities grew and led to military fight between them. King Zamorin was defeated by the Portuguese.

With the victory over Zamorin, the military superiority of the Portuguese was established.

Rise of Portuguese power In India

In 1505 AD, Francisco de Almeida was appointed as the first Portuguese governor in India. His policy was to control the Indian Ocean. This was known as the Blue Water Policy.

Alfonso de Albuquerque replaced Almeida as the governor in 1509 AD. And captured Goa from the Sultan of Bijapur in 1510 AD.He is considered the real founder of the Portuguese power in India. Goa subsequently became the headquarters of the Portuguese settlements in India.

Portuguese hold over the coastal areas and superiority in naval power helped them significantly to acquire other places.

By the end of the 16th century, the Portuguese captured not only Goa, Daman, Diu, and Salsette but also a vast stretches along the Indian coast.

Decline of Portuguese Power

But the rise of Portuguese power in India had a short life. The new rival trading communities from Europe created a big challenge to them. Struggle among various rival trading groups compelled Portuguese to give way to the more powerful and enterprising competitors.

Arrival of the British

Arrival of the British and the establishment of British East India Company was the outcome of the Portuguese traders who earn enormous profit by selling their merchandise in India. Englishmen motivated by the successful business stories of the Portuguese.

A group of English merchants - 'Merchant Adventurers' formed a company- the East India Company in 1599 AD. The Company received a royal charter from Queen Elizabeth I on December 31, 1600 AD authorizing it to trade in the East. Queen herself was a share holder in the East India Company.

Subsequently in 1608 AD, the East India Company sent Captain William Hawkins to the Mughal emperor Jahangir to secure permission. He succeeded in getting permit for the Company to establish its factories at various places on the Western coast of India.

In 1615 AD, Sir Thomas Roe was sent by Emperor James I of England to Jahangir's with a request for more concession for the Company. Roe successfully secured a royal charter giving the Company freedom to trade in the whole of the Mughal territory.

After establishing its factories in south and west India, the company started to focus on east India particularly Bengal, which was significant province in Mughal empire. The governor of Bengal Sujauddaula in 1651 AD, allowed the English Company to carry out its trade activities in Bengal.

A factory/settlement was established Hugli. And company acquired three villages Sutanati, Govindapur and Kolkata in 1698 AD. The Company built a factory there named as Fort William.

Important Battles And Wars In India

Arrival of the Dutch

The people of Holland (present Netherlands) are called the Dutch. Next to the Portuguese, the Dutch set their feet in India. Historically the Dutch were experts in sea trade.

In 1602, the United East India Company of the Netherlands was formed and given permission by the Dutch government to trade in the East Indies including India.

The Dutch founded their first factory in Masaulipatam in Andhra Pradesh in 1605. Subsequently they also established trading centres in various parts of India. Dutch Surat and Dutch Bengal were established in 1616 AD and 1627 AD respectively. The Dutch acquired Ceylon from the Portuguese in 1656 AD. They also took the Portuguese forts on the Malabar coast in 1671 AD.

The Dutch gradually became a potent force and captured Nagapatam near Madras (Chennai) from the Portuguese.

They set their foot in South India. In economic terms, they earned huge profit through business monopolizing in black pepper and spices. The major Indian commodities traded by the Dutch were cotton, indigo, silk, rice and opium.

The Dutch, during their stay in India, tried their hands on the minting of coinages. As their trade flourished they established mints at Cochin, Masulipattam, Nagapatam Pondicherry and Pulicat. Even more, Gold pagoda with an image of Lord Venkateswara, (god Vishnu) was issued at Pulicat mint. Dutch presence on the Indian subcontinent lasted from 1605 AD to 1825 AD.

The rise of the British power in the Eastern trade created serious challenge to the commercial interest of the Dutch leading to bloody warfare between them. Britishers were winners due to huge resources at their disposal.

The brutal killing of some English traders by the Dutch in Amboyna in 1623 further aggravated the situation. The Britishers one after another captured Dutch strongholds.

Arrival of the French

The last European people to arrive in India were the French. The French East India Company was formed in 1664 AD during the reign of King Louis XIV to trade with India. In 1668 AD the French established their first factory at Surat. And in 1669 AD another French factory at Masaulipatam was established.

In 1673 AD the Mughal Subhedar of Bengal allowed the French to set up a township at Chandernagore.

In 1674 AD, the French obtained a village called Pondicherry from the Sultan of Bijapur and founded city on it. Later it became the main stronghold of the French in India.

The French East India Company with the passage of time developed its trade bastions at Mahe, Karaikal, Balasor, and Qasim Bazar. The French came to India mainly with a purpose of trade and commerce. From their arrival until 1741 AD, the objectives of the French, like British, were purely commercial.

The French East India Company took hold of Yanam in 1723 AD, Mahe on Malabar Coast in 1725 AD and Karaikal in 1739 AD.

The East India Company : Development Authority.

The emergence of British empire is unique event in history of world. The huge edifice of British empire was created by East India company. History of legal system of India also begins with establishment of East India company.

It was incorporated in England on 31 Dec. 1600 under charter 1600 issued by British queen Elizabeth., for the period of 15 years. Official title of company was "The Governor and Company of Merchants of London trading into East Indies". As a consequence of this Charter East India Company was conferred

exclusive trading right in Asia, Africa, America and India. Hence no other British subject could carry trade within these areas.

Management of company was with court of directors (Board of directors) consisting of Governor and 24 directors and it was on democratic line. All members of company's were called General court (board)

East India company established its first factory in 1612 at Surat, during the period of Moghul Emperor Jehangir. On the request of company he granted certain facilities to company.

Object of company.

Object of company was commercial. East India company was constituted to promote / carry British trade and commerce. But gradually its object became political.

Development of authority.

East India company was incorporated with commercial object that is to carry British trade and commerce. Therefore company was conferred some powers / authority which were necessary to regulate business and to maintain discipline among its servants.

These powers were conferred to company by Moghul firman, when company arrived in India and different Charters issued after its incorporation and subsequently.

Moghul firman 1615.

When East India company arrived in India, Moghul Emperor issued firman allowing Englishmen to live according to their own religion and to settle disputes among themselves by their president.

Charter of 1600

Charter 1600 was the first Charter which was issued by Queen Elizabeth. This charter conferred legislative power (that is power to make bye-laws and ordinances) to company with a view to govern company and to maintain discipline among its servants. Company could impose punishment, fine. This power was not to regulate territory. Company made law in 1621 on management of meeting of Co. and its servants.

This Charter granted limited legislative power but laws made by company were not to be contrary to laws of England. But charter is of historic importance because from this Charter Indian laws were fully developed.

Royal grant 1615 and 1623.

Powers conferred by charter were not sufficient to maintain discipline amongst servants on high seas. Consequently Royal 1615 was issued by British crown King James I on 14 December 1615.

It conferred company power to issue commission to captain of vessel. Royal grant 1615 authorised captain to punish capital offences like murder, mutiny and apply martial law.

Royal grant 1623.

After sometimes company felt need of same powers to maintain discipline among its servants on land. Accordingly British crown issued Royal grant 1623 on February 1623 It authorised president and other chief officers to punish offences like murder, mutiny committed by servants on land. It authorised to award death punishment.

These two royal grants enabled company to maintain discipline among its servants on land on voyage.

Moghul firman 1615.

When east india company arrived in India ,Moghul Emperor, on the request of Sir Thomas Roe, issued firman allowing Englishmen to live according to their own religion and to settle dispute among themselves by their president.

Charter of 1661.

East India company prayed to Council of State in England for grant of more powers to enforce obedience among all Englishmen residing within their jurisdiction and to punish offender according to laws of England.

Consequently new charter 1661 was issued to by Charles II East India Company. This Charter conferred broad powers to Governor and council of each factory to judge all persons 'belonging to company or living under them, according to English law of England. Thus governor and council could administer justice to even Indians living on settlements.

The Governor and councils were authorised to administer justice in all civil and criminal cases according to the laws of England.

Various aspects of sovereignty were conferred by the first Charter 1600 and they were further extended by the Charter of 1661.

Charter of 1668.

In 1668 Charles II transferred Bombay to East India company for annual rent of £10. At the time of transfer he also granted charter 1668 to East India company conferring full powers, privileges and jurisdiction for administration, legislation and for dispensation of justice.

Charter empowered company to make laws and to punish by way of fine, imprisonment and death punishment. Company was also authorised to create court and to judge all persons on the same lines as in England. It envisaged application of English law to Bombay.

Charter 1668 marks transition of company from trading association to territorial sovereign with Civil and Military Government.

Charter 1683 and 1686.

Monopoly of trade of East India company was infringed by independent merchants by indulging in unauthorised trade. This resulted in great loss to company. To deal with this situation on 9 August 1683 Charles II granted charter 1683 to East India company.

Charter authorised company to establish Courts having jurisdiction to try maritime cases in Madras.

On 12 April 1686 James II issued charter 1686 to company to prescribe appointment of civil lawyer as head of admiralty court established in Madras.

Charter 1726.

Charter 1726 was granted to East India company by King George I on 24 September 1726. It is called judicial charter on account of its great significance in field of law and justice. Charter 1726 turned over new leaf in evolution of judicial institutions in three presidency towns of Bombay, Madras and Calcutta.

It introduced uniformity in judicial institutions in presidency towns. It established civil and criminal courts (justices of peace) which derived authority from British crown. And charter granted status of courts in England to these courts and could be called royal courts. Decision of these courts was authoritative as courts in England.

Charter made provisions for establishment of corporation in each presidency town.

Charter 1726 initiated system of appeal from Indian courts to privy council in England. It created channel to receive English law in to India

Due to these considerations charter 1726 is called landmark charter Indian legal history.

Thus the affairs of the company in India were governed by various Charters. The Company's Governors and Agents in India administered the Company's affairs as well as the territorial Governments of India according to rules of law and constitution as provided in these charters.

Organisational Set up of English company's Factories or Settlements in India.

Emergence of British empire was unique event in history of world. This huge empire was created by East India company which was organised in England for furthering commercial interest of Englishmen.

It was incorporated in England on 31 Dec. 1600 under charter 1600 issued by British queen Elizabeth., for the period of 15 years.

Object of company.

Object of company was commercial. East India company was constituted to promote /carry British trade and commerce. But gradually its object became political.

Organisation and management of company.

Management of company was with court of directors(Board of directors) consisting of Governor and 24 directors and it was on democratic line. All members of company's were called General court(board)

Official title of company was "The Governor and Company of Merchants of London trading into East Indies". As a consequence of this Charter East India Company was conferred exclusive trading right in Asia,Africa, America and India.Hence no other British subject could carry trade within these areas.

The business affairs of the company in India were governed by various Charters like charter 1600,charter 1661 etc.

By acquiring powers conferred on it by various Charters, Company started its career of trade and commerce in India. To carry on trade, company needed to establish few factories that is place of its offices,residence of its employees and warehouse for storage of goods.

Through these factories British power grown in India.

Surat factory/settlement .

British people regarded Surat as suitable place for establishing factory. Surat was international port,populous town and for Britishers it was only means communication to England from India.

Consequently in 1612 Englishmen established their first factory at Surat , during the period of Moghul Emperor Jehangir. On the request of company he granted certain facilities to company. Englishmen settled at Surat with leave of Moghul Government.

Administrative Set up of Surat factory.

Administration of factory was with presidents/Governor and council appointed by company. All decisions in council to be taken by majority votes.

In those days Mohammedan law was existing. It was based on religion.There was no territorial law.And also no uniform law on inheritance, succession and other subjects.

Englishmen did not like to be governed by muslim law having religious character. So they secured privilege from Moghul Emperor to be governed by their own laws.

Judicial set up of Surat factory.

Main responsibility of Englishmen was to govern themselves. Administration of justice did not gain much importance. Judicial system was created for small body of servants of East India company. There was no regular tribunal for deciding cases of Englishmen. President and Council of Surat factory were vested judicial power. They decided cases of Englishmen according to their own laws and customs. They were permitted to be governed by their own laws and customs due to Moghul firman.

There was no process of law . English law was to be applied but in reality no law was applied. Judges(President and Council) did not have elementary knowledge of English law. They decided cases according to their sense of justice and wisdom than English law. Quality of justice was not high order.

Surat was chief trading centre of company's activities in India till 1687. It was most important factory and first presidency town. Administrative head was called president /Governor and he was representative of company in India. Other factories established in the course of time were subordinate to Surat.

However in 1687 seat of president and council was transferred to Bombay. Accordingly Surat lost its preeminent position. And it was subordinated to Bombay.

▪Factory /settlement at Madras.

In 1639 Francis Day acquired piece of land from Hindu raja for East India company and constructed fortified factory which was called Fort St. George. wherein Englishmen and Europeans were residing. And it was called white town.

Hindu raja also granted to company full power to govern small village, Madraspatnam which was near factory. And in Madraspatnam Indians were residing. Do it called Black Town. Both towns collectively called Madras.

•Administrative Set up of Madras

Administrative head of Madras was called Agent, who administered Madras with help of council. In 1665 Madras was given status of presidency town. Since 1665 Madras was governed by Governor and council. Case of Mrs. Ascentia Dawes became turning point for making Madras Presidency town.

•Judicial set up of Madras.

Madras was consisting of Black Town and White Town. Judicial system for both of these was different.

For Black Town old and traditional judicial system existing before advent of Englishmen that is Choultry court with Adigar was continued.

For White Town Agent and council dispensed justice.

This judicial system was existing till 1665. In 1665 Madras was made Presidency town. Governor and council administered justice to white town. And for black town Choultry court consisting of servants of East India company administered justice.

This judicial system existed till 1686. On 10th 1686 Admiralty court was established. It decided not only merchantile and maritime cases but also civil and criminal cases. And appeal from Mayor's court established under Charter 1687 issued by East India company.

Thus it became general court of land. However after 1704 Admiralty court ceased to function on regular basis. But conveyed in case of necessity.

In 1688 another court was established in Madras. It was Mayor's court under charter 1687 issued by East India company.

It decided civil and criminal cases according to justice and good conscience and laws enacted by company.

Factory/Settlement of Bombay.

Charles II found uneconomic to govern Bombay from England so he transferred Bombay to East India company for annual rent of £ 10.

Administrative Set up of Bombay.

Deputy Governor and Council were appointed to govern Bombay. It was under control of governor of Surat.

Judicial system at Bombay.

Due to efforts of Gerald Aungier, Governor of Surat, first judicial system was established at Bombay in 1670. Court consisting of five judges was appointed for Bombay, Mazagaon and Girgaon.

Court decided small cases of theft and civil cases up to 200 xeraphins. Deputy Governor and Council was superior court. It decided cases falling beyond their scope. And decided appeal from Divisional court (court of five judges).

This judicial system continued till 1672. In 1672 previous judicial system was abolished. New judicial system that is Court of George Wilcox was created on 8 August 1672.

Court of George Wilcox decided civil, criminal, probate and testamentary matters. Justices of peace were appointed as assessor to court of George Wilcox in criminal cases. Deputy Governor and Council acted as Appellate court. It heard appeal from Court of George Wilcox.

This system came to an end because of Keigwin's rebellion in 1683.

In 1684 Admiralty court was set up in Bombay. This court consisted of St John as judge-advocate of this court. It decided civil, criminal, maritime and mercantile matters.

In 1685 another court was set up that was court of Voux. It decided civil and criminal cases. This set up continued till 1690. Since 1690 to 1718 no judicial system was operative. This period is known as dark period in judicial history of Bombay. Because Moghul Admiral Siddi attacked Bombay. His attack put end to judicial system.

In 1718 court consisting of nine judges (five British and four Indian) was appointed. It decided civil, criminal, testamentary cases according to law equity and good conscience and Company's rules and ordinances.

This judicial system continued till 1726. In 1726 new judicial system, under charter 1726, was created.

In 1687 Deputy Governor and Council became judge of admiralty court

Factory / Settlement of Calcutta.

In 1690 Englishmen constructed fortified factory on the bank of river Hooghly named as Fort William. In 1698 Subhedar of Bengal granted zamindari rights of Calcutta, Sutanati and Govindpur to east india company. After this grant status of company raised and it became zamindar.

Company became entitled to administer justice and to collect revenue.

Administrative Set up.

In 1699 Calcutta became Presidency Town and governor and council were appointed to administer settlement of Calcutta.

Judicial setup of Calcutta.

In 1700 English officer known as Collector was appointed to collect revenue and decide civil, criminal and revenue cases of Indian inhabitants. He also took cognizance of petty criminal cases of Englishmen.

Serious criminal cases were decided by Governor and council.

He was empowered to punish offences by way of fine, imprisonment ,whipping. Death sentence was to be confirmed by Governor and council.

This judicial system was replaced by new judicial system that is Mayor's court established under Charter 1726 1726.

Madras Settlement and Administration of Justice.

Introduction

Madras Settlement .

In 1639 Francis Day aquired piece of land from Hindu raja for East India company and construed fortified factory which was called Fort St.George. wherein Englishmen and Europeans were residing.And it was called white town.

