

## **Complete Indian Legal History from year 1600 to 1935 Part 1 to last Part 38**

Complete Indian Legal History from year 1600 to 1935  
Part 1 to last Part 38

The Indian Legal history period is between 1600 to 1935.

Date of first part - 30th January 2010  
Date of last part - 3rd January 2011

Link for Each part of Indian Legal history.

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## Part 38 - Last Part – Indian Legal history –Government of India Act 1935

now the Indian Legal History – Part One – East India Company Year 1600

A little knowledge, it is said, is a dangerous thing.

Reality Views by sm -

Legal history is not created or made by one person, it is a never ending story.

Legal history is a mirror of society.

If someone wants to understand the nation and the problems faced by the nation one has to look back at the past legal history, what happened in the past?

Someone will say I should write the legal history of last 1000 or more years, but it is not useful for me or anyone, as we do not follow any of those laws.

That is one reason I have to choose one date from which to write the history of Indian Legal system.

Today the present Indian legal system as well as laws which we are using is the gift of East India Company and British king, the rulers of India.

History is very vast, but I will try to cover in short all the important events of Indian legal

History, First I have decided to write about the constitution of India, but then realized that if someone does not know Legal History of India, he will not understand the current situation and problems which India is facing .For all our problems root cause is our laws.

Indian Region has a history of more than 5000 years, but for us Indians real legal history started with the arrival of East India Company in the year 1600.

Before arrival of British, the India was divided into different countries , each king ruled and made laws which he liked and felt are good and right.

As the king died or the king lost the war with neighbor king the rules of that kingdom were changed

Our present judicial system and laws is a gift of British Kings.

Let's start to understand and know the Legal History of India.

While writing this I will clarify many terms also.

East Indies - refer to nations - India, Pakistan, Bangladesh, Myanmar, Nepal, Sri Lanka, the Maldives and also Thailand, Cambodia, Laos, Brunei, Singapore, the Philippines, East Timor, Malaysia and Indonesia.

Dutch-held colonies in the area were known as the Dutch East Indies

Spanish-held colonies were known as the Spanish East Indies

Caribbean is called the "West Indies

The east India Company was formed to do business with the East Indies.

East India Company is also known as East India Trading Company, English East India Company then British East India Company.

The oldest among several similarly formed European East India Companies, the Company was granted an English Royal Charter, under the name Governor and Company of Merchants of London Trading into the East Indies, by Elizabeth I on 31 December 1600

The charter awarded the newly formed company, for a period of fifteen years, a monopoly of trade (known today as a patent) with all countries to the east of the Cape of Good Hope and to the west of the Straits of Magellan. Sir James Lancaster commanded the first East India Company voyage in 1601

As per this charter no other company was allowed to do business with this geographic area with out the permission and license from the company.

The charter awarded the judicial powers to the company to make laws, to punish servants etc so that the functioning of company does not stop and company does not face losses.

The company was not allowed to make any laws which may go against the English laws or customs. The company was supposed to work in democratic manner.

During this time company aim was to do business and make profits, charter does not mention about the war and controlling other nations or lands.

This is the beginning, development of Indian legislative system. For Indians this phase is very important as this is beginning of formation of India as well as our legal system.

The charter gave the legislative power to the company; company found that the limited powers were useless on the long voyages to control servants and maintain law and order on ships.

To solve this problem company invoked the crowns prerogative and the commander in chief got the power to give death punishment to servants by using the law of martial.

On 24th January 1601 Queen Elizabeth gave first time this right to commander in chief.

Using this power first time on 28th Feb. 1616 at Surat Port, person named as Gregory killed an Englishman and commander in chief gave his death sentence.

**PREROGATIVE** – meaning in English law. The royal prerogative is an arbitrary power vested in the executive to do good and not evil.

With the charter of 1600 the company landed at the Surat Port during the Jehangirs reign to do business of Import and Export between the East Indies and England.

Before the arrival of East India Company in Surat, the Portuguese already established their business at Surat.

After arrival of East India Company at Surat, the company and Portuguese fought with each other and in the year 1612 the company won and established their first factory at Surat with the permission of the local Moghul Governor.

Factory was a place where company employees stayed, a big warehouse for storage of goods and different offices.

The company was running its business democratic way and as per the powers given to them by the charter.

Later company realized that to establish there business at Surat permanently they need permanent trading facilities directly from the Moghul Emperor, with this

view in the year

1615, James I sent an ambassador, Sir Thomas Roe to the Moghul Emperor and the Emperor issued the FARMAN OR FIRMAN , granting certain facilities powers to the company, Englishmen. Like they were allowed to hire a place and established the factory.

All the fights between Englishmen were solved by the company head the head was known as Governor or President.

In the year 1687, the seat or office of the President was transferred to Bombay, and slowly Surat lost its importance.

Later in future Madras, Calcutta and Bombay came to known as the Presidency Towns and the territories around these towns were known as Mofussil.

mofussil areas: - n. [Urdu] outlying districts, away from urban areas or big city centres

### **Surat Factory and administration –**

The factory got the administrative as well as judicial set up.

The president and council were appointed by the company who hold the administrative power.

All decisions in the council meeting were taken by a majority of votes.

The president got one vote only and no right to overrule the members.

Its very interesting to know that this time at Surat there was no special law, or territory laws were present neither laws regarding succession, marriage or divorce or inheritance,  
all the laws were derived from religion ,  
for Muslim their own laws ,  
for Hindus their own laws, etc.

But regarding criminal matters only Muslim law was followed.

There was no uniform law among the people.

Englishmen got permission from the Moghul Emperor that they should be allowed to follow their own laws inside their factory and on their own people which they got.

This way from the beginning Englishmen here in East Indies, surat followed their own british laws.

As per Moghul orders the fights between local people and English people came

under local jurisdiction, tribunals at Surat.

That time local justice system was corrupt and who got the more money won the case. But Englishmen rarely went to local courts; they themselves administered all justice at Surat.

## **Know the Indian Legal History – Part Two -**

When Company started its business with East India, that time also in Europe, British, Spanish, Dutch and Portugal all were fighting with each other regarding the business, as well as to keep control over the sea.

I am not going into those wars and those details.  
Final result is only important, who won the war.

In early days company got only business factories or stations at various places without territorial sovereignty.

Company first started business at Surat, Agra, Ahmadabad, and Broach, and Surat factory become the main head office.

In the year 1639 first Time Company got the power and right to mint money and govern Madras on condition that half the customs and revenues of port should be paid to the grantor.

In the year 1658 company paid 380 pagodas as king's shares. Later In 1672 the amount was increased to 1,200 pagodas and Company first time got the full unrestricted power and control over Madras including justice . Later company added more villages with the same rights.

In 1752, company got full control over Madras and that remaining India was controlled by Muslim or Hindu kings.

In 1698 the Company purchased at the cost of 1,200 rupees a year the right of zamindar over the three villages of Sutanati, Calcutta, and Govindpur. The fortified factory was named Fort William in honor of the King, and in 1700 became the seat of a presidency.

By giving Bribe, company got complete control over all three villages including Hindu as well as Muslim people, indirectly company became owner, ruler of those villages.



Like this company got full power at their 3 towns Madras, Bombay, and Calcutta which were came to be known as Presidency Towns.

### **With Presidency Towns our Judicial History started to grow.**

In the beginning at Presidency towns, the judicial system was their only to administer the Englishmen, and as towns made progress population of Hindu and Muslim people grew.

And company has to make the adjustments, changes to administer these people in their English Legal System.

### **Presidency Town Madras Judiciary –**

1. From 1639 to 1665 Judiciary Elementary State
2. From 1665 to 1686 – Court of Governor and Council was established
3. From 1686 to 1726 - Admiralty Court and Mayors Court was established.

### **Period One - From 1639 to 1665 Judiciary Elementary State –**

Madras was founded by Francis Day in 1639 who got grant from Hindu Raja and company build first Fort, factory which is known as Fort st.George.

Near the fort there was a village Madraspatnam on which also company got full power and right .this town later became Black Town and Inside factory town where British lived became white town and these both towns came to be known as Madras.