Hindu raja also granted to company full power to govern small village,Madrassetnam which was near factory. And in Madrassetnam Indians were residing. So it was called Black Town. Both towns collectively called Madras.

Administrative Set up of Madras

Administrative head of Madras was called Agent,who administered Madras with help of council. In 1665 Madras was given status of presidency town . Since 1665 Madras was governed by Governor and council . Criminal case of Mrs. Ascentia Dawes(1665) became turning point for making Madras Presidency town.

- Administration of justice in Madras •

Administration of justice in Madras may be divided into three periods/Stage -

First period /Stage(1639-1665)

Madras was consisting of Black Town and White Town. Judicial system for both of these was different .

For Black Town old and traditional judicial system existing before advent of Englishmen that is Choultry court with Adigar was continued.It was court of petty cases. It decided civil and criminal cases. But grave offences were decided according to English law by seeking directions of Hindu raja.

During this period Adigar Kanappa was appointed in Choultry court. After his dismissal,on the ground of misuse of power, from court servants of East India company were appointed in Choultry court.

Choultry court decided cases according to long established usage.

Appeal from decision of Choultry court was to be heard by Agent and council.

For White Town Agent and council dispensed justice.They decided civil and criminal cases of inhabitants of white town. Serious criminal cases were often referred to Company's authorities in England for their advice.

Agent and council were supposed to apply English law. But they did not have elementary knowledge of English law. Accordingly they decided cases according to wisdom and common sense and not according to English law.

Second period /stage(1665-1683)

In 1665 Madras was given status of presidency town . Since 1665 Madras was governed by Governor and council . Criminal case of Mrs. Ascentia Dawes(1665) became turning point. This criminal case was referred to Company's authorities in England for advice by Agent and council . Because they did not have power to try this case.

It brought some changes in administrative and judicial set up of Madras. These changes were- status of Madras was raised and it was made Presidency town. - Status of Agent and council was raised and they were made Governor and council and they were authorised to decide all types of cases including serious criminal cases like murder. -Charter 1661 which granted broad powers was made operative.

Mrs.Ascentia Dawes was charged with the killing of her slave girl. Governor and council tried this case .She was acquitted.

Thus since 1665 after this case Governor and council administered justice to white town. And for black town Choultry court consisting of servants of East India company administered justice.

Choultry court was reorganized number of its judges increased from two to three. It decided civil cases up to 50 pagodas and cases of higher values with the consent of parties.

Appeal from decision of Choultry court was to be heard by Governor and council.

Third Stage/period (1683-1726)

In this period two important courts were established, Admiralty court and Mayor's court.

On 10th 1686 Admiralty court was established. It decided not only merchantile and maritime cases but also civil and criminal cases.

Admiralty court was established on account of following reasons -

I . Monopoly trading right which was conferred under charter 1600 to east india company was infringed by independent merchants. Company suffered great loss. Consequently need of court having jurisdiction to punish these merchants was felt.

II. The crime of piracy was rampant on high seas. Consequently need of court to try cases of piracy felt.

Admiralty court was consisting of person learned in civil law and two merchants appointed by company.

It decided cases according to rules of equity and good conscience and laws and customs of Merchants. It could settle its procedure subject to directions of British crown.

Admiralty court could hear appeal from Mayor's court established under Charter 1687 issued by East India company. Thus it became general court of land . However after 1704 Admiralty court ceased to function on regular basis. But conveyed in case of necessity.

Third period /Stage .

In 1688 another court was established in Madras. It was Mayor's court under charter 1687 issued by East India company and not by British crown.

Mayor's court was part of Madras Corporation. It court of record. It was consisting of mayor and three Aldermen and they were to be justices of peace.

Person expert in law was for assistance of court. Because judges of Mayor's Court were not expert in law. He was known as recorder of court.

Quorum of court was mayor and two Aldermen.

It decided civil and criminal cases according to justice and good conscience and laws enacted by company. It was authorised to impose corporal punishment, imprisonment fine and since 1712 death sentence.

During this period jurisdiction of Choultry court was diminished. It could decide petty offences and civil cases up to 2 pagodas.

In 1853 civil jurisdiction of court was taken out by court of request. In 1888 finally Choultry court was abolished.

Administration of Justice in Bombay.

Introduction

Before Bombay came to east india company, it was with Portuguese. They aquired Bombay from king of Gujarat in 1534. In 1661 Bombay was transferred by Portuguese to British crown as dowry in marriage of his (Portuguese king) sister Princess Catherine with the British crown,charls II who transferred Bombay to east india company in 1668 under charter 1668.

Charles II found uneconomic to govern Bombay from England so he transferred Bombay to East India company for annual rent of £ 10.

Administrative Set up of Bombay.

Deputy Governor and Council were appointed to govern Bombay.It was under control of governor of Surat.

Judicial system at Bombay.

Administration of justice in Bombay may be studied in following three stages -

First Stage (1668-1683)

Gerald Aungier was Governor of Surat factory. And main architect of first judicial system in Bombay. He was called true founder of Bombay. Due to his efforts first judicial system was established at Bombay in 1670.

He developed judicial system under two plans,judicial plan of 1670 and judicial plan of 1672.

Judicial plan of 1670.

According to this plan whole Bombay was divided into two divisions .Bombay, Mazagaon and Girgaon was the first division. And Mahim ,Pare, was second Division.

And in each division Court consisting of five judges was created. Custom officer (Englishman) was presiding officer of court. Quorum of court was three judges.

Court decided small cases of theft and civil cases up to 200 xeraphins . Deputy Governor and Council was superior court. It decided cases falling beyond their scope.They decided serious criminal cases like felony, murder, mutiny.

Appeal from Deputy Governor and Council was to be heard by Governor and council of Surat only in cases of absolute necessity.

Judicial plan of 1672.

This first judicial system continued till 1672. In 1672 previous judicial system of 1670 was abolished . Because it suffered from defects. Like -i)judges had not elementary knowledge of English law.

ii)No separation between executive and judiciary. Judicial and executive powers were vested in one same person.

New judicial system was created on the advice of company and with cooperation and advice over Mr. George Wilcox.

Under this plan whole judicial system in Bombay was reorganized. And new court judicature consisting of George Wilcox was created on 8 August 1672.

Court of George Wilcox decided civil ,criminal ,probate and testamentary matters. Justices of peace were appointed as assessor to court of George Wilcox in criminal cases. Court applied English substantive and procedural laws.

Court of conscience

Court of conscience was created to decide petty civil cases up to 20 xeraphins.It was to sit once a week.

Deputy Governor and Council acted as Appellate court.It heard appeal from Court of George Wilcox.

Criminal justice system.

Under this plan for criminal justice system Bombay was divided into four divisions, Bombay, Mahim, Mazagaon and sion.

In each division committing magistrate(justice of peace/Englishman)was appointed to act as assessor to court deciding criminal cases.

His function was to arrest accused,examine witnesses and to send record to court of judicature.

Appeal from decision of court of judicature to be heard by Deputy Governor and council of Bombay.

Panchayats.

In 1673 Panchayats were established to decide cases of persons of own cast if agreed to submit contraversies to their arbitration.

This judicial plan came to an end because of Keigwin's rebellion in 1683.Bombay was suppressed by them.

Second Stage 1684-1690.

Rebellions surrendered Bombay in 1684.In 1684 Admiralty court was set up in Bombay.This court consisted of St. John as judge-advocate of this court. It decided civil, criminal, maritime and mercantile matters.

In 1685 another court was set up that was court of Voux. It decided civil and criminal cases. It also acted as admiralty court till 1690.

This set up continued till 1690. Since 1690 to 1718 no judicial system was operative. This period is known as dark period in judicial history of Bombay. Because Moghul Admiral Siddi attacked Bombay. His attack put end to judicial system.

Third Stage (1718-1726)

On 25 March 1718 court of judicature consisting of nine judges (five British and four Indian) was restarted. Quorum of court was three English judges. It was to sit once a week.

It decided civil, criminal, testamentary cases. It was conferred probate and administrative jurisdiction. It decided cases according to law equity and good conscience and Company's rules and ordinances.

Appeal from Court of five judges was to be heard by Governor and council in cases of amount involved was five hundred or more. Similarly power to pass capital sentence was with them.

This judicial system continued till 1726. In 1726 new judicial system, under charter 1726, was created.

Administration of Justice in Calcutta.

In 1690 Englishmen along with their leader Job Charnock landed at village Sutanati and constructed fortified factory on the bank of river Hooghly named as Fort William. In 1698 Subhedar of Bengal granted zamindari rights of three adjacent villages, Calcutta, Sutanati and Govindpur to east India company.

After this grant status of company raised and it became zamindar. As zamindar Company became entitled to administer justice and to collect revenue in area of Calcutta.

Administrative Set up.

In 1699 Calcutta became Presidency Town and governor and council were appointed to administer settlement of Calcutta.

Judicial setup of Calcutta.

In 1700 English officer known as Collector was appointed to collect revenue and decide civil, criminal and revenue cases of Indian inhabitants. He also took cognizance of petty criminal cases of Englishmen.

Serious criminal cases were decided by Governor and council under authority of charter 1661.

He was empowered to punish offences by way of fine, imprisonment, whipping. But death sentence was to be confirmed by Governor and council.

Appeal from collector to be heard by Governor and council.

Administration of justice in Calcutta suffered below mentioned defects --

-Judicial system at Calcutta was extremely rudimentary. It was not suitable to impartial administration of justice.

-All judicial powers were concentrated in single person that was collector.

-Whole administration of justice was executive oriented. Collector and Governor and council were to exercise judicial and executive powers.

This judicial system was replaced by new judicial system that is Mayor's court established under Charter 1726 1726.

Module 02

Mayor's Courts and courts of requests.

Early Mayor's court in Madras.

Introduction

Madras was one of the early settlements /centres of British power in India. It was established by East India company. In 1665 Madras was given status of presidency town.

In 1688 Corporation was established under Charter 1687 issued by company and not by British crown. It was incorporated keeping in view levy of house-tax from natives.

Corporation was consisting of Mayor , Aldermen and Burgess. They were servants of East India company. Mayor's was part of this corporation. Mayor's court was important judicial organ operating in admiration of justice in Madras. It was established under Charter 1687 issued by East India company itself.

It dispensed justice to inhabitants of Madras. After Mayor's court was established Choultry court lost its importance.

Mayor's court: Establishment

Mayor's court was part of Madras Corporation. It was court of record. It was consisting of mayor and three Aldermen and they were to be justices of peace.

Person expert in law was to be appointed for assistance for court. Because judges of Mayor's Court were not expert in law.He was known as recorder of court. Sir John Biggs was appointed as first recorder of court.

Quorum of court was mayor and two Aldermen.

It decided civil and criminal cases according to justice and good conscience and laws enacted by company. It was authorised to impose corporal punishment, imprisonment, fine and since 1712 death sentence.

However government was making influence on Mayor's court.

Provisions of charter 1726.

Introduction

Charter 1726 turned over new leaf in evolution of judicial institutions in three presidency towns of Bombay, Madras and Calcutta. It is called judicial charter on account of its great significance in field of law and justice. Till 1726 judicial system in Bombay, Madras and Calcutta was not uniform. Each presidency town had its own judicial system which was distinct from other presidency. It was charter 1726 which introduced uniform judicial system in these presidency towns.

Status of courts established prior to 1726 were vague and indefinite. Courts under this charter were were and definite.

It was issued by King George I on 24 September 1726. It established civil and criminal courts in presidency towns which derived its authority from British crown and not from company.

Significance of Charter.

Courts established under this Charter were called royal courts. Decision of these courts, therefore, was authoritative and binding like court of England.

It introduced system of appeal from Indian courts to privy council in England. And thus it created bridge between Indian and British legal system.

It created channel for reception of English law in to India. Consequently whenever Indian laws were deficient principles of English law were applied by courts.

It also established local Legislature in each presidency town.

Due to these considerations charter is called landmark in Indian legal history and judicial charter.

Provisions of charter .

Charter laid down following provisions -

1. Corporation was to be in each presidency town incorporated consisting of mayor and 9 Aldermen. Appointment of mayor and Aldermen was not in the hands Governor and council. Corporation was made autonomous body and free from executive control.

II. Charter established Mayor's court in each presidency towns of Bombay, Madras and Calcutta . It was consisting of mayor and Aldermen . It was court of record. Quorum of court was mayor and two other Aldermen. It was to decide all civil cases arising from presidency towns.

Appeal from decision of this court was to lay to Governor and council. And further appeal from Governor and council to king in council.

Court applied English law and procedure as courts of England.

III. It prescribed form of procedure for court. Sheriff was to be chosen by Governor and council annually to serve process of court, to bring persons complained before court, to hold bail, to satisfy decree of court, to seize and sell proceeds of defendant.

IV. Criminal jurisdiction, for presidency towns, was vested in Governor and five members of council. Each of them was justice of peace as in England.

Three justices of peace was to constitute court of record.

Charter laid down justices of peace to follow same procedure after was followed by English courts.

V. Charter vested legislative power in governor and council of each presidency town. They could make rules, byelaw, ordinances. But laws were not to be contrary to laws of England. Approval from Court of directors of company was essential.

Genesis of charter 1726 indicated that company wanted to improve judicial system in three presidency towns. Accordingly on request of company British crown issued charter with a view to effect proper administration of justice in three presidency towns of Bombay, Madras and Calcutta. And for its better governance.

Consequences of charter 1726.

Judicial administration in three presidency towns of Bombay, Madras and Calcutta was not of high order. It was executive ridden and no separation between executive and judiciary. Judicial system was not uniform in these presidency towns.

Courts prevailing before 1726 were courts of East India company which derived authority from company not from British crown. Accordingly its decision was not authoritative like court in England.

Judges were supposed to apply English law. But they did not have elementary knowledge of English law. There was great need of introducing reform in judicial administration. Accordingly charter 1726 was issued by British crown King George I.

Charter turned over new leaf in evolution of judicial institutions in three presidency towns of Bombay, Madras and Calcutta. It introduced uniformity in judicial institutions of Bombay, Madras and Calcutta in the form of Mayor's Court.

Mayor's Court derived authority from British crown and not from company. It was royal court having powers as courts in England. Its decision was authoritative as courts in England.

Charter conferred status of English courts to Mayor's court. It introduced system of appeal from Indian courts to privy council in England. And thus it created bridge between Indian and British legal system.

It created channel for reception of English law in to India . Consequently whenever Indian laws were deficient principles of English law were applied by courts.

It also established local Legislature in each presidency town. So it was possible to make laws suitable to needs.

Charter made attempt to make judiciary independent of executive.

Critical estimate of the working of Mayor's Court from 1726 to 1753.

Mayor's court was established under Charter 1726 issued by British crown King George I. Charter established Mayor's court in each presidency towns of Bombay(on 10 Feb 1728) Madras(17 August 1727) and Calcutta(December 1727) . It was consisting of mayor and Aldermen .

It was court of record. Quorum of court was mayor and two other Aldermen. It was to decide all civil cases arising from presidency towns.

Appeal from decision of this court was to lay to Governor and council. And further appeal from Governor and council to king in council.

Court applied English law and procedure as courts of England. Status of Mayor's Court was equivalent to that of court of England. It was royal court.

East India company sent legal material for its guidance. It was in the form of books on civil and criminal proceedings, probate of Wills etc.

Court was required to send copies of its register to company for scrutiny of its work.

Mayor's court started its judicial career with aim of judicial independence. Fawcett opines that career of Mayor's Court was stormy. Though its conduct was unduly discourteous in the main it was inspired by judicial independence and integrity.

However working of Mayor's Court gave rise to conflict governor and council of each presidency towns.

In presidency town of Bombay conflict with governor and council arose on- jurisdiction over native in the matter of caste and religion, on issue of form oath for Hindu witness.

In Madras Presidency town dispute arose over form of pagoda oath in stead of geetha oath for Hindu who refused to take pagoda oath.

In Calcutta presidency town conflict arose between zamindari courts and governor and council.

Main causes of conflict were-

I . Superiority complex between Mayor's Court and governor and council. Both thought superior to other.

II. Discourteous conduct and violation of religious sentiment of Hindus by Mayor's Court.

III. Attitude of governor and council in lowering down judiciary in public eyes by issuing directions to proceed in particular manner. And jealousy of governor and council to judges.

V. Defects in charter 1726 which contained no provisions on many issues. For example which law to be applied by Mayor's Court.

This conflict created confusion and chaos in presidency towns. However this was set in 1753 by charter 1753.

Charter 1753: Reforms introduced.

Post- charter period in presidency towns of Bombay, Madras and Calcutta was not smooth. But was marred by conflict between Mayor's Court and governor and council.

Superiority complex of Mayor's Court and governor and council, attitude of governor and council, defects in charter 1726 and discourteous conduct of Mayor's Court were reasons of conflict between them. This conflict created confusion and chaos in presidency towns of Bombay, Madras and Calcutta.