Madras was subordinate to Surat that time.  
Head of Madras Town was called as an Agent.  
Madras is the first Presidency Town of company.

During this period company agent did not do anything to change the justice system of black village, headman of black village did the justice for the black village.

No formal procedure was their, very few cases are reported but very interesting case happened in 1644 .

A sergeant Bradford Killed a native from Black town and company agent did not try him and but they gave the case to the black town Head and who found that death is caused by Accident .

That time normally Agent referred the cases as per importance to the headman or the Raja or sent the report to the England regarding criminal or serious crimes.

## **Period Two - From 1665 to 1686 – Court of Governor and Council was established**

Charter of 1661 gave judicial power to the Governor and Council not to the Agent. To try serious cases like murder agent was not entitled and he referred those cases to England, but in the Year 1665 Company made changes and the agent of Madras became the Governor of Madras.

So he can use all the powers given by the charter of 1661 which became effective in black town as well as white town. That is Madras.

In the year 1665 first jury trial was held with the help of grand and petty juries which involved six Englishmen and five Portuguese none of them was studied in law.

So quality of law and justice and procedure was poor, the Madras Governor informed the company head office in England regarding this but company did not send any lawyer to Madras from England.

That time also in criminal trials, the accused has to wait long to get their trial started as governor and Council was not aware about English Law so they always waited, consulted to the Company Head office which was in the England.

### **On record there are cases –**

**One Englishman killed other Englishman and the accused has to stay in jail for 31 months, without trial as Governor consulted the case to England Head office.**

The governor and council of Madras were afraid that they may commit mistake regarding English law or trial and other reasons, the problems started to grow in Madras Presidency and people started to think that reform was needed.

In 1678 Governor decided to hold weekly two days court to try all the cases as per English Law with the help of Jury of 12 men.

**This court was designated as High Court of Judicature and was inaugurated on March 27, 1678.**

After this choultry Court was also reorganized, choultry court – village head administered Justice.

After reorganization company servants took the charge, mint master, customer or pay master and presence of two was compulsory they hold the court 2 times weekly and tried matters upto 50 pagodas.

**Pagoda was a gold coin valuing 3 rupees.**

All the appeals went to Governor and Jury, this way first time a hierarchy of court was established in Madras.

## **Third Period - 3. From 1686 to 1726 - Admiralty Court and Mayors**

## **Court was established at Madras**

On August 9 1683, Charles II granted charter to the company to establish the courts which was to consist of person learned in the Civil law and two merchants appointed by the company.

The court got the power to hear and try the cases related with the mercantile, maritime, trespass, injury and wrongs etc.

Again on April 12, 1686 Charles II issued a new charter with same provisions. In 1683 mercantile law was not fixed but it was based on customs of merchants and Roman law not common law of England.

The chief judge of the admiralty Court was known as the Judge –Advocate. After this charter on 10th July 1686 in Madras a Court of Admiralty was started which was consisted of three civil servants.

In 1687 company sent from England Sir John Biggs a professional lawyer learned in civil law to act as the judge advocate of Admiralty Court.

After this Governor and Council stopped to use their Judicial Functions. And admiralty Court started to give justice in all cases civil, criminal as well as maritime. The court used Jury in criminal cases and not in the civil cases. Importance - First time in India a professional lawyer came who was studied in civil law and most important thing is Executive gave up Judicial Function. Executive means Governor and his Council.

Sir Biggs Died in 1689. And Governor again took the charge of judicial function. Governor became the judge advocate. And one Hindu and one Armenian were selected to assist the admiralty court regarding respective communities.

In 1692 Company sent John Dolben as new judge advocate and in 1694 he was dismissed on the charge of taking bribes.

Then William Fraser a civil servant became the Judge advocate .

In 1696 company directed that members of the council should in succession serve as the judge advocate .

After Fraser , a merchant was appointed as judge advocate later he resigned and no one was ready to become the judge advocate, so company made the court registrar , judge advocate He left for England in 1704 and it was decided that office should remain vacant . After 1704 admiralty court ceased to sit on regular basis.

### Interesting case –

In 1694 company brought a case suit against Elihu Yale the ex- governor of Madras who extorted 50000 Rupees from merchants.

Beginning of Corruption by Executive.

So it is our tradition and religion to do corruption in India from olden times.

*FEBRUARY 2010*

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### Indian Legal History Part 3 - 1688 - Madras Mayors Court –

Indian Legal History Part 3 - 1688 - Madras Mayors Court –  
Reality Views by sm –

At that time in England there they got London Corporation and they got London mayors court, as per the British Law that time Municipal corporations enjoyed the judicial powers also. Company issued the charter and started Madras Corporation utilizing the powers given by British Crown. In the year 1687 company established Madras Corporation and Mayors Court was the part of this corporation.

In the year 1686 Madras government levied a house tax on the Madras city population to repair the city wall, but people of Madras, local people did not pay the tax and company faced problems and difficulties to collect the tax. After this company decided that to make the tax collection easy, a body should be formed consisting of English men as well as local Indian population so it will become easy for the Company officials to collect the tax. The corporation came into existence on September, 29, 1688 which consisted of a

Mayor, 12 Aldermen and from 60 to 120 Burgesses. It was decided that every year new Mayor will be elected from Aldermen by aldermen and burgesses and retiring Mayor can be reelected by them. The aldermen and Burgesses got the power to remove the Mayor if he is unable to perform his duties.

Only Englishman can become the Mayor. The Aldermen hold the office as long as they stayed in Madras city. Indirectly they hold the office for lifelong. Mayor and Burgesses hold the power to remove the Aldermen from office also if he did not perform well.

Among the Aldermen minimum 3 were required to be British servants of the company and other 9 can belong to any nationality or religion.

The first 12 Aldermen were as follows –

Englishmen	–	3
Hindus	–	3
Frenchman	–	1
Portuguese	–	2
Jews and Armenians	–	3

The charter appointed 29 Burgesses and then remaining Burgesses were appointed by the Mayor and Aldermen.

Among the first 60 Burgesses, the caste heads were selected as the Burgesses. This was the nature of First Corporation.

The Mayor and the 3 senior Aldermen were to be the Justices of the peace. The Mayor and Aldermen were to form a Court of record which was authorized to try civil as well as criminal cases.

**This court was known as Mayors Court.**

The Mayors court was authorized to give following punishments. Fine, amercement, imprisonment and corporal punishment. The convicted persons got right to file appeal at the Admiralty court. As Mayor and Aldermen did not have legal knowledge the provision was made for the appointment of the Recorder of the court. He helped the Mayor regarding the cases and he also got the power to vote just like Aldermen.

The recorder of the court was required to be skillful in the law as well as the servant of the company. **The charter appointed the Judge Advocate Sir Biggs as the first Recorder.**

Only in the year 1712 the court got power to give death sentence to native people. The Mayor Court did not follow uniform punishment for the same crime it depend on the judges discretion for this the reason was that the Mayor and his team did not have any legal knowledge. Sir Biggs got the experience of working as a recorder in the London but here in Madras the problem was that Sir Biggs sat in the Admiralty Court as Judge Advocate where appeals from the Mayors Court were went. But company ignored this fact. After the death of Sir Biggs no Recorder was appointed. Like this in the period of 1686 to 1726 in Madras city 3 Courts functioned. Mayors Court, Choultry Court and Admiralty Court. After 1704, Governor and Council heard the appeals from the Mayors court as Admiralty court stop to function.

In this period also the criminals were so long kept in jails that even people forgot the crimes. Justice system was very slow and no one bothered. The capital punishment was given by Hanging. Robbery was punished with Death. Witchcraft was punished with fine and pillory.

**Meaning of the words –**  
Alderman –

1. A member of the municipal legislative body in a town or city in many jurisdictions.
2. A member of the higher branch of the municipal or borough council in England and Ireland before 1974.
3. one of the senior members of a local council, elected by other councilors

## Burgesses

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

### Administration of Bombay – Legal system of Bombay 1668 – 1726 – Part 4

Administration of Bombay – Legal system of Bombay 1668 – 1726 – Part 4  
Indian Legal History – Part Four  
Reality Views by sm -

1. In the year 1534 Portugal first time got the Island of Bombay by cession from the King of Gujarat, Sultan Bahadur. Bombay was controlled by them for more than a century.  
2. When King Charles II of England began his reign, the Emperor Aurungzebe was at the height of his power in India.  
3. in Surat Company occupied merely the position of one of the big trading houses of the city which was controlled by Aurungzebe.

4. In the year 1661 Portuguese King Alfonsus VI transferred the Island of Bombay to Charles II as a gift on the marriage of his sister Princess Catherine with the British King. That time Bombay was a poor place and population of Bombay was just 10 000, Bombay was a just small fishing, neglected Island town.  
5. Later Charles II transferred Island of Bombay to the East India Company in year 1668 for annual rent of Ten pounds.  
6. Charles II gave charter to the company to administer the Island of Bombay with full powers and jurisdiction.  
7. The company was authorized to make the laws on the basis of Laws of England.

8. Thus with the charter of 1668 , the status of East India company started to change with this charter the trading company started its journey towards becoming a territorial sovereign .

9. Thus Bombay came under the Surat Presidency; The Governor of Surat factory was the ex-officio Governor of Bombay.

10. Gerald Aungier the Governor of Surat factory led the plans of judicial system in Bombay, he was the founder of Bombay. With his effort in the year 1670 in Bombay first judicial system was established.

11. Bombay was divided into two divisions. First Division – comprised Bombay, Mazagaon and Girgaon and 2nd division Mahim, Parel , Sion and Worli and in each division a court consisting of five judges was started with English person as the head of each Court and Indians were also appointed as the judges .

12. Ten Thousand Population - 10 Judges

13. 1 Thousand Population – One Judge

14. Today what is situation in India ?

15. This courts quarterly submitted copies to the Deputy Governors office which were to constitute a superior court.

16. From 1670 – 1672 legal system was very elementary. No one was lawyer .

17. In the year 1672 legal system was reformed and George Wilcox became judge . The court was to have jurisdiction in all cases ,civil ,criminal .

18. The court sit once a week and tried all civil cases with the help of Jury.

19. Provisions were made for the speedy trials and quick decisions by the court .

20. A fee of 5 percent was charged on each case which court tried.

21. For administration of criminal justice .Bombay was divided into 4 divisions ,section

- Bombay
- Mahim
- Mazagaon
- Sion

22. In each section ,An English person was appointed as a justice of peace . He held preliminary examination of the witnesses against an accused and made a record which he sent to the Court which sat once a month to try criminal cases with the help of Jury.

23. The judge was given salary of 2000 Rupees a year . But company did not pay salary to the judge Wilcox and further company started to reduce the salary of judges, so judges



will never go against the company top officials. Executives.  
 24. Reduced Salary – Reduces status  
 25. This time civil case was decided in 10 to 12 days  
 26. Justice was very cheap .  
 27. Debtors were kept in jail until they paid their debt.  
 28. The law was so strict that even dead body of debtor was kept in jail until relatives paid the debt, this is the reported case of company employee.  
 29. Jury would be consisted of 12 Englishmen  
 30. In one criminal case a person accused of witchcraft was sentenced to death  
 31. In the year 1683 the company judicial system came to an end because of Keigwins rebellion on the Bombay Island and in the year 1684 the Keigwins rebels surrendered the Island to the company .  
 32. Today it is not important for Indians to know the details of this rebels and their story.

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### **Indian Legal History – Administration of Bombay 1684 to 1726 - Part 5**

Indian Legal History – Administration of Bombay 1684 to 1726 - Part 5  
 Reality Views by sm -

1. In the year 1684 the East India company sent Dr. John from England to Bombay.
2. Dr. John was expert in civil law.
3. Under the charter of 1683, company established Admiralty Court in Bombay which took cognizance of all civil as well as criminal matters.
4. That time Dr. St. John took the evidence against the Governor child and this made Governor child upset and Governor did not believe the theory of equality before the law .He felt offended and did not like the judicial independence so in the year 1685, he reduced the powers of this court and limited it to try only

maritime and admiralty matters.

5. And a new court was established in Bombay called as King's Bench of the common pleas. And person named as Vaux became judge who was not aware about law.

6. With this new court, both courts started to fight with each other regarding the jurisdiction of the court cases.

7. As Dr.St.John was very liberal person and believed in equality before law, the executives who thought judiciary is under them did not like Dr. John, so in the year 1687 Executives Governor, dismissed the Dr.John from his job of judge.

8. This time the persons who were obedient to the Executive and the governor were appointed as judge, and executives did not like persons like Dr. John who thought of equality before the law.

9. In the 1688, Vaux became Judge advocate by breaking the charter of 1683 which said that Judge advocate should be learned in civil law and Vaux never learned any kind of law, but he knew how to keep executives happy.

10. In the year 1690 Bombay was attacked by the Moghul Admiral Siddi.

11. After this attack the judicial system of Bombay came to an end. for the period of 1690 to 1718

12. After the gap of 30 years in the year 1718, March 25 again company started the court in Bombay which consisted of chief justice and 9 judges , 5 were British and 4 Indian judges

13. The court handled all cases, followed laws of England and tried to pay attention to the caste and customs of each religion also.

14. The court work as registration house also for the sale of immoveable property and charged fees also

15. The court sat once a week and decided all cases.

16. British Judges enjoyed more powers and respect than the Indian judges.

17. The courts work with speed, gave justice quickly and it was very cheap for everyone to go to court.

18. Courts followed customs of Hindus as well as Muslims when tried cases as

well as considered international law and British law.  
 19. It was common practice to give lashes as punishment to criminals.  
 20. Robbers were whipped and branded with red hot iron.  
 21. Everyone feared to do crime, justice was deterrent.  
 22. That time one interesting case is that the officials falsely charged innocent person and robbed his property by proving him guilty in court by producing fake papers and witnesses who were tortured. The case is known as Rama Kamati case.

### Administration of Justice at Calcutta - 1660 To 1726 and Charter of 1726 – Part 6

Reality Views by sm -

1. In the year 1668, the grandson of Aurangzed, Azimush-shan, and the Subahdar of Bengal gave Zamindari of villages, Calcutta, Sutanati and Govindpur for annual revenue of 1195 Rupees to the East India Company
2. In the December 1699, Calcutta became Presidency Town and Governor was appointed to administer the settlement.
3. As a zamindar company got all the powers just like other zamindars of that time. Bengal zamindars.
4. In Moghul Empire, zamindars got judicial powers, but collected the revenue and maintained law and order in the zamindari area or villages.

5. For judicial purpose that time Kazis court were established in each district, parganah and villages. They handled civil and criminal matters.

6. Normally village Panchayat solved all problems, In Hindus , elders or Brahmins solved the problems

7. The judicial system was simple, as everyone knew each other and transactions of each other.

8. Moghul Kings never paid any attention to judicial system that time nothing was organized.

9. The post of Kazi was sold many times , the highest bidder became the Kazi

10. Justice was purchased , corruption was rampant

11. Kazi never got salary, so kazi court fined the criminal and earned money, after this demanded money from the complainant for giving him justice.

12. The other Zamindars when gave death sentence , the appeal went to the Nawab but company never did this , the appeal from zamindar , collectors court went to the Governor and council

13. In Calcutta that time Collector enjoyed all the powers upto the year 1727

14. With the charter of 1726 the new system was started in Calcutta Presidency.

15. Before this charter the authority was given by company and zamindar, but the charter of 1726 was a royal charter.

16. The importance of this charter is that this charter introduced Uniformity of justice system in all 3-presidency towns.

17. The charter established civil and criminal courts in each presidency towns.

18. The 2nd important point is that before 1726 the courts got authority from the company but after this charter the courts got their authority from the royal British king , The courts enjoyed same status just like the courts which were present that time in England.