In 1749 company was advised by lawyers that charter 1726 was ended due to French occupation of Madras and Madras Corporation was ceased to function during French occupation. And that fresh charter was necessary.

Accordingly company requested British crown to issue new charter. And king George II issued new charter 1753.

- Reforms introduced by 1753.

Charter 1753 was made applicable uniformly in all presidency towns. Charter introduced following changes -

I. Organisation of Mayor's Court was changed.

Governor and council were empowered to appoint Aldermen. And for office of mayor (court) one name to be selected out of panel of two names to be submitted by corporation.

II. Jurisdiction of Mayor's Court was modified.

Charter 1753 provided that Mayor's court could not hear cases of native unless parties submitted them to jurisdiction of court.

Court was also authorised hear suits a against governor and council and against company.

III.Suitors were required to deposit money with government and not with court.

IV.Court of requests was established in each presidency towns to decide civil cases up to five pagodas. Cases exceeding five pagodas to be decided by Mayor's Court.

V.Govrnor and council were to act as justicesof peace and court of quarter session. It was to hear appeal from Mayor's court.

VI.Privy council was empowered to hear appeal from Governor and council.

- Criticism of charter 1753.

Charter 1753 had some good features. It put end to cause of conflict between Mayor's Court and governor and council. By expressly providing jurisdiction of court subject to consent of concerned parties.Thus it created court for Indians.

Establishment of court of request under it provided great help to poor litigants with small claims.

However Charter 1753 suffered following defects --

I.Charter made judiciary subservient to executive by empowering Governor and council to appoint mayor and Aldermen and also to remove Aldermen.

II.Charter made no provision to eradicate defects arising from lack of knowledge of English law to judges of Mayor's Court due to which there was no uniformity in decisions of Mayor's Court.

III.Judges of Mayor's Court were dependent upon company and governor and council for their stay and employment in India. Consequently they could not maintain impartiality in those cases in which company and governor and council were interested.

In spite of defects in charter, establishment of courts under it introduced uniformity in judicial institutions in settlement on the basis of English law and procedure. This created foundation for improved courts in future.

Abolition of Mayor's Court.

Mayor's court started its judicial career with aim of judicial independence. Fawcett opines that career of Mayor's Court was stormy. Though it's conduct was unduly discourteous in the main it was inspired by judicial independence and integrity.

However working of Mayor's Court gave rise to conflict between governor and council of each presidency towns.

Superiority complex of Mayor's Court and governor and council, attitude of governor and council, defects in charter 1726 and discourteous conduct of Mayor's Court were reasons of conflict between them. This conflict created confusion and chaos in presidency towns of Bombay, Madras and Calcutta.

Judicial system established under Charter 1753 was not sufficient. It was very weak and defective. Jurisdiction of courts under charter 1753 was confined to Calcutta. It could not take cognizance of cases arising in Bengal Bihar and Orissa.

Englishmen residing outside Calcutta were committing crime as there was no court to try them. And this was major deficiency in judicial system under charter 1753.

British parliament enacted Act of Settlement 1773. This Act made important innovation that was establishment of Supreme court at Calcutta.

Supreme Court at Calcutta and subsequently in Bombay and Madras superseded prevalent judicial system under charter 1753. Regulating Act conferred power to establish supreme Court. King George III issued charter 1774 establishing supreme court. Supreme Court avoided all those defects which were prevalent in previous judicial system under charter 1753.

Supreme Court was court of record. It tried all civil and criminal cases. Sir Elijah Impey was its chief justice.

Appraisal of Mayor's Court under charter 1726 and 1753.

Mayor's court under charter 1726.

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Mayor's Court derived its authority from British crown and not from company. Mayor's Court was royal court having powers as courts in England. Its decision was authoritative as courts in England. Charter conferred status of English courts to Mayor's court.

Mayor's court was established in each presidency towns of Bombay (on 10 Feb 1728) Madras (17 August 1727) and Calcutta (December 1727). It was consisting of mayor and Aldermen. It was court of record. Quorum of court was mayor and two other Aldermen. It was to decide all civil cases arising from presidency towns.

Appeal from decision of this court was to lay to Governor and council. And further appeal from Governor and council to king in council.

Court applied English law and procedure as courts of England. Status of Mayor's Court was equivalent to that of court of England. It was royal court.

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Mayor's Court under charter 1753.

Charter 1753 changed organisation of Mayor's Court. It was consisting of mayor and Aldermen. Governor and council were empowered to appoint Aldermen. And for office of mayor (court) one name to be selected out of panel of two names to be submitted by corporation.

Mayor's Court was authorised hear suits against governor and council and against company. It could hear cases of native if parties submitted them to jurisdiction of court voluntarily.

It decided civil cases exceeding five pagodas. Court was supposed to apply English law. But judges of Mayor's Court did not have elementary knowledge of English law. Therefore they applied its own notion of law and justice. Accordingly there was no uniformity in its decision.

Working of Mayor's Court gave rise to conflict between governor and council of each presidency towns.

Superiority complex of Mayor's Court and governor and council, attitude of governor and council, defects in charter 1726 and discourteous conduct of Mayor's Court were reasons of conflict between them. This conflict created confusion and chaos in presidency towns of Bombay, Madras and Calcutta.

It was not sufficient judicial institution and was very weak and defective. Jurisdiction of mayor's courts was confined to Calcutta. It could not take cognizance of cases arising in Bengal Bihar and Orissa. And this was major deficiency.

Englishmen residing outside Calcutta were committing crime as there was no court to try them.

Regulating Act 1773 replaced both Mayor's Courts by establishing Supreme Court in three presidency towns of Bombay, Madras and Calcutta.

Courts of request (small cause courts) Before 1726 there was no uniform judicial system in three presidency towns, Bombay, Madras and Calcutta. However Charter 1726 for the first time established uniform judicial system in presidency towns in the form of Mayor's Court.

It was court like court of England. It derived its authority from British crown. Therefore it was known as royal court. It followed English law and procedure.

However Mayor's court in its judicial career created conflict with governor and council of each presidency towns. Superiority complex of Mayor's Court and governor and council, attitude of governor and council, defects in charter 1726 and discourteous conduct of Mayor's Court were reasons of conflict between them.

This conflict created confusion and chaos in presidency towns of Bombay, Madras and Calcutta.

On account of this new charter 1753 was issued by British crown . It introduced some changes in previous charter of 1726.

Establishment of courts of Request.

Charter 1753 laid down provision relating to establishment of courts of request. Court of request was of great help to poor inhabitants. Charter established court of request in each presidency town.

It was consisting of commissioners from eight to twenty-four in numbers. Initially they were appointed by Governor and council. But later vacancies were filled by commissioners remained after retirement of half of the Commissioners. Every year half of the commissioners were to retire.

Three commissioners were to sit by rotation once a week. It was to decide civil cases up to 5 pagodas. Its jurisdiction was extended to all inhabitants.

Establishment of court of request was important good feature of character 1753.

Moghul 03

Adalat system in Bengal

Introduction

Battle of Plassy(1757) and battle of Buxar these two battles established company's might/strength in Bengal. Company made treaty with Moghul Emperor . Under this treaty Moghul Emperor Shah Alam granted diwani of Bengal, Bihar and Orissa to company in exchange of Rs. 25 lakh to be paid annually by company.

Moghul Emperor became puppet due to this treaty. Company was interested in military . Company acquired right to maintain army from Nawab under agreement in exchange of Rs. 53 lakh. Under this agreement company acquired maintenance of criminal justice.

In this way company established sovereignty in Bengal through these two battles.

Courts in Bengal under Moghuls.

During Moghul period Nawab and Diwan were two high dignitaries. Nawab was responsible for administration of criminal justice. And Diwan was responsible for administration of civil justice and collection of revenue.

During Moghul period Kazi's court decided civil and criminal cases. Village Panchayats were also active and decided cases except serious criminal cases. Its decision was effective and satisfactory because of fear of public opinion. Mufti was to interpret law while dealing with cases.

Fozdar was to suppress crime. Kotwal, mohatassib took cognizance of petty criminal cases.

Appeal from decision of Panchayat was to lay to Kazi's Court of district and then to chief Kazi of Subah.

Civil cases of Hindus were decided by their elder or Brahmin.

However when Moghul Empire disintegrated and Nawab's became weak in Bengal Kazi's court also either not functioned or offices remained unfilled or worked in corrupt manner. This created vacuum in sphere of law and justice.

In absence of regular judicial tribunal zamindars exercised judicial powers arbitrarily. They decided civil and criminal and revenue cases. They could impose fine.

Appeal from their decisions was to lay to Nawab's court at Murshidabad.

However zamindars exercised judicial powers not impartially but for their interest.

Nawab's court was existing at Murshidabad. It was highest court of Appeal. Deputy of Nawab was exercising judicial powers in absence of Nawab.

Highest civil court was court of Diwan. It decided civil cases. However in the course of time its Deputy, Darogah (Adalat) decided civil and revenue cases.

However there was no demarcation of jurisdiction between many courts. There was no regular system of law. Administration of justice was poor.

Dual Government in Bengal and its consequences.

Since 1765 system of dual government commenced in Bengal. The dual government proved useful. Indian officials had no power to enforce their decision and to take action English servants of company.

Company's servants misused their power for selfish end. People of Bengal were exploited. Corruption, bribery and misappropriation was everywhere.

In 1767 Verelst, Governor of Bengal made attempt to improve situation. He appointed servants of company to supervise collection of revenue and administration of justice.

However supervisors also misused their powers and positions for their selfish ends. They exploited people. They had no knowledge and training as to administrative and legal experience. They failed to perform their duties. They were to perform many functions beyond their capacity. The deteriorating condition of law and order could not be controlled.

In 1771 on account of famine condition became more deteriorated. Company blamed Indian officials for this condition. Company changed its policy. It decided to execute diwani functions not through Indians but through company's servants.

The Company as Diwan.

The year 1765 marks turning point in Indian history. Because since this year East India company started its sovereignty. In Battle of Plassy(1757) Company defeated Nawab of Bengal and in battle of Buxar deposed Nawab of Bengal(Mir Kasim) and of Oudh(Shah Alam). These two battles established company's strength in Bengal.

In 1765 Company made treaty with Moghul Emperor. Under this treaty Moghul Emperor Shah Alam granted diwani of Bengal, Bihar and Orissa to company in exchange of Rs. 25 lakh to be paid annually by company.

Moghul Emperor became puppet due to this treaty. Company was interested in military. During Moghul period Nawab was responsible for maintenance criminal justice. And Diwan was responsible for administration of civil justice. Nawab and Diwan were two high dignitaries.

Company acquired right to maintain army from Nawab under agreement in exchange of Rs. 53 lakh. Under this agreement company acquired maintenance of criminal justice.

In this way company established sovereignty in Bengal through these two battles. And also administration of justice and maintenance of law and order.

But company had no knowledge in this regard. Therefore it executed diwani functions that is administration of justice and maintenance of law and order through native Indians Mohammad Reza Khan and Raja Sitab Roy under its supervisors.

However its supervisors misused their powers for selfish ends. In 1771 famine occurred and condition of Bengal became more deteriorated.

Company blamed Indian officials for this condition. And so Company decided to carry diwani functions itself and not through Indian natives.

Warren Hastings Plan of 1772.

Introduction

After company had established its might in Bengal

East India company won two famous battles, battle of Plassy (1757) and battle of Buxar (1764). And after this win company established its might in Bengal. In 1765 company was granted Diwani of Bengal by Moghul Emperor . But its supervisors misused their powers for selfish end. Consequently company changed its policy and decided to carry out diwani functions itself.

The revenue collection and administration of civil justice brought under its direct control. For this purpose in 1772 company appointed Warren Hastings as Governor of Bengal.

As soon as Warren Hastings was appointed governor of Bengal, he started his efforts to eradicate evil existing in administration of civil justice and in collection of revenue.

He abolished dual government and executed diwani functions through servants of company.

Plan of 1772.

Warren Hastings appointed committee of four members under his Chairmanship to prepare plan for administration of civil justice and collection of revenue. This plan was called Warren Hastings Plan of 1772.

Collection of Revenue.

Under this plan territories of Bengal, Bihar and Orissa were divided into districts and in each district English officer (collector) was appointed. He was responsible for collection of revenue.

Administration of civil justice

For administration of civil justice in each district Mofussil diwani adalat (as court consisting of collector) was established. It was empowered to decide civil cases of Hindus according to Shastras and of Muslims according to Quran. Civil cases consisted of subject matter containing marriage, inheritance, contract, partnership, debt.

Native law officers (Kazi mufti maulavis and Pandits) were appointed to assist court in interpretation of Hindu law and Muslim laws. Decision of this Court up to Rs. 500. was final.

Appeal from decision of this court was to lay to Sadar Diwani Adalat if value of suit was more than Rs. 500.

Sadar Diwani Adalat (consisting of governor and two members of council) was established at Calcutta as Appellate court to hear appeal from decision of Mofussil Diwani Adalat.

Small cause Adalat consisting of head farmers of parganas was established to decide petty civil cases of civil nature.

Criminal justice system.

Mofussil faujdari adalat was established to decide criminal cases. Court applied muslim criminal law. Maulavis were to interpret the law.

Sadar Nizamat Adalat/Daroga-i-Adalat.

Sadar Nizamat Adalat was established at Calcutta. It was to decide appeal from decision of Mofussil fouzdari adalat. Court was assisted by Chief Kazi, Chief Mufti and three Maulavis.

Governor and council were to supervise working of the court.

Revenue Administration.

Collector was responsible for administration of revenue. He was under control of Board of Revenue.

Merits of plan.

This plan laid down foundation of sound and impartial judicial system. It safeguarded personal law of Hindus and Muslims.

Justice was not costly as courts were established in each District.

Judges ceased to have personal interest in case as commission basis was removed and court fees to be deposited with Government and with judges.

Defects of plan.

1. Application of personal laws was not complete but limited in certain matters.
2. Personal law was applied only to Hindus and Muslims and not to parsing and Christians.
3. Disputes were decided according to muslim law and Hindu law which were sources of respective law and not complete laws.
4. Judges could be easily misguided as by native law officers as they did not have knowledge of English law. This resulted in uncertainty.
5. Collector was conferred exclusive powers. He was to collect revenue, decide civil cases and to supervise working of criminal courts.

There was no separation of revenue collection and administration of civil justice. Collector was collecting revenue and deciding civil cases in District.

New Plan of 1774.

New plan was prepared with a view to remove defects prevailing in plan of 1772. This plan introduced following reforms :

1. Civil Justice.

Territories of Bengal, Bihar and Orissa were divided into six divisions. Each division was consisting of several districts. And in each division council that means provincial council was established. Provincial council was consisting of four or five servants of East India company.

It was to collect revenue and decide appeal from decision of mofussil Diwani adalat. Its decision in suits of value up to Rs 500. was final.

Appeal from decision of provincial council in suits of value of Rs 1000 was to lay to Sadar Diwani Adalat at Calcutta.

In each District Diwan/Amil was appointed in place of Collector. He was to act as judge of mofussil diwani adalat. He was to be appointed by Governor general and council on the recommendation of provincial council.

Criminal justice.

Sadar Nizamat Adalat was shifted from Calcutta to Murshidabad under superintendence of Nawab. Mohammed Reza Khan was appointed as Nawab.

Supervision over mofussil fouzdari adalat by collector came to an end. Similarly supervision over Sadar Nizamat Adalat by Governor and council came to an end.

Merits of plan.

1. Judicial administration was put in hands of Indian officer, Diwan. He was to preside over mofussil diwani adalat. He was appointed in place of Collector.

2. Supervision over Sadar Nizamat Adalat and mofussil fouzdari Adalat was removed.

3. Establishment of provincial council in each division made justice cheap and reduced hardship of litigants.

5. All cases decided by mofussil diwani adalat were appealable irrespective of the value of suit.

Defects of plan

1. Provincial council were conferred excessive power and was beyond control of Governor and council of Calcutta.

2. Separation between civil justice and collection of revenue was not maintained.

Reorganisation of Adalats in 1780.

In 1780 certain changes were introduced in plan of 1772 through Plan of 1780. These changes may be explained as under:

- 1 Separation between revenue collection and judicial function was maintained.
2. Provincial council was confined only to decide revenue cases and to collect revenue. And judicial function was assigned to Diwani Adalat consisting of superintendent of diwani adalat, who was english servant of company.

Decision of this court was final in cases involving value up to Rs 1000. Appeal against decision of this court was to lay to Sadar Diwani Adalat.

Separation between revenue function and judicial function was merit of this plan.

Defects of organisation plan.

1. Burden on Diwani court increased as there were inadequate courts (only six) in Bengal Bihar and Orissa. This led to delay in justice.
2. Administration of justice was not in high order. Because judges of Diwani Adalat and Mofussil Diwani Adalat were not expert in law.
3. Zamindars and Public officers were honorary judges. They were deciding small cases of of Rs 100. And they were not paid remuneration. So they misused their power for their own interests (their fees)
4. Provincial council's work was against principle that no man can be appointed as judge in his own cause.
5. Separation between executive and judiciary was not complete.