19. With the charter of 1726, the appeals from courts in India went to the Privy Council in England.

20. This way English law system became accepted to Indians, Indians did not find it foreign and Indians did not have any other judicial system as such.

21. With this charter in each presidency town local legislature was established.

22. Charter of 1726 is also known as judicial charter as this is the beginning of development of Indian law system and judiciary.

23. Names of Presidency Towns - Madras, Bombay and Calcutta

24. All the courts established before the year 1726 got the power from company but after this charter courts got their permit, authority from the British King.

Following are the few provisions of charter of 1726

1.

In each presidency Town establishment of corporation consisting of Mayor and nine Aldermen.

2.

Every year new mayor was chosen from the Aldermen

3.

An aldermen hold office for life

4.  
Establishment of Mayors Court

5.  
The mayor and two council members gave justice and appeal went to the Governor within 14 days. Further appeal could be made to the king in council if matter involved more than 1000 pagodas This way first time Indians got right to file appeal in the king in council.

6.  
A sheriff was appointed for each ten miles of area by the Governor and council annually, in simple terms he was the police officer.

7.  
When complained was given to the court, the court issued the summons in writing to the Sheriff and he brought the accused in the court, he handed the summons to the concern party.

8.  
If party accused did not come on that day, the warrant was issued and Sheriff brought them before the courts, bail was granted sometimes.

9.  
For criminal jurisdiction , justice of peace was established same like England

10.  
Criminal jurisdiction system followed all the British criminal system and procedures.

11.  
Charter of 1726 empowered the governor and his council to make by laws, rules and ordinances for the regulation of corporation.

12.

In Madras charter became effective from the 17th August 1727

13.

In Bombay 10th February 1728

14.

In Calcutta December 1727 the implementation of charter started.

15.

The company directed the courts to maintain records and send them to England to know how they are working.

16.

With these establishments common Indians also start to file the more and more cases in the courts.

17.

Mayors Court, Governor, and Council always got disputes regarding jurisdiction in presidency towns. This fights resulted into the weakening of Judiciary in the future and executive became powerful.

18.

Company adopted policy not to get involved in the Indian customs and disputes but if the matter went to the Mayors Court they adopted English procedures.

Part 7 - Indian Legal History - Charter of 1753  
Reality Views by sm -

1. In the year 1746, The French got the control of Madras Presidency.





in nature.

15. The court was allowed to hear the Indian cases only if both native Indian parties agreed and submitted the case to the Mayors court.

16. Mayors court got the right to take action against the Mayor

17. No person was allowed to sit as a Judge if he was interested in the matter in anyway.

18. Mayors court got the power to hear the cases against the Government and Government Defended them

19. Now suitors deposited money with the Government not to the Mayors Court.

20. The new charter also created the new court called as Court of Request at each presidency town to decide, cheaply and quickly cases up to 5 pagodas. 1 Pagoda equals to 3 Rupees.

21. This court was established to help poor Indian litigants who can not afford the expenses of the court.

22. The court weekly sat once , and was manned by commissioners between 8 to 24 in number

23. The government appointed the commissioners and every year half of the commissioners got retired and those places were filled by the ballot method by remaining commissioners.

24. 3 Commissioners sat in each court on rotation

25. For small claims, cognizable by Requests court if people, plaintiff went to the Mayors court, the rule was that Defendant was awarded costs, this way it saved

time and money also.

26. Requests court got the power to hear the Indian matters also.

27. Now there were 3 courts namely

28. a ] court of Request

29. b] Mayors Court - Civil court Jurisdiction

30. c] Court of Governor and Council – the court where appeal from the Mayors court went

31. Criminal Cases - Justice of the Peace and court of quarter sessions consisting of Governor and Council

32. Regarding civil cases Privy Council in the England was the final authority

33. This charter introduced many changes but this charter took away the Independence of Mayors Court , which was given to this court by the charter of 1726

34. The East India Company with this charter also always followed the policy not to break the customs of Hindus and Muslims.

35. When both Indian parties agreed that time only Mayors court handled those cases.

36. As executive enjoyed more powers they appointed company servants as the judges.

37. The executives handled the cases in such a way it does not harm them or did not harm the company servants or friends.

38. In 1772 House of Commons appointed a committee of secrecy to check the affairs of the east India Company. The committee in its 7th report gave adverse report regarding Calcutta Judicial system.

39. The reported stated that Mayors court behaved as they wish in all the cases without following English law.

40. As a result of criticism , Supreme Court was Established at the Calcutta in the

year 1774  
41. The supreme court of Calcutta was Independent court and does not work under company executive and consisted of professional lawyers who knew English law in depth.

## Part 8 - Indian Legal History – East India Company Becomes Diwan of Bengal

Reality Views by sm -

1.

In the beginning we have seen that East India Company started judicial system in the three presidency towns namely Calcutta, madras, and Bombay.

2.

As company started its expansion in India, company started to take control of surrounding areas of Presidency Towns and this surrounding area was called as the Mofussil area.

3.

East India Company started administrative system in the Mofussil areas and that administrative system was called as Adalat system.

4.

Adalat system was introduced by the company to administer justice in the

mofussil

areas.

5.

In the beginning company started adalat system in the year 1772 in Bengal, Bihar, and Orissa. later it was introduced in the mofussil of Bombay and Madras when company saw the good results in the Bengal .First the experiment was made in the Bengal and when successful it was introduced into the Bombay and Madras Mofussils

6.

That time when Nawab Siraj –ud-daula saw the rising power of East India company in the Bengal , he attacked the Calcutta and captured the Calcutta in the year 1756

7.

After this east India company under the leadership of Clive attacked the Calcutta and recaptured Calcutta in the year 1757

8.

Same year Battle of Plassey was fought and Nawab was defeated.

9.

After this real power in Bengal went to the company but company made the Mir Jafar the Nawab and gave him civil government.

10.

When Calcutta council was dissatisfied with the performance of Mir Jafar as Nawab they replaced him , and Mir Kasim became the Nawab in the year 1760

11.

In the year 1763, again Mir Jafar was made the Nawab.

12.

In the year 1765 the minor son of Mir Jafar, Najam-ud-daula became the Nawab.

13.

This way slowly East India Company increased its power in the Bengal.

14.

Nawab of Bengal was just a puppet in the hands of East India Company. When company wanted, company changed the Nawab.

15.

As company was supreme, why it did not declare itself was the ruler of Bengal?

16.

There were few reasons. The first and most important reason was that that time British Constitutional law if No British Person can claim the sovereignty over any territory for himself, it must vest in crown and this way crown and parliament got the authority to legislate that area. The second reason that East India Company was afraid of French as well as Portuguese as they would create international problems for company as well as problems in the Bengal for company. Therefore, company took the easy way out, used Nawab as the Puppet, and controlled Bengal through him.

17.

In the year 1765 Moghul Emperor Shah Alam granted to the company the diwani of Bengal, Bihar and Orissa

18.

The company agreed to pay annually 26 lakh rupees to the Moghul Emperor and got right to keep the all-surplus amount of collected revenue.

19.

The grant of the Diwani gave to the company a de jure status of an official of the Moghul Emperor.

20.

The company was real controller but still company adopted this policy of not becoming direct ruler.

21.

During the time of Moghul administration, Moghul Emperor appointed two persons in the province that is Subah; one was called as Nawab and second was Diwani.

22.

Nawab or Nizam controlled the criminal justice system as well as military and maintained the law and order in the Province

23.

Diwan or Diwani gave right to collect the revenue, and decide civil and revenue cases. Diwan send the collected revenue to the central authority or treasury

24.

This way the power of divided between Nawab and Diwan and both acted and controlled each other

25.

Nawab got the military but no money

26.

Diwan got the money but no military so this way Moghul Emperor kept his control on both as none of them can become powerful than the Moghul Emperor.

27.

Regarding Bengal, we can see that Nawab of Bengal was the Puppet of East India Company and Now East India Company became the Diwan of the Bengal.

28.

Now again company made the agreement with the Nawab that he will not maintain the army and company will pay him an annual allowance of 53 lakh rupees for his expenditure and criminal judicature.