Reforms of 1781: Initiative of Impey and Warren Hastings.

Sir Elijah Impey prepared plan of 1781 to introduce reforms in then existing administration of justice in Bengal Bihar and Orissa. Plan prepared by was known as plan of 1781.

He gave full support to Warren Hastings to establish sound judicial system in Bengal Bihar and Orissa.

Civil justice.

1. Civil Procedure Code was compiled by Elijah Impey under guidance of Sadar Adalat and Mofussil Diwani Adalat.
2. Number of Provincial courts were increased from six to eighteen.

3. Diwani Adalat was presided over by judge instead of superintendent.

4. Jurisdiction of diwani adalat was limited to civil cases. And they were not to decide revenue cases directly or indirectly. This was also maintained in previous plan.

5. Additional provision was made for submitting record of cases decided by Zamindar or public officer to respective mofussil diwani adalat.

6. Function of native law officer was made clear that is to expound law on the basis of fact. Judges were also instructed to decide question of fact according to determination of native law officers.

7. Diwani adalat was authorised to summon zamindar or Talukadar to appear in person or by vakil to answer the action lying in court.

8.

Application of personal law was retained with certain modification that is the we'd succession was added to the word inheritance.

Judges of Sadar Diwani adalat and Mofussil Diwani Adalat were permitted to apply justice equity and good conscience in cases where no clear provision was there.

9. The control of Sadar Diwani adalat was made more effective and powerful. It was to hear appeal from Mofussil Diwani Adalat where value of suit was more than Rs 1000.

Reforms in Administration of criminal justice

Certain changes were brought in administration of criminal justice.

1. Judges of mofussil diwani adalat were authorised to act as magistrate and to arrest person suspected of committing crimes and them to Mofussil faujdari adalat for trial.

2. Separate department consisting of servant of company was created at Calcutta to control and superwise working of mofussil fouzdari adalat that was Sadar Diwani Adalat and Sadar Nizamat Adalat.

Person presiding over this department was called Remembrancer of criminal court. He was under control of governor general.

Under plan of 1781 administration of justice was improved.

Module 04

Regulating Act 1773.

Circumstances prior to Act.

In 1773 the East India

Objects of Act

The Regulating Act of 1773 was enacted with following three main objects:

- 1.To bring management of company under control of British parliament and crown.
- 2.To introduce reforms in constitution of company
- 3.To introduce reforms in the Company's Government in India.
- 4.To provide remedies against illegalities and oppressions committed by servants of the company in India.

The Regulating act of 1773 permitted the Company to retain its former possessions and power in Indian but the management was brought under control by the British Government.

Salient features /provisions of Regulating Act.

- 1.Act brought certain changes in Constitution of company.

Term of Directors was increased from one year to four year and one fourth directors were to retire every year and in their place other persons were to be elected.

Act also brought changes in voting rights of proprietors. Shareholders having share of 1000 £ were eligible for right to vote and others not possessing such shares were denied right to vote.

Act provided that all correspondence relating to revenues in India shall be placed by directors of company before Treasury in England. And correspondence relating to civil and military affairs before Secretary of state for In England.

- 2.Act intro certain changes in company's government in India.

New government consisting of Governor general and council of four members was established. They were appointed for five years. But they could be removed earlier on the recommendation of court of directors.

Presidency towns of Bombay, Madras were brought under control of governor general and council in matter of war and peace.

- 3.Act vested legislative power in Governor general.They could make rules and regulations for good governance of factories.

- 4.Act vested power to establish supreme Court in British crown.

5. Governor general, Members of council and judges of supreme Court were prohibited from accepting presents or engaging in private trade.

Legislative power under Act 1773.

Regulating Act empowered governor general and council to make rules and regulations and issue ordinances for good governance of factories. Rules, regulations and ordinances made by them were required to be just and reasonable and repugnant to laws of England. They were required to be published and registered with Supreme Court to be in force.

Person in India could make appeal against such rules and regulations to Supreme Court within 60 days of their registration. And Person in England to king in council.

King in council could disapprove within 2 years from the date of their passage. Copies of such rules and regulations to be sent to secretary of state in England.

Charter Act 1774 And Supreme Court of Calcutta.

Charter 1774 was issued by British crown and Supreme Court was established at Calcutta. Act abolished Mayor's court at Calcutta and also it superseded charter Act 1753.

Charter Act 1774 made provisions relating to appointment, removal and jurisdiction of judges of supreme court. Supreme Court was consisting of chief justice and other three judges.

Judges of supreme Court were to hold office for five years. Barristers having standing practice of 5 years could be appointed by British crown. It was court of record. And court of equity. Therefore it could exercise powers like High court of chancery in England. It could make rules for regulating its own procedure.

The court of collector, quarter session, court of request and sheriffs were put under its control. Therefore it was authorised to issue writs of certiorary, madam us, error or proceed do.

Supreme Court was conferred civil, criminal, ecclesiastical, admiralty and writ jurisdiction.

Salient features of Settlement Act 1781.

Act of Settlement was enacted by British parliament with a view to remove defects of Regulating Act 1773. Provisions of this Act were vague and uncertain. Regulating Act explained/amended these provisions. Act settled issues which were created by Regulating Act 1773.

Salient features of Act.

Following were features of Act 1. Act removed defects of Regulating Act by amending its provisions.

2. Act put restrictions on jurisdiction of supreme Court by declaring that it has no jurisdiction to in revenue matters or acts done according to usage or practice or regulations of governor general in Council.

Act declared that governor general and council were not subject of jurisdiction of supreme Court when they acted in official capacity.

3. Act virtually restricted jurisdiction of supreme Court. It provided that supreme Court could decide suits of inhabitants of Calcutta according to usages of Hindu or Muslim or usages of defendant as the case may be.

4. Act provided relief to persons who were imprisoned under judgement of supreme Court in Patna Case. They were authorised to appeal to king in council against judgment of supreme Court.

5. Act recognised Company's Court (Sadar Diwani Adalat) as Appellate court to decide appeal from decision of mofussil courts in civil cases.

6. Act empowered governor general to frame regulations for provincial council and provincial courts.

Major defects of Settlement Act 1781.

In spite of its good features Act of Settlement 1781 was criticized. Analysis of provisions make it clear that Act was substantially in favour of governor general and council and against supreme Court. Governor general and council was made supreme and arbitrary. Supreme Court was not allowed to introduce rule of law.

The term 'British subject ' was not defined.

Act failed to settle contravertial and doubtfull issues like Act not clarified relation between British crown and indian territory.

It was not clear whether provincial courts were to have concurrent jurisdiction with Supreme Court or exclusive one.

Act perpetuated distinction between presidency towns and mofussil. In short Act was not satisfactory.

Critical Estimate of the Provisions of Regulating Act 1773 and Charter 1774.

Regulating Act and Charter 1774 made praiseworthy attempt to make supreme Court independent of executive control. Judicial administration was brought persons expert in law.

However both failed to explain position of supreme court. This created conflict as to its jurisdiction . There was uncertainty and confusion about law to be applied by Supreme Court . Regulating Act and Charter 1774 not provided clarification.

Certain words like his Majesty's subjects, person employed in service of company were not clarified. Consequently this led to conflict between supreme Court and governor general and council.

Accordingly Act of Settlement 1781 was enacted by British parliament to remove defects in Regulating Act and Charter.

Trail of Raja Nand Kumar.

The trial of Raja Nand Kumar is popularly known as trial of judicial murder of Raja Nand Kumar. This is a historically significant trial because later on this. Because later on this trial became a major ground for the impeachment of Governor General Warren Hastings and Chief Justice Elija Impey of the Supreme Court of Calcutta, by the House of Commons, after they returned to England.

Events prior to the commencement of trial

Raja Nand Kumar was once Governor of Hugli under Nawab Siraj-Ud-Daulah in 1756. He was loyal to English Company. He brought charges of bribery and corruption against Governor-General Warren Hastings to Francis, a member of the council.

Complaint stated that in 1772 Warren Hastings, when he was Governor, accepted from him as a bribe of Rs.1,04,105/- for appointing Gurudas as Diwan. And Rs.2,50,000. from Munni Begam for appointing her guardian of the infant, Nawab Mubarak-Ud-Daulah.

In the council meeting a motion, by Monson, was moved and Nand Kumar was asked to appear before it. This motion was opposed by Warren Hastings who was presiding at the meeting. In spite of Hasting's opposition, motion was carried by a majority of votes in the Council. This irked Hasting and he dissolved the meeting of the Council and left the seat.

The Council elected Clavering to occupy the presiding seat at the meeting. Raja Nand Kumar, after appearing before the Council examined. The Council found the charges of Raja Nand Kumar, against Warren Hastings to be true and held that he received a sum of Rs.3, 54,105. as a bribe and therefore the Council by a resolution directed Warren Hastings to pay the same amount into the Company's treasury.

Facts of the Case .

Raja Nand Kumar was arrested with Fawkes and Radhacharan, for conspiracy. Warren Hastings and his favorite Council member Barewell declared their intention before the judges of the Supreme Court, to prosecute Raja Nand Kumar, the Fawkes, and Radhacharan for conspiracy.

The trial of Raja Nand Kumar, for conspiracy, continued with another trial of his for forgery. The Supreme Court delivered its judgment in July 1775, in the conspiracy case. Fawke was fined, but the judgment was reserved against Nand Kumar on account of the forgery case. The Governor General Warren Hastings implicated Nand Kumar in another case of forgery as he found that Nand Kumar could not be involved in conspiracy. The charge of forgery against Nand Kumar, was with respect debt in 1765.

Mohan Prasad brought a charge of forgery on 6th May 1775 before the justices of the peace at Calcutta.

Le Maistre and Hyde acted as Magistrates, they heard the case and scrutinized the evidence for the prosecution till late in the night. The Magistrates, in the capacity of the justices of the peace, being satisfied with the evidence of the prosecution witnesses, ordered the Sheriff at Calcutta to keep Nand Kumar in safe custody until he would be released as per law.

Mohan Prasad gave a bond to prosecute Nand Kumar in the Supreme Court dated 7th May 1775, and on this basis, his trial commenced before the Chief Justice and three other puisne judges of the Supreme Court on 8th May 1775. The trial lasted till the midnight of 15th June 1775. The Chief Justice Impey summed up the whole case on the morning of 16th June.

The judges gave the unanimous verdict that holding Nand Kumar guilty. The Chief Justice rejecting all pleas to defend Raja Nand Kumar, sentenced him to death under an Act of the British Parliament which was passed in 1729.

The advocate of Raja Nand Kumar decided to take an appeal to the King-in-Council and petitioned the Court to stay the implementation of the decision. But the Court rejected the petition.

The efforts to seek the assistance of the members of the Council also proved in vain. The letter of recommendation by the Nawab to the Council, to suspend the sentence also proved to be futile. Raja Nand Kumar was thus hanged on 5th August 1775 at 8:00 a.m. at Cooly Bazar near Fort William.

Two Important questions raised in the trial.

The first, whether the Supreme Court had jurisdiction in this matter?. Second, whether the English Act of 1729, which made forgery a capital offense, was extended to India?

The prime objection regarding the Supreme Court's jurisdiction was that before the establishment of Supreme Court in Calcutta, the Indians in Bengal were tried by local Faujdari Adalats. In this case, the offense was committed before the establishment of the Supreme Court, and therefore it had no jurisdiction to decide the case.

On the second issue of applicability of the Act of 1729 to India, there was a divided opinion even amongst the judges, but ultimately the majority views including that of the Chief Justice Impey prevailed. Thus the decision of the Supreme Court, in this case, created a huge controversy and depicted the arbitrary state of the administration of justice in India. This decision was widely criticized and popularly referred to as judicial murder of Raja Nand Kumar.

Kamaluddin case.(1775)

Present case was on the issue Whether Supreme Court had jurisdiction over revenue officer? Case also depicts conflict between governor general in Council and Supreme Court.

In this case kamaluddin was an ostensible holder of a salt farm(at Hijili) on behalf of kanta babu, who was the farmer. In 1775 Kamaluddin was imprisoned without bail on the ground of arrears of revenue due the claim of which he disputed.

Kamaluddin approached supreme Court and obtained writ of Habeas corpus for setting him free. The judges further stated that kamaluddin should not be imprisoned again to pay the arrears till under renter was called and he proved to be insolvent.

The members of the council stated that the supreme court had no jurisdiction to take cognizance of revenue cases. On the contrary Supreme Court claimed jurisdiction on the ground that they were servants of East India company. And under Regulating Act 1773 court was justified to punish revenue officers for their illegalities.

However majority of the governor general in council decided to order the provincial council to re-arrest kamaluddin and pay no attention to the Supreme Court order.

But the governor-general Warren Hastings refused to support the council members. Therefore its decision could not be implemented

The case of kamaluddin was an eye opener disclosing defective provisions of the Regulating Act due to which not only the supreme court and the supreme council came into the dispute but also the gulf between the governor-general warren hastings and three members of the council who constituted the majority, gradually became wider and wider.

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Patna Case (1777)

In present case issue was whether Supreme Court had jurisdiction over judicial officers for Act under legal duties.

In this case Shah Baz khan was native of kabul.He served company.After retirement he settled at Patna and married with Nadir Begum.He had no issue. His nephew Bahadur Beg was residing with him.

In 1776 Shahbaz Beg khan died.After his death his wife and nephew claimed property.

Bahadur Beg filed petition in Patna provincial Council and claimed entire property on the ground that he was adopted son.He also stated that Nadir Begum embezzled valuables of deceased and same should be recovered from her for her.And to appoint guard to protect property.

Patna Provincial council ordered muslim law officers to collect property seal it and report as to rights of parties.

Muslims law officers after investigation stated in report that both parties claimed property.

Nadir Begum claimed property on the ground of gift and dower deed in her favour by her husband. But Bahadur Beg stated that gift was not genuine but forged.

In report it was mentioned that Bahadur Beg claimed entire property on the ground that he was adopted son.

Muslim law officers stated that deed was forged and they recommend that property to be divided into four parts and one fourth to be given to Nadir Begum because under muslim law widow is entitled to one fourth part after death of deceased.

Patna Provincial council ordered that decision of Muslim law officers be executed and persons responsible for forgery be put in confinement to be tried in Faujdari Adalat.

Nadir Begum refused to take one fourth part of property refused to deliver title deeds and she appealed to Sadar Diwani Adalat. But appeal was pending for long time without action.

Ultimately she brought action in supreme Court against Bahadur Beg, muslim law officers for assault, personal injury and false imprisonment. And she claimed damages of Rs. Six lakh.

Supreme Court held that deed was not forged and Nadira Begum was entitled to whole property. Court awarded three lakh rupees for personal injuries.

Defendants were not able to pay. So they (law officer) were imprisoned. Some died on the way to Calcutta. They were kept in imprisonment till 1781.

Subsequently Defendants filed appeal in Supreme Court. Appeal was dismissed.

In 1789 again Nadira Begum started prosecution against members of Patna Provincial council for false imprisonment and putting guard for her to return to Bahadur Beg's case.

Patna Provincial council pleaded that acts were done in their official capacity

Supreme Court tried action widow, Nadira Begum was awarded Rs. 15000. as damages.

Subsequently Provincial council prepared Indictment against Nadira Begum for forgery.

But the same was quashed on the ground that neither Nadira Begum and other were neither residents of Calcutta nor servants of company.

Issues involved in case.

Whether Supreme Court had jurisdiction over Bahadur Beg and Muslim law officers? Whether judicial officers could be held liable for acts done in official capacity?

Case created effects.

It exposed state of company's judicial system. Case was one of the causes for passing of Act of Settlement 1781. Panic among farmers. Because they were held under jurisdiction of supreme Court.

Cossijura Case 1779.

Present case depicts conflict between governor general in Council and Supreme Court.

In this case Raja Sundarnarain was zamindar of Cossijurah in District of Midnapur. He was engaged in collection of revenue for company. He was to £ 20,000. as revenue to company.

Kashinath was merchant of Calcutta and surety of Raja Sundarnarain. Raja was indebted to Kashinath. And he tried to recover money through Board of Revenue at Calcutta. But he failed.

Ultimately he filed debt suit in Supreme Court at Calcutta. Supreme Court issued writ of capital to arrest Raja. He was avoiding arrest by hiding himself.

Meanwhile Supreme Council (governor and council) informed Raja and other Landholders that they should not pay attention to process of court unless they were in service of company or voluntarily accepted jurisdiction of court.

After such directions Raja used force to resist execution of writ by Sheriff issued for arrest of Raja. Assistance required to serve writ was also denied from collector of Midnapur. Similarly Commanding Officer of troops was directed to provide sufficient force to interpret arrest. Sheriff were arrested and were sent to imprisonment at Calcutta. Kashinath brought action against governor and members of council for assault on sheriff and rescued his effects/property seized with a view to deprive him recovering his debt from Raja.

Members initially appeared but subsequently refused to submit to jurisdiction of court. Court issued writ against councillors but Army officers did not allow to serve writ.

Supreme Court felt insulted and punished Attorney of company on the ground that on his advice government denied assistance to court process.

Court had no force to compel appearance of Councillors. But at this stage Kashinath withdrew suit against Raja and governor and council.

Issues involved.

Whether zamindars were under jurisdiction of supreme Court?

Who was competent to issue relating to jurisdiction of court?

Cossijura Case depicts conflict between governor and council and Supreme Court. Defects in company's courts came in light.

Passing of Act of Settlement 1781 was one of its effects.

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Supreme Court at Calcutta.

Supreme Court was established at Calcutta under charter 1774 issued by British crown King George III on March 26 1774. Sir Elijah Impey was its chief justice and the other three judges were with him.

Establishment of Supreme Court was great step forward in Indian legal history and important innovation of Regulating Act .

Supreme Court superseded previous judicial system existing under charter 1753. It was more improved Tribunal

Supreme Court was consisting of chief justice and other three judges to be appointed by crown. It was court of record and equity.

It decided civil cases. Appeal was allowed to privy council in England in case subject matter involved was 1000 pagodas with the permission of supreme Court. Application for permission to be made within six month from delivery of judgement.

Supreme Court was conferred civil, criminal, ecclesiastical, admiralty and writ jurisdiction.

Supreme Court at Madras and Bombay

Subsequently Supreme Court was established in Madras in 1801 and in Bombay in 1823. Appeal from each Supreme Court was allowed to privy council. Powers and jurisdiction were same. All courts were courts of record.

Subsequently Supreme Court and Sadar Adalats were merged 1861 and in their place High Court was established in accordance with provisions of Indian High Courts Act 1861.

Laws administered in Supreme Court.

Supreme Court was established by British crown under charter 1774. It was court of record. And also court of equity, therefore it was given power to administer justice according to rules and procedure of high court of chancery in England. It could administer justice according to principles of justice, equity and good conscience as applied by court of chancery in England.

It was empowered to make rules to make rules for its procedure.

However there was no mention neither in Regulating Act nor in Charter Act 1774 as to law to be administered by Supreme Court. Supreme Court replaced Mayor's Court which applied English law. Therefore supreme court was supposed to apply English law. However it was not clear which law to be applied by it.

Module 05

Judicial Measures of Cornwallis.

Lord Cornwallis introduced various reforms in judicial system of india. He was first Governor who introduced principle of administration according to law. He established permanent rules for settlement and collection of revenue and for administration of justice.

Lord Cornwallis accepted his office as governor general in 1786. He put his condition that whenever would be necessary he would override Council. His condition was accepted. He was continued as governor till 1793.

Plan of 1787

Under plan of 1787 he reorganized existing districts. Districts were reduced from 36 to 23. In each District servant of company that is collector was appointed in charge of District. And judicial function and revenue functions were vested in him.

However he was to keep separate various functions separate from each other. He was to decide revenue cases in revenue court know as Mal Adalat. He was to decide civil cases in mofussil Diwani Adalat . Beside this he was decide cases concerning succession, boudary Disputes of zamindar and Talukadars.

Appeal from decision of Mal Adalat was first to lay to Board of Revenue at Calcutta and then to Governor general in council.

Appeal from decision of mofussil diwani adalat was to lay to Sadar Diwani Adalat in all cases involving value of more than Rs 1000 . Further appeal from decision of Sadar Diwani adalat was to lay to king in Council in England.

Collector was also to act as magistrate within his District. He was empowered to arrest try petty offences, punish offender by corporal punishment or imprisonment.

Besides In each District Registrar was appointed in District civil Court to decide cases up to Rs 200.

Serious offences were to be referred to nearest mofussil nizamat adalat.

Defects of plan.

1. Separation between executive and judiciary was not maintained.

2. Collector was over empowered .

3. Collector was more interested in collection of revenue. Because his promotion was depended on collection of revenue.

Reorganisation of Criminal Judicature.

In Bengal Bihar and Orissa Mohammedan criminal law was applicable to Muslims and Hindus. However Lord Cornwallis realised defects existing in administration of criminal justice under Nawab. Punishments were defective. Retaliation/Kisa, Diya/Blood Money, Hadd/Fixed punishment ,Tazeer/discretionary punishment. These were forms of punishment.

According to injured person had right to inflict similar punishment on wrongdoer. Under Diya injured person was permitted to claim blood money instead of punishment to offender.

Hadd which was type fixed punishment could not be changed by judge.

There were some offences for which punishment was at the discretion of judge.

Similarly evidence law under criminal law was also defective. Procedure of criminal court was defective.

These defects led to reorganise criminal courts. Mofussil faujdari adalat was abolished. Collector was made court of District. Circuit court/moving was created in division made of territories of Bengal, Bihar and Orissa. It was under control of Sadar Nizamat Adalat.

Sadar Diwani Adalat was shifted from Calcutta to Murshidabad. The office of court of Remembrancer was abolished.

Scheme of Criminal Judicature 1790.

Through scheme / Plan of 1790 reforms were introduced in criminal law and criminal courts.

Reforms in Mohammadan law.

1. Mens rea (intention of party) was given due importance. It was made clear that intention of party than manner of instrument employed to be taken in to account.

2. Relative of murdered person were deprived of to pardon offender.

3. Punishment of mutilation was abolished and imprisonment and hard work was introduced.

4. Rule that in case of refusal to prosecute accused by heirs of accused was abrogated but case was to be tried court of circuit. And record of case was to be sent Sadar Nizamat Adalat which was to punish offender.

5. Law of evidence was modified. And Hindu was permitted to be witness against muslim.

Reforms in organization of criminal courts.

1. Mofussil faujdari Adalats were abolished. There were three types of courts, Court of District Magistrate, it was lowest court. Second was court of circuit, this was middle court. And highest court Sadar Nizamat Adalat.

2. Territories of Bengal, Bihar and Orissa were divided into four divisions those divisions were Calcutta, Murshidabad, Dacca and Patna. And in each division circuit court was established. It was moving court consisting of two covenanted servant of company as Judges assisted by Muslim law officers. Circuit court was to pass sentence according to fatwa proposed by muslim law officers. In case fatwa was disapproved by court record to be sent to Sadar Diwani Adalat for final decision.

3. Sadar Nizamat Adalat was shifted to Murshidabad from Calcutta. It was consisting of Governor general and members of council assisted by muslim law officers (Kazi, mufti and maulavis). Sadar nizamat Adalat was responsible for governor general and council. Authority of Nawab over it was removed.

It was to decide cases according to Mohameddan law. Some cases could be referred to it.

Salary of persons working in criminal courts was increased. Office of Remembrancer of court was abolished.

Scheme of Criminal Judicature 1790 was based on principle of checks and balances. It was made to maintain impartial efficient administration of justice.

Judicial plan of 1793.

In 1793 Lord Cornwallis introduced very important reforms in administration of justice. He prepared Code known as Cornwallis code.

Revenue Administration.

Separation between revenue function and judicial function was maintained. Revenue Courts (Mal Adalat) was abolished. Powers of collector to decide civil cases and revenue cases was taken out.

Collector was to collect revenue only. He was subject control and superintendence of Board of Revenue. Mofussil Diwani Adalat was to decide civil and revenue cases.

Appeal from decision of mofussil diwani adalat was to lay to Board of Revenue and from board of revenue to governor general in Council at Calcutta.

Administration of civil justice

Organisation of civil court was modified. In case of Sadar Diwani adalat in place of Collector civil servant of company was appointed its judge. He was to be assisted by Hindu and Mohammedan law officers.

Mofussil Diwani Adalat was to try civil and revenue cases. Appeal from decision of mofussil diwani adalat in revenue cases was to lay to Board of Revenue and from board of revenue to governor general in Council.

In civil cases appeal from decision of the Mofussil Diwani Adalat was to lay to Provincial court of Appeal irrespective of monetary value.

Provincial court was to exercise supervisory function over mofussil diwani adalat. Its decision in cases involving value of Rs 1000 was final. Second appeal was your lay to Sadar Diwani Adalat in case value of Rs was more than Rs 1000.

In case involving value more than Rs 5000 appeal from Sadar Diwani Adalat was to lay to King in council/Privy Council.

Besides certain subordinate courts were established to decide minor cases.

Court of Sadar Amins and commissioner subsequently called munsif' court was established to decide cases up to Rs 50. Landholders ,Farmer and Tahsildar could be appointed by mofussil diwani adalat as munsif. They were honorary judges. Indians could be appointed as munsif.

Registrar of mofussil adalat was authorised to decide cases up to Rs. 200 referred to it by mofussil diwani adalat. But it's decision was subject to Mofussil Diwani Adalat.

Court fees was abolished.

Collector and other executive officers were under jurisdiction of mofussil diwani adalat.

Administration of criminal justice.

The court of circuit and provincial court of Appeal were united and were established at four places of Calcutta, Dacca, Patna and Murshidabad.

Native law officers were continued. Their tenure was given permanency. Governor general could appoint them and they could be removed by him on misconduct and incapacity to perform public duty.

Legal profession was organised by Regulation VII Of 1793. Person desiring to join legal profession was required to obtain certificate after fulfilling qualifications.

Members of legal profession were put under control of Sadar Diwani adalat. They could be dismissed by Sadar Diwani Adalat on misconduct, profligacy, misbehaviour in private life. Fees was paid through court and not directly.

Uniform pattern of Regulation to be made by Government was introduced. Preamble, title for Regulation were prescribed. Similarly Regulation was to be divided into sections and subsection and to be published.

Permanent settlement of land revenue was succeeded. Zamindars were made owners of land and they were required to pay nine - tenth of revenue collection of government.

Police reforms were introduced. District was divided into police jurisdiction of 20 miles. And it was guarded by Darogah with armed constabulary.

Dacca, Patna and Murshidabad were divided into ward and was guarded by Darogah who was under control of Kotwal.

Darogah and Kotwal were to apprehend criminals, prevent commission of crime and peace.

Appraisal of the system of 1793.

1. Separation between judicial and revenue functions.
2. Separation between judiciary and executive was maintained up to some extent.
- 3 . Principles of judicial control of executive was applied.
4. Principle of checks and balances was applied.
5. Organisation of court was improved.
6. Native law officers were provided security of tenure.
7. Legal profession was regularised which enabled parties to claim remedies through legal expert (vakeel)
8. Uniformity in form Regulation to be made by Government.
9. Permanent settlement of land revenue reduced under certainty about collection of revenue.

Module 06

Establishment of High court.

Indian High Courts Act 1861.

Introduction

Before passing of Indian High Courts Act 1861 there was dual system of courts, Supreme Court established in Presidency towns of Bombay Madras and Calcutta. And Adalat system established in Mofussil area by East India company. Source of their power, jurisdiction was also different.

Uncertain jurisdiction of supreme Court and company's court created confusion and chaos. This was main cause of conflict between them. Both courts claimed jurisdiction over same person.

Their relationship was tense and conflicting. It was realised that to avoid confusion and chaos these two courts were to be merged. Merger of these courts was the only remedy to avoid confusion and chaos.

It was also realised that necessary changes to be introduced to in administration of justice to create atmosphere/ for unification of these courts.

Accordingly background for unification of these courts was created. In 1833 All India legislature was created under Charter Act 1833 Charter Act provided that Acts passed by All-India legislature would be binding on Crown's court as well as company's court. In this way in the matter of law uniformity was created. Another step was taken for appointment law commission for codification of law.

Under Charter 1853 second law commission was appointed for preparation of scheme for merger of supreme Court and Sadar Adalats.

Indian High Courts Act 1861.

Background for merger of unification of these two courts were created. But merger was actually taken place when Indian High Courts Act was enacted in 1861. Indian High Courts Act was enacted by British parliament with a view to abolish dual judicial system and to establish High Courts in its place.

Act empowered British crown to establish high court in each presidency town.

Act provided that at least one third judges including chief justice to be Barristers having five years standing practice. Judges were to hold office during the pleasure of her Majesty.

Act vested civil, criminal, admiralty, testamentary matrimonial and intestate jurisdiction.

Act made it possible to unite judges having knowledge of English law and judges having knowledge of native laws and customs.

It was made clear that Act of parliament or order of British crown, Act of Indian Legislature applicable to supreme court were applicable to High court.

High Court was given power to make general rules to exercise original and appellate jurisdiction and to regulate practice and procedure.

Constitution of High Courts.

The High Court was to consist of a Chief Justice and other judges not exceeding 15 as her Majesty might from time to time think fit to appoint.

A Barrister having not less than five years standing practice or

Member of the Covenanted Civil Service of at least 10 years standing who had served as Zila judge for at least 3 years in that period or

Person having held judicial office, for at least 5 years, person who had been a pleader of a Sadar Court or a High Court for at least 10 years could be appointed as judge.

The law to be applied by high court was same as applied by the Supreme Court i.e. English law. However, the High court was allowed to use the principles of justice, equity.

In May 1862 high court was established in Calcutta. And in June 1862 high court established in Bombay and Madras.

High court was court of record. It was given civil, criminal, intestate, testamentary, admiralty and matrimonial jurisdiction.

Letters Patent establishing High Courts.

Government of India Act 1935 gave power to his Majesty to issue letters Patent constituting high court or reconstituting existing high court. High Court of Nagpure was established by issuing letters Patent.

Letters Patent were to be issued by British crown. Under Indian High Courts Act 1861 high court was to exercise civil, criminal, intestate, testamentary, admiralty and matrimonial jurisdiction. It could exercise powers and authority in relation to administration of justice.

By letters Patent British crown could impose limitation and directions on jurisdiction of high court. High Court was bound by Act of parliament, Order of British crown, Act of Indian Legislature applicable which were applicable to supreme court and consistent with Indian High Court Act, letters Patent.

Indian High Courts Act 1865 and 1911.

Subsequently Indian High Courts Act 1865 was enacted. This Act empowered governor general and council to alter local limits of jurisdiction of high court established under Indian High court Act 1861. However this power was subject to approval by British crown.

Indian High Courts Act 1911 empowered governor general and council to appoint additional judges for period of two years. Act increased number of judges from 16 to 20.

Government of India Act 1915.

The present Act introduced several changes in Constitution, jurisdiction and law to be applied by high court. High Courts were declared to be courts of record. They were to enjoy original, appellate and admiralty jurisdiction in respect of offences committed on high seas.

Under this Act court was to consist of chief justice and other judges as may be appointed by his Majesty not exceeding twenty. Judge was to be Barristers having five years standing practice or Member of civil service having not less than ten years standing practice and served powers of district judge or person having held judicial office not inferior to small cause court for five years. or person pleader of high court for ten years.

One third judges were to be Barristers or advocates and one third were to be members of Indian civil service.

Judges were to hold office during pleasure of his Majesty. Courts were to exercise powers to make rules for court practice. Courts were not to exercise original jurisdiction in revenue matters.

It could exercise original jurisdiction for suits relating to inheritance, succession to land rent goods and suits of inhabitants of Calcutta Madras and Bombay.

Act of 1915 empowered His Majesty to new high court in any territory. In exercise of these powers his Majesty established high court in Patna and lahor.

Government of India Act 1935.

Under Government of India Act 1935 High court was to be courts of record. It was to consist of chief justice and other judges as may be appointed by his Majesty not exceeding number fixed by him. Judge was to be appointed by his Majesty. He was to hold office for 65 years. But may be removed by his Majesty on the ground of misbehaviour or infirmity of mind or body on the recommendation of privy council.

High court was to exercise jurisdiction as vested in it before commencement of this Act. It was given power of superintendence over courts which were subject to its appellate jurisdiction.

Appeal was to lie to federal court established under this Act in case of question of interpretation of Act or order in council and if so certified by high court.

Appeal was also to lie without such certificate in case value of subject matter was not less than 50,000.

Government of India Act 1935 gave power to his Majesty to issue letters Patent constituting high court or reconstituting existing high court. High Court of Nagpure was established by issuing letters Patent.

High Court established during 1947 to 1950.

During this period some high courts were established. The Punjab high court established in 1947 by order of governor general. In 1955 seat of high court was shifted to Chandigarh. In 1966 high court was reorganized and it was made common for Punjab and Haryana.

In 1948 Assam High Court was established by order of governor general of India. In 1971 it was reorganized. It was made as Gauhati High Court along with Assam, Nagaland, Meghalaya, Manipur and Tripura.

In 30 April 1948 Orissa high court was established by Governor general. It was given powers as were given to Patna High court.

Rajasthan High court was established in 1949 Rajasthan high court ordinance. In 1948 Cochin High court was established by ordinance 1948.

In 1961 Mysore High court Act passed to regulate jurisdiction and powers of Mysore High Court which was established before independence by Mysore High Court Act 1884.

High court of Jammu and Kashmir was existing before independence. It was established by letter patent dated 28.8.1943. It was continued by Constitution of India.