29.

After this agreement, company became Supreme Authority regarding Bengal.

30.

The nawab of Bengal also agreed that a Deputy Nawab will be appointed by the Calcutta government and Nawab will work as per his advice and Nawab cannot remove him from his post.

31.

Thus East India Company got the responsibility of maintaining military, collecting revenue and civil justice, criminal justice was seen by deputy Nawab, and expenses regarding criminal justice were made through the allowance of Nawab.

32.

After getting, the Diwani in the beginning company did not make any changes in the procedure of collecting revenue or civil justice as company was not aware how it functioned. Moreover, they were less in numbers.

33.

The company appointed Mohammed Reza Khan at Murshidabad and Raja Shitab Roy at Patna to control the working of old system; they both were supervised by two English officers situated at Murshidabad and Patna.

34.

Mohammed Reza khan was appointed as the Naib Nazim and he look after the administration of criminal justice system on behalf of Nawab.

35.

As both these, two were reported to the East India Company they knew who the real master was so they never went against the Company servants.

36.

Using them company officials made lot of money in a short period.

37.

The east India company servants did the private business also and made more money.

38.

In the year 1765, Clive became the Governor of Bengal and he himself described the situation of Bengal as follows. 'I shall only say that such a scene of anarchy, confusion, bribery and corruption and extortion was never seen or heard of in any country but Bengal.

39.

In this way Bengal was ruin by Bengal officials as well as East India company officials, everyone became the criminal and robbed the Bengal.

40.

To improve these matters in the year 1769 Governor Verelst appointed company servants as supervisors in the districts. The supervisors were to collect information regarding condition of the soil, collection of land Revenue and administration of justice .They were to check the corruption and supervise the justice system. The supervision extended to practically on all the functions of Diwani.

41.

The governor and council described the justice system as , corrupt bargain with the highest bidder



42.

The proper procedure of maintaining records was started.

43.

Kazis and Brahmins who administered the justice were given Sanads, which were duly registered so that non-authorized persons cannot give the justice.

44.

However, the scheme of Supervisors failed as they were in less numbers and has to look after more work.

45.

Majority times they also became corrupt.

46.

In the year 1771 Bengal face the acute Famine and in that one fifth of the population was swept away. That time company saw reduction in the revenue collection. In addition, company officers blamed that Indian officers are doing more corruption. Therefore, Company as a diwan decided to take full charge of collection of revenue. The company officers just wanted to increase their corruption share so they brought this idea.

47.

After this, Governor and Council at Calcutta were to become responsible for providing solutions for administrative problems.

48.

This is the beginning of new judicial system in the Mofussil

49.

That time judicial officers kazis were appointed not on the merit but matter of official favor.

50.

Zamindars were also corrupt and ruled the villages as they wished.

51.

Judicial officers did not get the salary so they use this power and did the corruption to make money.

52.

There was no procedure established that time. Corruption was everywhere and honesty was sold everywhere.

53.

To reform this entire situation Warren Hastings was called to formulate a scheme for the execution of functions of Diwani.

54.

Warren Hastings Introduced new judicial administration system as well as revenue collection system in the year 1772

55.

It laid the Foundation of Adalat system.

## Part 9 – Indian Legal History – Judicial Plan of Warren Hastings 1772 and 1774

Reality Views by sm -

1.

Warren Hastings Administrative plan divided territory of Bengal, Bihar and

Orissa into number of Districts.

2.

In each District an English servant of the company was appointed as collector who was to be responsible for the collection of land revenue.

3.

Establishment of Mofussil Diwani Adalat

4.

As per Warren Hastings plan a Mofussil Diwani Adalat was established in every district with collector as the Judge. The court was authorized to decide all civil cases like disputes regarding properties, inheritance, marriage, caste, debts, disputed accounts, contracts, partnerships and demands of rent.

5.

Where ever possible religious laws of Muslim as well as Hindus were followed and applied .E.g. Caste, marriage, inheritance etc.

6.

As English servant who was appointed as Collector did not understand the religious laws , Kazis and Pundits were appointed to help him

7.

The decisions of the Mofussil Diwani Adalat in cases up to Rs.500 were final.

8.Establishment of Small Cause Adalat –

9.

As name says, this Adalat decided petty cases up to Rs. 10 .The Head farmer of the Pergunnah became the judge. This system was designed to save the traveling expenses of poor farmers, as they did not need to travel to the district place for

justice.

10. Establishment of Mofussil Fozdari Adalat –

11.

In every district a mofussil nizamat or fozdari adalat was established to try all criminal cases.

12.

The adalat consisted of the Muslim kazi, mufti and moulvies.

13.

The moulvies interpreted the Muslim law of crimes.

14.

The Kazi and Mufti gave fatwa and render judgment.

15.

In this adalat collector exercise general supervision over the Adalat, and saw that no corruption was made in the case. The judgment was given impartially.

16.

This Fozdari adalat was not allowed to handle cases where punishment was death sentence or forfeiture of property of the accused. Such cases went to Sadar Nizamat Adalat for final orders.

17. Establishment of Sadar Adalats –

18.

Firstly two courts were established namely Mofussil Diwani Adalat and Mofussil Fozdari Adalat over them 2 superior courts were established namely Sadar Diwani Adalat and Sadar Nizamat Adalat.

19.

The sadar diwani adalat was consisted of Governor and members of the council and was to hear appeals from the mofussil diwani adalat in the cases over 500 Rs.

20.

The first sitting of the Sadar Diwani adalat was held on the 17th March, 1773.

21.

On each appeal fee of 5 percent was charged.

22.

The appeals were to be filed in the Adalat within 2 months from the date of the judgment, decree given by the Mofussil Adalat.

23. Establishment of Sadar Nizamat Adalat –

24.

Sadar Nizamat Adalat consisted of an Indian judge known as Daroga-i-adalat who was to be assisted by the chief Kazi, chief mufti and 3 moulvies. Nawab appointed all these persons as per the advice of Governor.

25.

In case of death sentence, punishment death warrant was made by the Adalat and signed by the Nawab as the Head of Nizamat.

26.

The governor and council supervised this adalat to control and reduce the corruption.

27.

All cases were heard in the open court.

28.

All courts were ordered to maintain registers and records.

29.

Any case older than 12 years was not accepted.

30.

District courts forwarded their records to the Sadar adalat

31.

In civil cases when Plaintiff filed a case, defendant accused person was given only limited time to give answer and then examine the witness and give the decree, pass the final orders.

32.

The plan tried to reduce the expenses of people.

33.

With this plan law officers like kazis, muftis were given salaries.

34.

Before this plan Judge charged the commission but this new plan abolished this law and introduced the Court fee system where fees went to Government.

35.

After this plan and establishment of Courts for common Indians it became easy to approach the Judiciary.

36.

Warren Hastings was very intelligent person; he purposefully did not take the full charge of Criminal justice system and kept the puppet Nizam alive.

37.

He did not change the forms and when possible tried to show case that company

respected the Nizam. Like Nizam got the power to sign the death sentence.

38.

The other clever intelligent system Warren Hastings kept alive was that following Hindu laws for Hindus and Muslim laws for the Muslims.

39.

In this plan collector got the many powers, collector was the administrator, tax collector, civil judge and supervisor over the criminal courts.

40.

With this collectors got the unlimited powers and Warren Hastings knew this that collectors will become corrupt and he already told the company directors about this defect of this plan. The directors of the company understood the fear and reality of this plan.

41.

In the year 1773, Company directed the Calcutta council to withdraw the collectors as they became very corrupt.

42.

After this Calcutta Government introduced new plan for the collection of revenue and administration of Justice on November 23, 1773 and put it into force in the year 1774.

43. Plan of 1774 –

44.

With this plan collectors were recalled from every district.

45.

In place of Collector an Indian officer was appointed called as Diwan or amil.

46.

Diwan got the power to collect the revenue as well as act as a judge in the Mofussil diwani adalat.

47.

The territory of Bengal , Bihar and Orissa was divided into six divisions with their head quarters at Calcutta, Burdwan, Murshidabad , Dinajpore, Dacca and Patna

48.