Indian Constitution reorganized existing high court. It consists of several provisions relating to high court. According to constitution high court may be established for each state. However Parliament may establish common high court for two or more states.

High court may consist of Chief justice and other judges as may be appointed by President. Judges are appointed by president in consultation with chief justice of India, governor of state and Chief justice of high court.

Module 07

Privy Council - Highest court of Appeal.

Origin of Privy Council .

Privy Council played important role in development of judicial system and in appeal system of India . Jurisdiction of privy council to decide appeal came to an end in 1949. But till this time it was Supreme appellate tribunal for India.

Appeal To Privy Council (1726-1860)

Charter of 1726 for the first time granted right to appeal to Privy Council in England from judgements of Indian courts. Privy Council decided appeal from all cases of value of 1000 pagodas or more decided by Governor and council.

Under charter 1726 Mayor's court was established in each presidency town of Bombay, Madras and Calcutta. It tried civil cases. Appeal from Mayor's court was to be heard by Governor and council.

And further appeal from Governor and council was to be heard by privy council in England.

Under Charter 1774 privy council heard appeal from decision of supreme Court at Calcutta. Supreme Court was established at Calcutta in accordance with provisions of charter Act 1774. It decided civil cases. Appeal was allowed in case subject matter involved was 1000 pagodas with the permission of supreme Court. Application for permission to be made within six months from delivery of judgement.

Subsequently Supreme Court was established in Madras in 1801 and in Bombay in 1823. Appeal from each Supreme Court was allowed to privy council.

Privy Council also heard appeal from company's court /sadar Diwani Adalat. Act of Settlement 1781 allowed appeal to Privy Council from Sadar Diwani Adalat where value of subject matter was 5000 pound. Before Act of Settlement decision of Sadar Diwani Adalat was final.

Subsequently in 1802 Sadar Diwani Adalat was established in Madras. Since 1818 governor general in Council relinquished authority to hear appeal from decision of Sadar Diwani Adalat. And privy council was authorised to hear appeal without monetary restrictions. Since 1812 privy council decided appeal from Sadar Diwani Adalat at Bombay.

In 1833 Judicial committee Act 1833 was enacted which established permanent judicial committee of privy council to hear appeal. Under this Act privy council heard appeal from Supreme Court, Sadar Diwani Adalat in case value of subject matter was Rs 10,000.

In 1845 British parliament amended Judicial Committee Act 1833 and right to appeal was vested in parties by taking out management of appeal from company.

Appeal to Privy Council (1861-1949)

In 1861 Indian High Courts Act was enacted. It allowed appeal to Privy Council in case value of suit was Rs 10,000. Or High court certified that case was fit for appeal.

Indian High Courts Act 1861 abolished previous judicial system that is Supreme Court and Sadar Diwani Adalat and created High Courts in their place by merging both.

Appeal to Privy Council was allowed in case of judgement or order made in its original jurisdiction. And in criminal cases where point of law was reserved for opinion of high court and high court certified the same.

Under Government of India Act 1935 Privy Council heard appeal from decision of Federal court. Act established federal court and provision was made for appeal to federal court from decision of high court given in its original jurisdiction without leave. Or with leave of privy council or federal court in other cases.

In 1948 Federal Court (Enlargement of Jurisdiction) Act 1948 was enacted by Central legislature with a view to enlarge appellate jurisdiction of Federal Court and to restrict appeal to Privy Council.

Under this Act appeal from decision of high court was allowed on the same line on which appeal to Privy Council was allowed.

Jurisdiction of privy council to hear appeal was completely abolished by abolition of jurisdiction of privy council Act 1949. Since 10.10.1949 appeal pending before privy council were transferred to federal court. Powers conferred on privy council were transferred to federal court. On 26.1.1950 Supreme court was established in India and federal court was replaced by Supreme Court.

Supreme Court was given wide jurisdiction and it is highest court of india.

Module 08

Federal court of india

Foundation of Federal Court:

High Court was the highest court in India. Privy Council was above it. But to approach the Privy Council required huge expenses and time of the litigants.

In Nov. 1934, the joint select committee of both the houses of British Parliament in its report recommended the establishment of one federal court. British Parliament passed the Government of India Act, 1935. The said Act provided for the establishment of a Federal Court in India under Section 200. On 1st October, 1937, the federal court was established.

The seat of the court was the chamber of princes in the Parliament building in Delhi. It was a court of record. Sir Maurice Gwyer was the 1st chief justice and the other two puisne judges were Sir Mohammad Sulaiman and M.R. Jayakar. The federal court lessened the work load of the Privy Council.

Chief justice and other judges of court were to be appointed by his Majesty. They were to hold office till the age of 65 years. His Majesty was empowered to remove any judge from his office on the grounds of misbehaviour or infirmity of mind or body but on the recommendation of the Privy Council.

Person having 5 year's experience as a judge of High Court or 10 years standing as an advocate or Barrister or 10 years standing as a pleader in a high court may be appointed as judge.

According to section 201, The judges of the federal court were entitled to such salaries and allowances and to such rights in respect of leave and pension as were laid down by his Majesty from time to time.

Jurisdiction of the Federal Court:

Under the Government of India Act, 1935 the Federal Court was given three kinds of jurisdiction Original, Appellate, Advisory.

Original Jurisdiction:

The original jurisdiction of a Federal Court was confined to:

(a) Disputes between units of the dominion or

(b) Disputes between the dominion and any of the units where –

(i) It involved a question of fact or a question of law on which the existence of a legal right depended.

(ii) It involved interpretation of Government of India Act, 1935 or of any order in council made there under.

(iii) The extent of legislative or executive authority vested in the federation by virtue of instrument of accession of the State is involved.

But the federal court had no power to entertain suits brought by private individuals against the dominion. The court was not authorised to enforce its own decisions directly but with the aid of civil and judicial authorities throughout the federation. Section 208 provided for a right of appeal to the Privy Council from the judgements of the federal court in the exercise of its original jurisdiction, if such decision involved an interpretation of the Government of India Act, 1935 or any order in council made there under.

Appellate Jurisdiction: According to section 205 of the Government of India Act, 1935. An appeal shall lie to the federal court from any judgement, decree or final order of a high court.

Provided that the High Court certified that the case involved a substantial question of law as to the interpretation of Government of India Act, 1935 or an order of the Governor General in council.

Initially the Federal Court exercised appellate jurisdiction in constitutional cases under the Government of India Act, 1935. But its appellate jurisdiction was extended to civil and criminal cases from 1948 by Section 3 of the Federal Court (Enlargement of Jurisdiction) Act, 1947.

Later in 1949 the system of appeal from India to the Privy Council was totally abolished in criminal cases.

Advisory Jurisdiction:

Under Section 213 of the Government of India Act, 1935 Governor-General may refer question of law, which was of such a nature and of such public importance that it was expedient to obtain the opinion of Federal Court, to federal court.

The Governor-General was, however, not bound by the advice of the Federal Court.

Authority of the Law laid down by Federal Court:

Section 212 of the Government of India Act, 1935 laid down that the law declared by the Federal Court and any judgement of the Privy Council will be binding on all the courts in British India. Thus, the High

Court and subordinate courts in British India were absolutely bound by the decision of the Privy Council and the Federal Court.

Abolition of Federal Court:

Federal Court worked for a short period of 12 years. In place of Federal Court the Supreme Court of India was established on 25-1-1950 by the Abolition of the Privy Council Jurisdiction Act, 1949.

Module 09

Evolution of law through legislation and judicial decisions in colonial period.

Process of codification-

Charter Act 1833

The Charter Act of 1833 / Saint Helena Act 1833 or the Government of India Act 1833 is an Act of the Parliament of the United Kingdom.

Charter act 1833 introduced reforms in then existing legislative machinery in India. It played vital role in codification consolidation of Indian laws. There were several factors responsible for enactment of this Act.

East India Company many territories. Was very difficult for it to control them of with existing constitutional set up. And strong Central government felt necessary for administration. Similarly law existing in presidency towns and in mofussil area was not uniform. It created confusion and chaos. Therefore need of establishment of all India legislature having authority to make laws was felt.

Lord Macaulay demonstrated necessity of consolidation and codification of Indian laws.

In 1833 attention of parliament was brought to leading vices in process of Indian government. Those were nature of law ill defined power through which laws were enacted. And conflicting judicature which administered laws.

To remove these defects charter Act 1833 was enacted by British parliament. Act was great step towards process of codification.

Object of Act.

Objects of act were as follow :

-to consolidate and codify Indian law

-to establish all India legislative.

-to remove defects relating to laws and administration.

Provisions of Act .

Act made following provisions:

1.Act established All India legislature.

All India legislature had authority to make laws for territory under control of East India company. It was consisting of governor general in Council and four other members fourth member was to be law member. His function was assist governor general and councillors in making laws .He was to be appointed by court of directors.

All India legislature removed all law making sources prevailing before 1833.These sources were not uniform but diverse.

2.Act established law commission.

Object of Act was to consolidate and codify Indian laws . Accordingly it made provision for appointment of law commission to be appointed by Governor general in council. Its function was to make common code of laws for India.

It set principle to be followed in process of codification that was uniformly, diversity and certainty.

3.Act made provision for strong Central government.

Presidency towns of Bombay, Madras and Calcutta were under control of governor general of Bengal (and he was designated as governor general of India).All civil and military powers were conferred to him.He was authorised to take measures of safety. Power of presidency to make regulations was taken out. Governor general in council was empowered to make laws and regulations for all persons residing in company's territories in India.

4.Act continued territorial possessions of company for another twenty years in trust for His Majesty.

5.Governor general in council was empowered to appoint Deputy Governor of Bengal.

6 . Act empowered His Majesty to remove any officer of company.

First law commission. Charter act 1833 empowered governor general in Council to appoint Law Commission. Pursuant to provision of charter act 1833 First Law Commission was appointed in India 1835.

Commission was consisting of initially chairman and other members.

However in 1837 number of members of commission reached to 5. Law Commission was subject to control of governor general in Council. Governor general in Council was authorised to determine subject

upon which commission was to make enquiries and submit its report and was directed to prepare law applicable to non Hindus and non Muslims and to draft Penal Code and civil and Criminal Procedure Code.

First Law Commission drafted penal code for India. Draft of penal code was prepared by Lord Macaulay.

First law Commission suggested law of England as lex loci that is law of land to non Hindus and non Muslims Mofussil area. Because in presidency towns English law was applicable to non Hindus and non Muslims and same law should be applied and law of land should be throughout territory of company.

Following were important recommendations of first law commission--

1. Substantive law of England should be declared as Lex loci non Hindus and non Muslims.
2. English substantive law not to be applied to non Christians for matters diverse and adoption.
3. Act of parliament of England fast after 1726 was not to be extended to official area unless there was provision for extending to India.
5. Appeals from established in mofussil were to lie to Supreme Court.
6. lex loci Act was not to be applied to hindu , Muslims or to his property.

Unique contribution of First Law Commission was lex locy report. Because implementation of recommendations by First Law Commission would have reduced diversity in laws applicable to residing in mofussil area.

Similarly report submitted by First Law Commission was praised because it suggested definite law for non Hindus and non Muslims.

Another contribution of Law Commission was that it prepared draft of civil procedure code and also law of limitation.

However there were several defects in report submitted by First Law Commission. First law Commission lost its vitality after retirement of Lord Macaulay.

Second law commission.

East India company was established under Charter 1600. Charter was issued by Queen Elizabeth. It conferred necessary powers to carry out British trade. Initially company was incorporated for the period of fifteen years. Latter Company became territorial sovereign.

Charter Act 1853 vested territorial possessions of company in trust in government. Duration of fixed period was removed. British parliament could terminate authority of company at any time.

Charter Act empowered British crown to appoint second law commission. In pursuance of power vested by this charter British crown appointed second law commission to examine and consider recommendation of first law commission.

Second Law Commission was appointed in 1853. It was appointed for 3 years.

Sir John Romiley was its president. Commission was consisting of 6 members having legal knowledge and judicial experience.

The main task assigned to Commission was to examine and consider recommendations of first law commission. During its tenure Commission submitted four reports.

Commission submitted its first report in 1853. In this report Commission submitted plan for amalgamation of Supreme Court in Bengal with Sadar Diwani Adalat and Sadar nizamat Adalat and in their place establishment of High Court. Preparation of civil procedure code terminal Procedure Code to be applied by High Court.

In second report Commission submitted that there should be substantive civil law for persons Mofussil area. Commission expressed review that dairies need of substantive civil law weight should be enacted on the basis of of England but after its enactment it should be Indian law.

Majority members in favour of introduction of English law in India through codification .

The most important contribution of Commission was that it laid down principle on which Indian law should be codified in future.

The commission was not in favour of codification of Hindu film law because it may obstruct improvement in state of population.

In third report Commission proposed establishing judicial system and procedure North Western provinces stop this division system was based on judicial system proposed for Bengal subject to minor changes.

In its fourth report Commission proposed judicial plan provinces of Bombay and Madras.

On the basis of report of second law commission, civil procedure code 1859 ,Criminal Procedure Code 1861, limitation act 1859 were enacted. Indian Penal Code submitted by First Law Commission was considered and passed in 1860.

Second Law Commission enacted Indian High Court Act 1861. It abolished Supreme Court hand Shivani Adalat and Sadar nizamat Adalat and in their place High Court was established in each Presidency towns.

Third law commission.

Third law commission was appointed in 1861. Lord Romiley was chairman and other five members. Commission was directed to prepare substantive law for India on the basis of law of England. And giving due regard to conditions, religion of India. Commission set on foot work of drafting.

Contribution of Commission.

Commission submitted seven reports. First report was consisting of draft of law of inheritance and succession for persons except Hindus and Muslims. And Succession Act 1865 was enacted. This was considered as valuable contribution of third law commission.

Second report was submitted in 1866. Second report was consisting of draft of contract law applicable to all. And Indian Contract Act 1872 came into existence.

Commission submitted third report in 1867 on draft of Negotiable instrument Act.

Fourth report was consisting of opinion of commissioners on draft of contract law already submitted.

Fifth report was submitted in 1868. It was consisting of draft of evidence. However it was dropped. New bill was submitted in 1868 by Sir J. F. Stephen. It was revised in 1872 and Evidence Act 1872 came into existence.

Sixth report was on draft of Transfer of Property.

Seventh report was last report submitted in 1870. It was on revised draft of criminal procedure code.

Fourth Law Commission.

In 1875 Lord Salisbury gave suggestion regarding appointment of fourth Law Commission. He also pointed out that task of preparing remaining branches of penal code for legislative council may be entrusted. In 1877 proposal was accepted.

Fourth Law Commission was consisting of three members, Dr. Whitley Stokes, Sir Charles Turner and Raymond West. Government proposed to codify some branches of substantive law.

In 1879 draft bills on easements, Alluvial and Diluvial and Master and servant were referred to fourth Law Commission.

Fourth Law Commission submitted only one report. Report was consisting of following recommendations:

1. Process of codification of substantive law should be continued and English law should be basis of such codification. But due regard to be given to native habits and model thought.
2. Object should be uniformity in legislation. Special and local customs should be treated with great respect.
3. Operation of European British Minor Act 1874 should be expanded.

4.laws relating to negotiable instrument, transfer of property, easements, master servant relationship should be codified and passed.

5 . Preparation of systematic chapter on interpretation.

As a result of recommendations of this commission negotiable instrument Act,Easement Act,Transfer of Property Act were enacted.

Fourth Law Commission was last commission appointed by British Government.

Charlotte Abraham v Francis Abraham [1861]

It indicatest he status of Native Christians, known as East Indians and the law of inheritance and succession as administered in the Mofussil Court in respect to their rights and property, considered

The cases coming within the jurisdiction of the Zillah Courts, for which no specific rule may exist, the Judges are to act according to justice, equity and good conscience.

Law/regulations then existing prescribes that suits before the Native Courts regarding succession, inheritance, caste, etc, the Hindoo law with respect to Hindoos, and the Mahomedan law with regard to Mahomedans are to be considered the general rules by which the Judges are to form their decision.

Held, that the latter Regulation applied to Hindoos and Mahomedans, not by birth only but by religion.

Held, also, in a case of succession to the estate of a deceased of pure Hindoo blood, who had married a European wife, professing, with his family, the Christian religion, and whose ancestors for generations had embraced Christianity, that such case was within the provisions of Madras Regulation 1802 and was to be decided by reference to the usages of the class to which the deceased attached himself and the family to which he belonged.

Upon the conversion of a Hindoo to Christianity, the Hindoo law ceases to have any continuing obligatory force upon the convert.

The convert may renounce the old law by which he was bound

or if he thinks fit, he may abide by the old law notwithstanding he has renounced the old religion.

Because though the profession of Christianity releases the convert from the trammels of the Hindoo law, yet it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern.

The convert, though not bound as to such matters, either by the Hindoo law, or by any other positive law, may by his course of conduct after his conversion, have shown by what law he intended his rights to be governed.