In each division many districts were created.

49.

The complete Bihar came under the Patna Division

50.

A provincial Council consisting of four or five English servants of the company were appointed in each division to supervise the collection of revenue and to hear appeals from the cases decided by the amil , the Indian diwan.

51.

The appeals from this Provincial council were allowed if the case amount was more than Rs. 1000. The appeal went to Sadar Diwani Adalat.

52.

This time also Warren Hastings new that the Provisional council will do the more harm and more corruption than the Collectors. Warren Hastings thought this plan as a temporary plan but Regulating act was passed in this time and Warren Hasting could not change the plan until year 1780



Part 10 - Indian Legal History – Regulating act of 1773 and Creation of Supreme Court at Calcutta.

Reality Views by sm -

1.

The company servants made lot of money in India, when they went to UK, they started to live lavishly and even they bought the seats of House of Commons.

2.

The population of UK started to doubt the working of East India Company in India.

3.

The shareholders of the company voted and started to get the big dividends.

4.

From the year 1767, it was the rule that company will pay to the British exchequer, four lakh pounds every year to retain its territorial acquisitions and revenues.

5.

The company servants made money, started to become rich and company was making losses, so company approach to the British Government for loan.

6.

After this, House of Commons appointed a select committee and a secret committee to probe the affairs of company before giving company the loan amount.

7.

The reports suggested that Company should be brought under the British parliament and reports mentioned the evils of company affairs.

8.

After this parliament enacted the Regulating Act, 1773 to remove the prevailing evils.

9.

Parliament amended the constitution of company, brought company under the parliament, with this era of parliamentary enactments started.

10. Provisions of Regulating Act –

11.

The term of the directors of east India Company was increased from one year to 4 year and provision was made that every year one-fourth directors were elected in rotation.

12.

The voting power of shareholders was restricted.

13.

The company directors were required to lay before the Treasury all correspondence from India relating to revenue and before a Secretary of state, everything dealing with the civil and military affairs of the Government of in India.

14.

The act appointed a Governor General and Council of 4 at Calcutta

15.

They got all the powers, civil and military regarding all the company acquisitions as well as revenue in the kingdoms of Bihar, Bengal and Orissa.

16.

Warren Hastings was appointed as the first Governor General and other three came from England. All were to hold office for 5 years but king can remove them if Court of directors recommend the removal

17.

The Governor General got only one vote and casting vote in case of tie

18.

Governor General did not get the power to over rule the majority vote. Because of this, other three council members always opposed the policies of Warren Hasting and first six years Warren Hasting found it very difficult to introduce new laws or policies.

19.

In the year 1776, one member from the council died and Warren Hasting became powerful because of casting vote. Only in the year 1786, governor general got the right of veto to over ride the decision of council. Because of experience, they knew that without veto Governor General fails to show the results and implement policies.

20.

The Regulating act put the Madras and Bombay Presidency under the supervision of Calcutta Presidency in matters of war and peace.

21.

The subordinate presidencies were required to send regularly all details of revenue and other important matters to the Governor General.

22.

Only in emergency situations, subordinate presidencies were allowed to take decisions if required because of necessity. Because of this Madras and Bombay

presidency always took the decisions without fearing governor general

23.

Creation of Supreme Court at Calcutta, This act created the Supreme Court at Calcutta by the royal charter.

24.

King George III on 26 March 1774 issued a charter establishing the Supreme Court at Calcutta.

25.

The charter appointed Sir Elijah Impey as the chief justice and Robert chambers , Stephen Caesar Lemaistre and John Hyde as puisne judges.

26.

Interesting story is that In India Supreme Court at Calcutta enjoyed jurisdiction in all type of matters, where as same time in England they got different courts for each, only after the passage of 100 years, after the passing of judicature act of 1873 in England all the different courts came under one. In this way what happened in 18th century at Calcutta , same thing happened in England in the 19th century but we Indians were slave in the both the cases.

27.

Supreme Court was to consist of chief justice and three puisne judges who were appointed by the king and they were to hold the office during its pleasure.

28.

Only the barrister with the 5 years of minimum experience was eligible to become the judge. The court was to be a court of record.

29.

The court got the jurisdiction in following, civil, criminal, admiralty and ecclesiastical jurisdiction.

30.

In criminal cases, the court was to act as a court of Oyer and terminer and gaol delivery for the town of Calcutta and the factories.

31.

The jurisdiction of the court was not to extend to all the persons of Bihar, Orissa and Bengal. It extended to the servants of majesty, company servants etc.

32.

Supreme Court was not allowed to hear the cases against the Governor General and council and exception was crime of felony or treason.

33.

The appeals from the Supreme Court were made to the King in council in England.

34.

Governor General and council got the powers to make the laws and rules but with the condition that all the rules and laws must be registered in the Supreme Court and did not become effective until they were registered and published in the Supreme Court .

35.

Any person in India got the power to appeal against such rules within sixty days in the King in council, which then set aside such a rule or changed the law. The appeal was to be made in the Supreme Court of Calcutta within stipulated period.

36.

It was mandatory to send all the rules made by Governor General to a secretary of state in England.

37.

Any person in England got right to appeal against the rules within sixty days after the rules were published in the England.

38.

King in council got the suo motto power to change or disallow any rule without appeal within the period of 2 years.

39.

This provision of law and rule registration in the Supreme Court, made it easy to introduce the new laws and rules, which saved the time, as now it was not required to take the permissions from the England head office of the company.

40.

The best part of was that Supreme Court reviewed the law before it became the law.

41.

The governor general and council , supreme court judges and its officers were not allowed to do any private trade in India , as well as they were forbidden to accept any gifts and presents.

42.

In the beginning one of the problem with the Regulating act was that majority terms were not defined properly by the regulating act and it lead to the conflict between the Supreme Court Judges and Governor and general and council.

Part 10 - Indian Legal History – Regulating act of 1773 and Creation of Supreme Court at Calcutta.

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## **Part 11 - Indian Legal History – Supreme Court Becomes Secondary at Calcutta - 1781**

Part 11 - Indian Legal History – Supreme Court Becomes Secondary at Calcutta - 1781

Reality Views by sm -  
The case of Nandkumar, a classic case  
This is the case against Warren Hastings brought by majority council, then  
Supreme Court against majority.  
Nandkumar got the support and protection from the Majority council.

Nandkumar was influential man from Bengal, brought the corruption and bribery charges against the Warren Hastings in the council. When this charges were heard by the council Warren Hastings left the room. After few days Mohun Pershad filed a forgery case against Nandkumar in the Supreme Court of Calcutta. Supreme Court found Nandkumar guilty and gave him death punishment as per the law. And the sentence was duly executed.

Supreme Court judge was the friend of Warren Hastings, but the case was tried with the help of 4 judges and 12 Englishmen. Still many historians say that as judge was the friend of Warren, the nandkumar got death punishment.

For me I feel that Nandkumar became Bakra between the fight of Council and Warren Hastings. In the year 1728 in England for the act of forgery, capital punishment was given to the accused person when he was found guilty.

## The Patna Case —

The Patna Case Happened in the years 1777, 1778, and 1779, this is very interesting case.

Shahbaz beg khan came to Patna from the Kabul and joined the company army; he made money and settled in Patna.

As he did not have any children, he called his nephew Bahadur Beg from Kabul to stay with him and he expressed his desire to adopt him and hand him his all property.

Before this Shahbaz died in the year 1776.

After this the fight started between the widow [of Shahbaz Beg,] Nadirah begum and nephew Bahadur Beg regarding the property of Shahbaz Beg.

Bahadur Beg filed a suit against the Begum in the Patna Provincial Council which functioned as the Diwani court for the town under the Warren Hastings plan of 1774

As per the law English judges were helped by the Kazis and Pundits to understand the customs and laws of community. Kazi and Pundits were not supposed to decide the cases wholly. But English law officers were not interested in the Indian customs they were more busy in collection of revenue.

So English judges gave, allowed the local officers to hear the evidence, decide the fact and expound the law. Patna council left the entire matter in the hands of Muslim law officers. Begum was not given any notice regarding this suit.

Muslim law officers rejected the Begum's claim of gift of deed which she said her husband made. As Muslim law does not recognize adoption they rejected the claim of the Bahadur Beg also.

They decided that the property of deceased's property be divided as per the Hanafi school of intestate succession, One fourth property was allotted to the widow, Three fourth go to Shahbaz Beg brother, father, but as he was at Kabul and could not look after property it was entrusted to Bahadur Beg as his son and representative in India. The provisional council considered the report in the presence of the vakeels of both the parties and confirmed the same and ordered the Muslim law officers to divide the property.

Begum did not accept the fourth share and she left the house and took shelter in the Muslim shrine for the 4 months. To force her to return home a guard was posted at the shrine. She was even denied food. The guard was withdrawn after a month.

Then Begum appealed the Sadar diwani adalat but that time Sadar diwani adalat was not functioning, Then Warren Hastings wrote a letter the Patna chief council for explanation and Later Patna chief informed to the Hastings about the matter. But nothing happened.

Then Begum filed a case in the Supreme Court against the Bahadur Beg , kazi and muftis for the assault, battery, false imprisonment , breaking and entering her house and taking away her property and claimed damages amounting to Rs.6 lakh.

Then Supreme Court issued the bailable arrest warrant against the Bahadur Beg, kazis and muftis. They were arrested in the Patna and brought before the Supreme Court at Calcutta the reason they all failed to furnish the bail of 400,000 Rupees. And they were kept in jail. After few days government gave bail for the kazi and muftis.

Later Supreme Court heard the case and found that Patna council and kazis and muftis did not function as per their duties and did not function,perform their duties as per the procedure of law.

The court found the deed of gift original and true and valid. The court awarded damages of Rs.3 lakh to the Begum for personal injuries. As defendants failed to pay the damages they were sent to the Jail.

This case is the excellent example which shows us to Indians the power of Courts

if they are easy to approach for the common people and speedy trial.

The other famous case is Cassijurah case – In this case Supreme Court forces came against the Forces of government regarding court case. The case involves the contempt proceedings against the Governor General and council who send forces to stop the Supreme Court forces. This case is landmark case as Supreme court and Executive, government came to fight with each other.

The government servants as well as English servants did not like the powers of Supreme Court, on the other hand majority Indians like the power of Supreme Court, which gave them justice against the Corrupt Government Indian as well as white officers of the company.

In the year 1777, the company directors complained about the working of courts in Calcutta in the England and demanded that the division of powers is required so that Court will not interfere in the working of government in India.

Consequently in the year 1780 House of Commons appointed a select committee known as the Touchet Committee to hold a through inquiry into the administration of justice in Bengal, Bihar and Orissa.

The committees report led to the passing of new act, the act of settlement 1781, to remove the doubts of the regulating act, to support the government and to safeguard the ancient laws and customs of Hindus and Muslims.

House of commons knew that this law will empower the Executive and this is what they wanted, because We As Indians should not forget that the Company just started their business and control of India ,in this case to increase that control over India , it was necessary that Executive becomes strong and powerful .

This act clearly said that Governor General and Council is not under Supreme Court.



No person will be liable to court if he acts on the order of Governor General or council.

It was again decided that Hindu and Muslim laws should be used for the communities.

Sadar Diwani Adalat got the status of court. - Revenue Matters, cases

Supreme Court was not allowed to hear any cases against the misconduct of any government working or adalatas.

The Supreme Court was not allowed to hear the revenue cases and this way Government as well as government employees got full freedom to rob the Indians.

Government Employees were also Indians.

This way Government became more powerful than the Courts. And Judiciary became secondary.

After the act of 1781 Supreme Court worked more for the next 8 years.

But that time Supreme Court was so successful that it was established in the Bombay and Madras.

Part 12 – Indian Legal History – Establishment of Supreme Court at Bombay and Madras

Reality Views by sm -

1. Charter of 1753 established the judicial system in the Presidency town of Bombay and Madras.

2. In 1791, Madras Presidency, Madras Council informed and asked the company directors that they need professional lawyers for the civil and criminal cases and also suggested that Appeals from Madras court should go to the Supreme Court of Calcutta instead of England which will save the time and which will help the complainants to get speedy justice, appeals to England delayed the justice.

3. British Parliament enacted an act in 1797 permitting crown to issue charters to establish Recorders Court at Bombay and Madras. Then On February 1, 1798 King George III issued charters for the purpose of creating Recorders Court at Bombay and Madras.

4. In Madras from November 1, 1798 Recorders Court started to function and near about same time Bombay Recorders Court also started its functioning.

5. On 26th December 1800 king George issued letter regarding the establishment of Supreme Court at Madras which came into existence on 4th September 1801 and Sir Thomas Strange became the first chief justice of court, Sir Thomas was the Recorders Court chief justice, With the establishment of Supreme Court at Madras the all powers of Recorders Court were given to the Supreme Court.

6. In 1823, with Royal charter in Bombay Presidency Supreme Court was established. And Supreme Court started functioning from 8th May, 1824 and Sir E. West became the Chief Justice.

7. Bombay Supreme Court, judiciary also faced the conflicts with the Executive and government.

8. In one case Chief Justice West found the one of the friends of Governor and company servant Erskine guilty in a case of misappropriation of money and he dismissed him.

9. In Bombay Government tried to limit the Press power and drafted new law, but

Chief Justice West rejected it saying Freedom of Press is important. In this fight with the Government, Chief Justice threatened the one news paper which took the side of Government, chief justice said that it's a government paper

10. In one case Supreme Court demanded the records from the Government but on last minute government did not show the records to the Supreme Court on the name of Secrecy.

Part 13 – Indian Legal History - Judicial Plan of 1780, First Indian Civil Code Prepared

Reality Views by sm -

Warren Hastings knew that the judicial plan of 1774 was not perfect, and when Warren Hastings again got the chance and He made changes to the judicial plan of 1774, On April 11, 1780 new plan was introduced.

As per the plan of 1780 judicial and executive functions were separated. Adalats – Function to do civil justice, no revenue work Provincial Council - No judicial work, only revenue related work, collection and revenue cases.

But with this plan the problem was that, area was vast and adalats were few to administer those large areas, because of this, cases were more, time was limited with the judges and thus arrears piled up in every adalat. 2nd problem was that witnesses have to travel lot to reach the adalats There was only one Adalat in the whole of Bihar. Because of this people thought it is better not to file the cases in courts, as filing cases in court meant, delayed justice, physical harassment, waste of time and

money.

As per the judicial plan cases up to Rs.100 were referred to the person who stayed near the place of litigant ,but before this it was compulsory to file the case in the Adalat, and 2nd problem was that the person who work as judge has to work as a honorary judge and he did not get any salary . The Zamindar or public officer acted as an honorary judge and they charged money for this and also zamindar got the chance to do corruption as he became the honorary judge.

Warren Hasting was not satisfied with the plan of 1780 he always thought about the improving judicial system in India. The judicial system of East India Company.

On 29th September 1780 Warren Hastings proposed in the Council that chief justice Sir Elijah Impey be requested to accept the charge of the office of the Sadar Diwani Adalat.

Impey accepted this offer. He remained in Sadar Adalat for a year but he introduced, made lot of reforms in sadar adalat.

Impey Drafted many regulations to reform the adalats. On November 3, 1780 first reform, regulation was passed to regulate the procedure of the diwani adalats. As per this rule , the Mofussil judge has to decide the facts , he was allow to take the help of Hindu Pundits or Muslim Mulla if it was necessary to understand the cause or case.

Impey Compiled a civil procedure code for the guidance of the Sadar Adalat and mofussil diwani adalats It was the first code of civil procedure to be prepared in India .

It was promulgated by the Council on July 5, 1781 in the form of a Regulation. It was the digest of the civil rules The code consolidated at one place a detailed civil procedure. The code contained 95 clauses and with it all the previous regulations relating to

civil procedure were repealed.  
The code of 1781 clearly defined the functions, powers and jurisdiction of Sadar Diwani Adalat.  
This code was translated in Persian and Bengali language that time.