He may do so either by attaching himself to a class which in this respect has adopted and acted upon particular law, or by having himself observed some particular law, family usage, or custom.

The status of a member of an undivided Hindoo family who became a convert to Christianity, in reference to parcenership, considered. Such circumstance held to amount by the Hindoo law, to a severance of parcenership.

Whenever an opinion of the Pundits is required by the Court, and there are many special circumstances which may bear upon the question to be submitted for their opinion, these special circumstances ought to be set forth by the Court in the case submitted to the Pundits.

The principal question involved in this appeal was as to the law which governed the succession to the property of the late Matthew Abraham, a Protestant native of India, resident in the Madras Presidency, and who died intestate in the year 1842.

The ancestors of Matthew Abraham for several generations had been Christians; and Matthew Abraham, who had been baptised in infancy in the Roman Catholic faith, but afterwards became a convert to the Protestant religion, married a European wife in the year 1820, and with her and the children of the marriage conformed in all respects to the language, dress, manners, and habits of English persons up to the time of his death.

The Sudder Court at Madras held that the property should be distributed in accordance with the Hindoo law.

The circumstances of the case, were that in the year 1812, Matthew Abraham, then a youth was residing at Bellary with his father; and was at that time receiving religious instruction from a Protestant missionary, having become a convert from the Roman Catholic to the Protestant religion.

The Respondent, another son of Matthew Abraham's father was born in the year 1813. About the year 1815, Matthew Abraham was appointed to a situation in the Arsenal at Bellary, upon a salary of Rs. 52 a month. His father died some time prior to the year 1820 without leaving any property. In the last-mentioned year, Matthew Abraham married the Appellant, Charlotte Abraham, whose father was an Englishman and her mother a Portuguese.

In the year 1823, he opened a shop on his own account at Bellary and in the year 1827, the Respondent, Francis Abraham, who was then of the age of fourteen was placed by Matthew Abraham as a writer and attendant in his shop, and on the 2nd of April, 1832, he and a Mr. Richardson were admitted as partners in the shop under a deed of partnership, whereby the then partners were to be entitled equally to the profits.

No capital was contributed by the Respondent upon his admission to the partnership. Mr. Richardson retired from the partnership in or about the year 1836, but upon his retirement no new arrangement was made between Matthew Abraham and the Respondent, as to their shares in the shop. Matthew Abraham, besides being a shopkeeper, held a contract from Government for the supply of spirituous liquors to the troops in cantonment at Bellary.

And in order to enable him properly to carry out that contract, he erected a large distillery in or near Bellary. The contract was first taken by Matthew Abraham in the year 1827, and the contract was taken by him from year to year, with the exception of the official year 1829-30, until his death in the year 1842, at which time the contract was still subsisting.

The distillery business so carried on by Matthew Abraham was separate from the shop, and was carried on by him alone on his own account, and, as it appeared and was insisted by the Appellants, without any partner but for some time previously to and at the time of the death of Matthew Abraham, the Respondent was employed as a clerk or manager in the distillery business, and during the frequent periods of absence of Matthew Abraham from Bellary, transacted the chief part of that business.

On the 10th of July, 1842, Matthew Abraham died intestate, leaving his widow, the Appellant, Charlotte Abraham, and two sons, Charles Henry Abraham, who is since deceased, and the Appellant, Daniel Vincent Abraham, him surviving. At the time of the death of Matthew Abraham, the other son, Charles Henry Abraham, was of the age of twenty years, and was in England for purpose of his education, and the Appellant, Daniel Vincent Abraham, was of the age of nineteen years, and was residing with his mother at Bellary.

The property of Matthew Abraham consisted of the benefit of the Abkarry contract, which was still subsisting.

The sum held in deposit for the due fulfilment thereof and of the distillery business of the capital employed in the shop at Bellary, and his share of the profits thereof of a business and property at Kurnoul of certain houses and property at Bellary of a policy of assurance on his life for Rs. 6400 in the Madras Equitable Assurance Society and of ready money and outstanding debts, and money due to him on securities.

At the request of the Respondent, the Appellant, Charlotte Abraham, executed a power of attorney, appointing him her attorney to collect all the money, debts, goods, and effects due, owing, payable, or belonging to her as the widow of Matthew Abraham.

And for all purposes therein mentioned and she afterwards herself procured letters of administration of the effects of Matthew Abraham, which were granted to her by the Supreme Court at Madras, whereby she became the sole legal personal representative of Matthew Abraham in the Madras Presidency.

The Respondent, under the authority of the above power of attorney, took possession of the books, papers, money, and securities for money of Matthew Abraham, and collected and received the debts, money, stock, and all other property belonging and due to his estate. The Abkarry contract which was

held by Matthew Abraham, and was subsisting at the time of his death, as before stated, expired in the month of April, 1843.

Immediately upon the death of Matthew Abraham, the Respondent obtained permission from the Commissary-General to carry on the business of the Abkarry contract, and accordingly he entered into written engagement, dated the 22nd of July, 1842, to discharge the obligation of the Abkarry contract bond executed by his brother, Matthew Abraham, in the year 1842.

Upon the expiration of the contract in 1843, the Respondent obtained a renewal of the contract in his own name, and obtained further renewals thereof from year to year, up to the date of the suit hereinafter mentioned. The deposit which had been made by Matthew Abraham for the due fulfilment of his contract, and which remained lodged at the time of his death continued as the deposit upon the renewals of the contract to the Respondent up to the year 1848, when he withdrew that deposit and lodged a Bengal promissory note for Co.'s Rs. 5000.

The distillery business for the purpose of the Abkarry contract had, ever since the death of Matthew Abraham, been carried on upon the premises built by Matthew Abraham.

The Respondent, after the death of Matthew Abraham, continued to carry on the business of the shop in which he had been a partner with Matthew Abraham, employing the capital which was invested therein at the time of the death of Matthew Abraham. The Appellant, Daniel Vincent Abraham, was admitted for some time in the position of a partner, and drew some small share of the profits, but the Respondent, in the year 1851, kept the Appellant, Daniel Vincent Abraham, from the shop, and prevented him from receiving any share of the profits thereof; and since that year the Respondent had carried on the business of the shop alone, and possessed himself of all the profits arising therefrom.

English law a point of view, however, which, so far as the Respondent is concerned, seems to them to be excluded by the pleadings in the cause, the evidence on the part of the Respondent is insufficient, when weighed against the evidence on the other side, to establish a partnership according to that law.

Their Lordships, therefore, have come to the conclusion, that the decree of the Sudder Court cannot be maintained but, on the other hand, they are not prepared to go, to the full length to which the Judge of the Civil Court of Bellary has gone, by his decree. The Respondent no doubt stood in a fiduciary position though he may have been unconscious of the duty arising from his acts, he had, in effect, attorned to the Appellant, Charlotte Abraham, by accepting a power of attorney from her. That character, and the acquisitions under it, should have, been renounced before the Respondent asserted an interest adverse to that of his constituent.

such an assertion in one acting as agent is not prohibited on grounds of policy alone. It is in itself an unconscientious breach of duty to a principal. The Letters of administration were, indeed, taken out for a special object only; they were not strictly necessary, a certificate, would have sufficed. But they were not of a limited character.

There were assets in the local jurisdiction, and all parties concerned in interest were either consenting to or subsequently ratified, the authority delegated by the letters of administration. The administration related back to the death of Matthew Abraham the possession of the whole property, therefore, from the time of his death must be ascribed to the first Plaintiff, as the Defendant acting under his power could not claim adversely.

Their Lordships are by no means disposed to infringe upon the wise, and salutary rules which have been laid down as to the conduct of persons standing in confidential positions; but, on the other hand, they entirely agree with the Sudder Dewanny Adawlut in their estimate of the value of the Respondent's services.

The property in the Abkarry contract way, by reason of its special character, be said to have been in a great degree preserved to the family by him.

The evidence shows that none of the Plaintiffs were competent to the management of the concern. In all probability, but for the Respondent, the contract would have been lost to the family.

It is represented to have been the chief source of their income. It differs materially from an ordinary trading partnership. The selection of the contractor is influenced by considerations which might probably have caused the Respondent to be named as the successor to his brother in the contract.

The relationship of the Respondent to the family, the devotion of his time and labour to the augmentation of its wealth, the creation, as it were, of the profits of the Abkarry business, establish a great difference between this and the case of any ordinary agency.

In ordinary cases and under ordinary circumstances these services on the part of the Respondent would, no doubt, be sufficiently compensated by the provision in that behalf contained in the decree of the Civil Court, but in this case, their Lordships find it proved by the Plaintiff's first witness, that the Respondent on Matthew Abraham's death declared to him that he had worked like a slave in the Abkarry business, and was merely paid for his labour

But that for the future he would not do so unless he received an equal share with the others, meaning his brother's widow and two sons and the witness says that he soon afterwards mentioned this conversation to the widow. If the widow dissented from this view, she ought, as their Lordships think, to have communicated such dissent to the Respondent, but she never did so.

After her having so long availed herself of the Respondent's services, which she knew to be rendered on the faith of his receiving one-half the profits as a remuneration for those services, she and the other

parties interested in the estate could not, in their Lordships' opinion, be justly entitled to dispute the right of the Respondent to be remunerated to that extent.

Their Lordships, therefore, think, that it ought to have been declared by the decree that the Respondent was entitled to an equal share of the profits of the Abkarry contract accrued after the death of Matthew Abraham as a remuneration for his services in the execution of that contract.

Their Lordships think also that, having regard to the evidence to which they have last alluded, and to the Respondent having been permitted for so many years to carry on the Abkarry contracts without any dissent having been expressed to the terms stipulated for by him, the decree of the Civil Court has not dealt properly with the question of costs.

They are of opinion that, under the circumstances of the case, the costs, up to the hearing, ought not to have been given against the Respondent by the decree, but ought to have been reserved until the accounts were taken.

The benefit which may result to the estate may form a material ingredient in considering what ought ultimately to be done as to the costs, and the mode in which the Respondent may account under the decree may also influence that question.

The decree of the Civil Court having thus, in their Lordships' opinion, gone too far, their Lordships think that there should be no costs of the appeal to the Sudder Court or of this appeal.

Gopeekrist Gosain v/s Gungapersaud Gosain (1854)

Case was decided by Privy council in appeal.

In this appeal two important questions raised. One was question of fact. The other was question of law which was relevant not only to parties residing in Bengal but also to society at large among the natives of India.

Issue before the court was that whether property involved in benamee transaction was joint property.

In this case a wealthy native, Rogoram Gosain, employed as a Banian, at Calcutta. He purchased immovable property in the names of other than his own. Some of these purchases were made in the names of his sons, and some in the name of his son-in-law and of his brother.

It is very much the habit in India to make purchases in the names of others and from whatever cause or causes the practice may have arisen it has existed for a series of years, and these transactions are known as Benamee transactions.

Here there has been no evidence given that the Appellant had any separate property or that it was from his funds or that any part of the purchase-money was paid.

So the whole of the property must be considered as joint property.

In the case there is no question that all the money was provided by Rongoram Gosain that is indisputable.

I do not allude now to whether the money was the joint property of Rogoram Gosain and his brother. It is clear it was not the money of the individual in whose name the purchase was effected.

If the person in whose name the purchase was effected had been a stranger in blood, or only a distant relative, no question could have arisen he would have been prima facie a trustee. It is clear that in the case of a stranger the presumption is in favour of its being a benamee transaction, that is a trust.

But it is clear also that in this country, where the person in whose name the purchase is made is one for whom the party making the purchase was under an obligation to provide, the case is different and it is said that that ought to be deemed the law of India also, not because it is the law of England, but because it is founded on reason and the fitness of things.

The present case does not appear to be at all of a nature with those benamee transactions which are prohibited by the Regulations.

In making the purchase in the name of his eldest son, acted only in conformity to the general usage and custom of the country, against which the prohibitory enactment was never intended to apply.

On the whole, then, their Lordships feel bound respectfully to dissent from the judgment of the Supreme Court.

The dismissal of the Bill can not therefore stand there are no costs to be dealt with, the Bill having been dismissed without costs.

Their Lordships will declare that the purchase was a benamee purchase, and will also declare the party in whose name it was made was a trustee for the father, and that the property in question was part of the father's estate at the time of his death.

Justice Equity and good conscience.

Gokul Chand v Hukum Chandra Nath Lal.(1920-1921)

Present case was on the principle of justice equity and good conscience.

In this case issue was whether appellant could be joined as defendant for debt transaction arising from joint ancesrtal business.

In this case the appellant was in Indian Civil Service. He was an unseparated member of a joint Hindu family governed by the Mitakshra. The family carried on joint ancestral business as money-lenders. They gave hundis to the respondents in respect of a debt.

The appellant was not privy to the business. The respondents sued, upon the hundi making the appellant a defendant.

The appellant had passed examination in Indian Civil Service after seven years special educational training in England.

There was no evidence as to the source of the funds raised for that training.

Held

(1) that the appellant official salary was partible property of the joint family, since it resulted from a special educational training, and the appellant had not discharged the liability, upon him, of proving that that training was not at the expense of the joint family.

2) that the appellant was liable upon the hundis to the extent of his share in the joint family' property, including his official earnings, and that questions which, might arise with regard to property not partible on any ground and also as to statutory rules restricting the alienability of an official emoluments should be dealt with in execution proceedings.

In considering whether gains are partible there is no valid distinction between a direct use of the joint family funds and the gains by his efforts.

In present case the suit was instituted by the respondent firm against present appellant and his four-brothers to recover the sum of Rs. 7,200 upon four hundis given to the respondent firm.

Appellants were members of a joint Hindu family, which carried on an ancestral money-lending business in respect of which the hundis had been given.

The appellant by his written statement pleaded that he had no personal knowledge of the hundis, or anything in connection with them. And that he had never participated in the business of the family, and that even if the claim was proved there could be no personal decree against him. The respondents stated that the appellant's want of knowledge did not affect the respondent's rights, and that he was a member of a joint Hindu family with his father and brothers, and was personally liable.

It appeared that the appellant in his youth spent seven years in England for the purpose of a special educational training for the Indian Civil Service into which he had passed by examination. And that he held therein the post of a Joint Magistrate and was in receipt of salary.

Defences were rejected. Appeal was dismissed. Appellant was held liable.

Module 10

Constitutional History .

Morley -Minto Reforms And Indian council Act 1909.

Introduction

Lord Morley was Secretary of state for India and Lord Minto was Viceroy of India. Indian Council Act 1909 was result of their efforts made for bringing reforms. Their reforms were known as Morley-Minto reforms.

Previous Indian Council Act did not satisfy Indian leaders. Political situation developing in India required British authorities to secure moderate support of Indian National Congress .Mr.Gopal Krishna Gokhale, who was leader of moderate section, met Lord John Morley. He placed his views before Morley and convinced urgency of constitutional reforms.

Minto was in favour of constitutional reforms. He appointed committee to inquire. Committee submitted its report in Oct. 1906. British Parliament passed Indian Council Act 1909 on the basis of this report.

The Morley-Minto reforms had not introduced any significant change in the powers of the councils.

In fact, the Secretary of state frankly declared that he had absolutely no intention of introducing a Parliamentary form of Government. The form of government introduced after the revolt of 1857 remained unchanged even after the Morley-Minto reforms.

The only change was that Indians were made eligible to be appointed to high positions. Satyendra Prasad Sinha was the first Indian made as member of the Governor-General's executive council. Later he was made a governor of a province.

In 1911, he was presented in an imperial Darbar that was held at Delhi where British king, George V, and Queen were also present. The Darbar was also attended by Indian princes who displayed their loyalty to the British crown.

Two important announcements were made on the occasion. One was the annulment of the partition of Bengal made in 1905. Another was the shifting of the capital of British India from Calcutta to Delhi.

Indian Council Act 1909.

Act was enacted on the basis of Morley-Minto reforms.

Objects of Act.

Indian Council Act was enacted with following objects --

- I. to increase size of legislative council.
- II. to enlarge function of legislative council.
- III. to increase proportion of elected members.
- IV. to secure support of moderate section of Indian National Congress.

Provisions of Act 1909.

1. Act increased size of legislative council.

Numbers of members of legislative council of governor general were increased up to sixty. Legislative Council of Bengal, Bombay and Madras up to fifty. And legislative council of U.P. up to fifty.

Legislative Council was consisting of ex-officio members (governor and his councillors), nominated official members, nominated non-official members and elected members. Majority of non-official members was maintained.

2. Act authorised members of legislative council to discuss annual financial statement of government.

Act made provision empowering members to move resolution on annual financial statement, any matter of general public importance and to divide house on any matter related to them.

Act also authorised members to ask supplementary questions.

3. Act provided system of election.

Classes of electorates were, general electorates, Class electorates and special electorates. Landholders and professional classes were given special representation. Separate qualification for Muslims were prescribed. Provision was made for appointment of Non-official members.

Provision was made for separate communal electorates and for qualifications for Muslims. Qualifications were prescribed by regulations for candidates and votes.

4. Appointment of President.

Act made provision for appointment of president. Power to appoint president was conferred to Governor general, governor of Presidency and Lieutenant governor having executive council. President appointed by them was to act for them and was to preside over meeting in their absence.

5. Executive Council.

Governor general in council was empowered to establish executive council subject to approval of secretary of state in council. Indians were also eligible to be appointed to council.

Merits of Act.

Following were merits of Act --

I. Size of legislative council was increased as well as functions of central and provincial council were increased.

II. Act extended elective principles contained in Indian Council Act 1892.

III. Non official majority was provided in provincial legislative councils.

IV. Indians were made eligible to be appointed to executive council.

Act empowered members to discuss annual budget, to propose resolution on it and to divide house on it and to ask supplementary questions.

Demerits of Act .

I. Creation of separate electorates for Muslims which was against democratic principle.

II. There was no non official majority in central legislative assembly. Non official majority in provincial legislative councils was nominal and was not real.

III. Franchise provided was restricted in nature. Because few representatives were elected by system of indirect election and principle of nomination was retained.

IV. Act failed to establish responsible executive. Because real was with executive government. Legislature could not control it.

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Montague-Chelmsford Report and Government of India Act 1909 .

Edwin S Montague was Secretary for state of British Government. And Lord Chelmsford was Viceroy of India. Indian leaders aggravated demand for self government. In 1916 Indian National Congress demanded declaration of British Government's future policy about self government in India.

Indian Council Act 1909 failed to secure support of Indian National Congress. Due to first world war British government was in great need of Indian cooperation.

However British government realised Indian cooperation might be secured only after provincial autonomy was granted. Changes prevailing in country required constitutional changes.

All these circumstances created space for passing of another enactment. Lord Montague and viceroy Chelmsford toured India with a view to Indian problems. They studied Indian circumstances and made report. This Report was called Montague Chelmsford report.

•Government of India Act 1909.

On the basis of this report Government of India Bill 1909 was drafted and British parliament enacted Government of India Act 1909.

Objects of Government of India Act.

Government of India Act was enacted with following objects.

I. to provide Indian association in administration.

II. to establish responsible government in India or at once but through successive stages.

III. to develop self governing institutions in India.

IV. to provide independence to provinces in provincial matters.

Features of the Act.

I. Act started process of establishing responsible government in India.

II. Provinces were provided independence in provincial matters.

III. Dyarchy was introduced in provinces.

IV. Act provided developed self governing institutions in India.

Provisions of Act

1. Home Government.

Home Government was body in the form of the Secretary of state in Council. It was created by British Government to control Indian affairs. Secretary of state was authorised to give effect to transferred

subject in provinces. Transferred subjects were governed by Governor with the aid of ministers who were responsible to provincial legislatures.

Some functions of secretary of state were transferred to High Commissioner appointed under present Act.

2. Central Executive.

Governor general in council was central executive appointed by his Majesty and to whom executive powers were transferred. He was representative of king. He was to carry out its functions with advice of council. But he could overrule decision in case decision was harmful to peace and tranquillity of country.

He could summon meeting of council and distribute work to the member of council. He could also summon and dissolve central legislature.

His sanction was necessary to introduce certain subjects in legislature.

3. Setting up of bicameral legislature.

Government of India Act set up bicameral central legislature consisting of two Houses - Council of State (upper house) and Legislative Assembly (lower house)

Central legislature could make laws on the subject included in central subject and also on the provincial subject but with previous sanction of governor general. However it could not make law altering, amending or repealing Act enacted by British parliament for India.

4. Provincial Executive (Dyarchy)

Act made provision for establishment of dyarchy in provinces. It was form/system of Government for provinces. Dyarchy introduced in provinces was type of double government wherein subjects of administrations were divided into two categories - central subjects to be administered by Central government and provincial subjects to be administered by provincial government.

The matters of all India importance were included in central list. Provincial subjects were transferred subjects to be administered by Governor with the aid of his ministers who were responsible to provincial legislatures and reserved subjects to be administered by Governor with the aid of executive councillors who were responsible to, through Governor general, secretary of state for India.

5. Communal Representation

Act provided separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.

6. Franchise.

Act granted franchise to a limited number of people on the basis of property, tax or education.

7. Public service commission.

Act established Central Public Service Commission in 1926 for recruiting civil servants.

- Shortcomings of Act.

1. Dyarchy system was defective. Division of subjects of administration was not clear.

2. Provincial autonomy was not satisfactory. Central government was vested wide powers to control provincial governments.

3. Legislature was not able to control executive (Governor general in council). Because it was not responsible to legislature but to secretary of state for India.

4. System of Election.

Act contained several objectionable provisions relating to election system. Right to vote was based on certain property qualifications. Persons paying land revenue, income tax, Municipal taxes were entitled to vote.

5. Act provided communal and special representation to certain classes of persons. On this ground also Indian leaders strongly criticized Act.

Simon Commission Report .

Simon Commission was constituted in 1927 by British Government under the leadership of Sir John Simon. Its object was to consider the functioning of the Constitutional system in India and to suggest changes.

It was Indian Statutory Commission consisting of four conservatives, two Labourites and one liberal member from the British Parliament.

Composition of commission criticised by Indian National Congress and Muslim League, led by Mohammed Ali Jinnah. Because Indians were excluded. The members of the commission were all Englishmen and not a single Indian was included in it.

The government showed no inclination of accepting the demand for Swaraj. The composition of the commission confirmed the fears of the Indian people. The appointment of the commission created a wave of protest all over the country.

In 1927, the annual session of the Congress was held at Madras. It decided to boycott the commission. The Muslim League also decided to boycott the commission.

The commission arrived in India on 3 February 1928. On that day, the entire country observed a hartal. In the afternoon on that day, meetings were held all over the country to condemn the appointment of the commission and to declare that the people of India would have nothing to do with it. There was

firing at demonstrators in Madras and lathi charges at many places. The commission faced massive protest, demonstrations and hartals wherever it went.

The central legislative assembly decided by a majority that it would have nothing to do with the commission. All over the country the cry of 'Simon Go Back' was raised.

The police resorted to repressive measures. Thousands of people were beaten up. It was during these demonstrations that the great leader Lala Lajpat Rai, who was popularly known as Sher-e-Punjab, was severely assaulted by the police. He died of the injuries inflicted on him by the police.

In Lucknow, Nehru and Govind Ballabh Pant were those who suffered blows of police lathis. The lathi blows crippled Govind Ballabh Pant for life.

In the agitation against the Simon commission, the Indian people once again showed their unity and determination for freedom. They now prepared themselves for a bigger struggle. The congress session at Madras, which was presided over by Dr M.A. Ansari, had passed a resolution which declared the attainment of complete independence as the goal of the Indian people. The resolution was moved by the Nehru and supported by S. Satyamurthy.

Meanwhile an organisation called the Indian Independence league had been formed to press the demand for complete independence. The league was led by a number of important leaders like Jawaharlal Nehru, Subhas Chandra Bose, Srinivas Iyenger, Satyamurthy and Sarat Chandra Bose, elder brother of Subhas Chandra Bose.

In December 1928, the congress met at Calcutta under the presidentship of Motilal Nehru. At this session, Jawaharlal Nehru, Subhas Chandra Bose and many others pressed the congress to demand complete independence. The congress, however, passed a resolution demanding dominion status. This meant less than complete independence. But it was declared that if the dominion status was not granted within one year, the congress would demand complete independence and would launch a mass movement to achieve it. The Indian independence league continued to rally the people behind the demand for complete independence throughout 1929. The mood of the people throughout the country had changed by the time the congress held its next annual session.

Recommendations of Simon Commission

Provincial Dyarchy should be abolished and responsibilities of ministers to the provincial legislatures should be enlarged.

The special power for the safeguarding of province and the protection of minorities comes under the Governor powers.

The representation of provinces and other areas constituted on the basis of population at the Federal Assembly (at the Centre).

Recommended Dominion Status for Burma and should be provided its own Constitution. Commission also reviewed to the the Government of India Act 1919.

Recommended the representation of Council of State could not be chosen on the basis of Direct Election. But by Indirect Election through Provincial Council which is more or less just like Modern day election procedure as Proportional Representation. Indian National Congress and a faction of the Muslim League, led by Mohammed Ali Jinnah, decided to boycott the Commission.

Upon arrival in Bombay on 3 February 1928, the Commission was met by protests. In London, the London Branch of the Indian National Congress planned a demonstration upon the return of the Commission.

The Simon Report was met with disappointment and condemnation throughout India. The Indian National Congress mistrusted the findings of the Commission and the Congress boycotted the Report.

Mahatma Gandhi subsequently started the Civil Disobedience Movement. Mohammed Ali Jinnah made it clear that the report was unacceptable to Hindus, Muslims and Indian nationalists.

The Muslims considered the Report to be reactionary. Executive Board of the All-India Muslim Conference called the Report 'unacceptable'. Prominent members of the Legislative Assembly of India , Mian Mohammed Shah Nawaz, Gaya Prasad Singh, Dr. Ziauddin and M. R. Jayakar criticized it as well. Even the Viceroy, Lord Irwin, made it clear that the Report had no chance of public acceptance in India.

In London, the Workers' Welfare League of India and the London Branch of the Indian National Congress organized a demonstration against the Commission. Many of the demonstrators were removed by the police.

Shapurji Saklatvala, who led the demonstration, raised the issue in Parliament. But he was informed that the Home Secretary, Joynson Hicks, had sanctioned this police operation.

In the wake of the Report, a series of Round Table Conferences were set up from 1930 to 1932. The outcome of the Commission and the Conferences was the Government of India Act 1935. The Act ended the dyarchy and direct elections were introduced for the first time. Sind was separated from Bombay, Orissa was separated from Bihar and Burma was separated from India. Provincial assemblies were to include more elected Indian representatives, who could lead majorities and form governments.

However, governors retained discretionary powers regarding summoning of legislatures, giving assent to bills and administering certain special regions.

Conclusion

Simon Commission was constituted under the leadership of Sir John Simon to look into the functioning of the constitutional system in India and suggest changes. It was officially known as 'Indian Statutory Commission' and consists of four conservative, two Labourites and one liberal member from the British Parliament. Commission did not have a single Indian member. Hence, at their arrival they greeted with

the slogan 'Go back Simon'. In order to overcome the protest, the viceroy, Lord Irwin announce an offer 'dominion status' for India in October AD 1929 and a Round Table Conference to discuss a future constitution.

Nehru Report 1928.

In 1928, All Party Conference was held at Bombay under presidentship of Dr. Ansari. A small committee presided over by Motilal Nehru was authorised to draft constitution for British India. Committee submitted its report known as Nehru Report.

Recommendations of Nehru Report were:

- Dominion Status to India.
- Executive to be made responsible to legislature.
- India to be federation.
- Provincial autonomy.
- Protection of interest of minorities.

In 1928 Nehru Report was considered by All Party convention. And report was provisionally accepted with certain changes by Mr. Jinnah on behalf of Muslim League. But in 1929 report was rejected. Mr. Jinnah put forward fourteen points as conditions acceptable by league.

In Calcutta Congress session Nehru Report was considered and resolution was passed that British must confer dominion status to India by the end of 1929. But British ignored. In Dec. 1929 at annual session of Congress at Lahore another resolution for complete independence was passed.

The report took inspiration from the American bill of rights which laid to the foundation of Fundamental Rights provision in the Indian Constitution.

Communal Award and Poona Pact.

Mahatma Gandhi attended Second Round Table Conference on 2 December 1931. He emphasized on immediate responsible government for India. But no due attention was paid to his demand.

Mahatma Gandhi was dissatisfied and returned to India on 28 Dec. 1931 and renewed civil disobedience movement. Again several leaders were arrested including Mahatma Gandhi and Jawaharlal Nehru.

Indian National Congress was declared illegal. Repressive measures failed to prevent people from taking part in movement. The British declared communal award in 1932.

Communal Award provided electorates for Hindu, Harijan, and Muslim.

Poona Pact(24 September 1932)

On account of communal award Mahatma Gandhi was shocked. He opposed it and started fasting unto death. However Pandit Madam Mohan, Rajendra Prasad, Dr. Ambedkar talked with him and prepared formula /agreement. This was called poona pact.

Main Provisions of the Pact:

- The Pact abandoned separate electorates for the depressed classes. But 18% seats were reserved for the depressed classes in central legislature.
- 148 seats were reserved for depressed classes in provincial legislatures. However joint electorate was retained.
- Adequate representation was given to depressed classes in local bodies and public services.
- Adequate sum was provided for promoting literacy among depressed classes.
- Representation in central legislature was given on principles of joint electorate.
- No disability was attached to any one on the ground that he is a member of the Depressed Classes in regard to any election to local bodies or appointment to the public services.

The civil disobedience movement.

In Calcutta Congress session Nehru Report was considered and resolution was passed that British must confer dominion status to India by the end of 1929. But British ignored. In Dec. 1929 at annual session of Congress at Lahore another resolution for complete independence was passed. In 1930 the Congress decided to launch another civil disobedience movement.

Mahatma Gandhi was authorised by congress working to launch civil disobedience movement. It included non violent Satyagraha, boycott of schools and colleges, imported goods, breaking the salt laws, non payment of taxes etc.

Mahatma Gandhi started movement on 12 March 1930 with Dandi March. He reached Dandi and violated salt laws. Several leaders including Mahatma Gandhi and Jawaharlal Nehru were arrested due their participation in civil disobedience. British government tried to suppress but it failed.

British government became ready for conciliation. In 1931 Mahatma Gandhi and Jawaharlal Nehru were released

Mahatma Gandhi and Lord Irwin made pact called Gandhi -Irwin pact On 4 march 1931 and civil disobedience movement was called off.

The incident was recorded by American journalist Web Miller. It prompted an international outcry against British policy in India.

India's independence was finally granted in August 1947. Gandhi was assassinated by a Hindu extremist less than six months later.

Government of India Act, 1935.

Main features of Act .

The Government of India Act was enacted by British Government . Following were features of Act --

I. Establishment of Dyarchy at centre.

Act introduced dyarchy at centre and abolished dyarchy from provinces. Federal subjects were divided into reserved subjects to be administered by Governor general with the help of executive council and transferred subjects to be administered by Governor general and council with the aid and advice of council of ministers.

II. Powers of governor general.

Governor general was very powerful authority. Act conferred following types of powers to Governor -

a) powers to be exercised on individual judgement .In this case he was not bound by advice of ministers.

b) powers to be exercised at his discretion. In this case he could exercise powers without consulting ministers.

c) powers to be exercised on advice of ministers.

III. Federal legislature /Central Legislature.

Act made provision for establishment of Federal legislature. It was consisting of king (represented by Governor general), Council of State and Federal assembly. It could make laws on the subject included in federal list and concurrent list.

IV. Federal Court.

Act made provision for federal court. It was consisting of chief justice and judges as deemed necessary and appointed by British crown. It had jurisdiction over federation, provinces and federal state.

It had also appellate and advisory jurisdiction.

V. Establishment of All India federation.

All-India Federation was consisting of British India, chief commissioners' provinces and Indian States. Accession to federation was optional and was on executing instrument of accession by joining State. In it State was to mention extent of surrender of its authority to federation.

Act contained characteristics of Federal constitution for federation.

VI. Provincial autonomy/ responsible government.

Act provided more autonomy to provinces. Governor was conferred certain powers, which he could exercise without consulting ministers. Ministers had control over government department.

Governor had special responsibilities to be discharged on individual judgement. So Act established responsible government.

VI. Home Government.

Act abolished Indian Council. And provision was made for appointment of advisor by secretary of states for India.

Secretary of state had control over important subjects like defence foreign affairs etc. He was to provide information to British parliament relating to Indian affairs.

VII. It introduced bicameral legislature. The legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house).

VIII. Act further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).

IX. It extended franchise. About 10 per cent of the total population got the voting right.

X. It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

Government of India Act 1935 marks a point in the history of constitutional development in India.

Opposition to Government of India Act 1935.

Govt of India Act 1935 is opposed for below reasons.

Govt of India Act, 1919 did not perform properly for India. Especially when dyarchy at the provinces was established.

Performance of the Act to be examined after 10 years' time, and the report to be sent to British parliament on the further improvement.

Simon commission was appointed by British Government mainly because of political change in Britain. And the commission didn't contain a single Indian. It is historically called All white commission.

There was no references to the All-India Muslim League participation

The failure of the Third Round Table Conference.

Britishers were slow in accepting demands of Indian leader.

Defects of government of India Act 1935.

The following were the main defects of the Government of India Act of 1935:

I. The autonomy introduced at provincial level was restricted and limited. The provincial governors retained important powers ahead of elected representatives.

II. The British authorities retained the right to suspend an elected government.

III. The Act did not make any reference of dominion status to India. There was no mention of Independence of India and the British kept all the controls of the government with them.

IV. The Indians had limited right to vote with separate communal electorates. The British made sure that the Congress party would not get a chance to rule the government.