In India, Impey was doing great job, but in England People were not happy with the Impey because of following reasons –  
Impey was appointed as the Supreme Court judge to monitor the Company affairs in India.  
But in India Impey stated to work as a company servant when he accepted to work as the Judge of Sadar Adalat. Accepting this violated the Regulation act. Because of other job, they believed that Impey would not do the justice with the job of Supreme Court.

Because of all above reasons , on 3rd May 1782 in England House of Commons adopted a resolution requesting the crown, king , to recall Impey to answer the charge of having accepted an office and violating the Regulating act. After this Impey left India on 3rd December 1782  
From the Impey appointment one should learn that what ever post or job may be, the concern person must be studied in that profession.  
EG.

Sports minister should be a sports man in his youth, Agriculture Minister should be graduate from the agriculture collage.

Regarding criminal justice system Warren Hasting took following steps. Machinery was created for the purpose of arresting criminals and bringing them before the fozdari adalat for the trial. This system never existed in India before this.

A new department, office of the Remembrancer was created at Calcutta to keep watch on the functioning of criminal adalats. The department was to work under the Governor General. The head of the department was known as Remembrancer of criminal courts. All criminal courts were required to send periodical reports to this department.

Everything was done as per the Muslim criminal law and Warren Hasting was not happy with many things, and wanted to reform them, he tried his best but company heads did not accept his views. Because of this in criminal justice system, everyone made money using the corrupt ways.

Part 14 – Indian Legal History – Cornwallis and Plan of 1787 –  
Reality Views by sm -

In Short about Warren Hastings (1732-1818) –  
Warren Hastings came to India as a clerk aged 16 and later became the Governor General of Bengal and British India. Warren Hastings started reforming revenue administration and judicial system and he resigned in 1784. Burke campaigned for his impeachment. On corruption Charges Warren Hastings was tried in England for seven years and he got acquitted in 1795, but financially he lost everything.

Warren Hasting divided the functions of revenue and judiciary systems. But many senior members of company did not like it and they thought separation is costly for company. When Warren Hastings left India, they openly started to criticize this. The court of directors on 12th April 1786 directed the Cornwallis to vest in one person the revenue, judicial, and magisterial functions. Cornwallis followed the ordered and introduced plan of 1787. In this plan Cornwallis increased the salaries of collectors. 2nd He reduced the number of Diwani districts from 36 to 23 and this made it possible to increase the salaries of collectors. The scheme was introduced through 2 Regulations. First Regulation dealt with Revenue Administration and it was introduced on 8th June 1787.

Second Regulation dealt with administration of justice and it was enacted on 27 June 1787.

In each district a company's English covenanted servant was appointed as collector who will collect revenue as well as will decide the all cases relating to revenue. Collector also worked as Judge in the district mofussil diwani adalat to decide civil cases, succession cases and land related cases like boundaries etc. Revenue Court was known as mal adalat. Appeals from mal adalat went to the Board of Revenue at Calcutta. And finally to the Governor General. In Diwani adalat appeals in the cases where matters involving more than one thousand rupees went to the Sadar Diwani Adalat, where Governor General and council handled the cases. Appeal from Sadar Diwani Adalats went to the King in Council. In each adalat registrar was appointed as a subordinate officer to help collectors. Registrar was given power to handle decide cases up to rupees 200 and orders passed by him became valid when it were signed by the judge of mofussil adalat. As a magistrate collector was authorized to try and arrest criminals in petty offences.

The magistrate got power to hear the cases against the Englishmen who committed crimes against Indians, in this case magistrate made inquiry and he felt that there is ground for trial, he would send the Englishman accused to the Calcutta for trial and if Indian complainant was poor, the government paid all the expenses of traveling to Calcutta.

Criminal Justice system –  
In 1790 Cornwallis tried to reform the criminal justice system which was following Muslim criminal law system and mofussil fozdari adalats were controlled by Kazis, muftis and moulvies. Everything was controlled by Naib Nawab Raza khan and who was not answerable to anyone including Remembrancer. The salaries of the criminal court judges were very low which encouraged them to get involved in the corruption. Low salaried kept honest and educated people away from this job and every

corrupt man wanted to become the criminal court judge. Fozdari adalats did not give fast justice, it delayed the justice. Delayed justice encourages criminals to do more crimes. As they do not fear the law.

Cornwallis wanted to reform all this and introduced the new scheme on 3rd December 1790.

Main Feature of the scheme of 1790 Criminal justice system – transferred to English servants from Muslim law officers.

Muslim law officers became advisors to the court. And criminal cases should be decided quickly.

Districts got the magistrates, above them were Courts of Circuit and above them was Sadar Nizamat Adalat.

Sadar Nizamat Adalat was shifted to Calcutta from Murshidabad and Nawab was divested of his control over the adalat.

In Sadar Adalat Governor General and council members sat as judges and Muslim law officers helped them to understand the Muslim law. Mofussil Fozdari adalats were abolished and on their place four court of circuits were established.

All districts in Bengal, Bihar and Orissa were arranged into four divisions of Patna, Calcutta, Murshidabad and Dacca. Court of circuit was a moving court and it traveled from district to district in the given division.

Court of Circuit consisted of 2 companies covenanted servants and Muslim law officers help them.

The new criminal judicial system was inaugurated on January 1, 1791 and office of remembrance was abolished which was created in the time of Warren Hastings.

The salaries of the criminal court judges were increased and first time Governor General took the complete control of criminal justice system Bengal, Bihar and Orissa.

In 1792, company government sanctioned small sum as a payment to the



prosecutors and witnesses who spent the days in court for their journey to attend the trials. The criminals who completed the punishment, when came out of jail they were paid money to maintain themselves for a month. Defects of Scheme – Lot of work for court of circuits No provision to supervise the collectors, who got unlimited powers

Cornwallis understood the defects of the above schemes and He introduced the plan of 1793

Part 15 – Indian Legal History – The Plan of 1793 –

In short Important points –  
 Seperation of Judicial and exective functions  
 Format of Regulation writing fix  
 Vakeels started to get the Sunnuds

Reality Views by sm –  
 Sunday, May 16, 2010

One of important point as per this plan was that no executive officer was to exercise any judicial power in any shape or form except at the higher lever. The executive officers were to be placed under the jurisdiction of the adalats. Even if the government is party in a matters of property it should be bound by court adjudication.

In this way for the first time in India the powers of Judiciary and Executive were separated and executive was placed under the judiciary. Lord Cornwallis wanted that courts should become the protectors of the rights

and property of individuals from corrupt officers as well as government. Plan of 1793 tried to protect the private rights of every person, promote public advantage, general benefit.

The policy of separating the two functions judicial and executive was put into practice by Regulation II of 1793 which abolished the mal adalats and transferred the suits triable there to the mofussil diwani adalats.

The power of the administration of civil justice was taken away from the collectors and given the diwani adalats as well as collectors lost the power of deciding revenue cases. The collectors lost all the types of judicial powers, functions.

Section X of the Regulation III made collectors and all the executive officers personally liable and could be required to pay damages to the injured party for violations of regulations, laws.

Lord Cornwallis gave power to the Indians to bring, file cases against the government if they felt their right was abused.

A diwani adalat was instituted in each district and in each of the three cities of Patna, Murshidabad and Dacca.

Regulation IV enacted the rules of procedure to be observed by the diwani adalats for receiving, trying and deciding cases. The period of limitation was fixed at 12 years.

The system of appeal is necessary as a safeguard against wrong or unjust, decisions.

To enable the speedy justice to the people it was necessary that poor can approach to the judiciary.

Regulation V instituted four courts of appeal having seats at Patna, Dacca, Calcutta and Murshidabad.

Each Court to consist of three Company's English covenanted servants, of whom two were to make a quorum.

These courts were to discharge the following functions.

To try civil suits sent to them by government or sadar diwani adalat.

To receive the charges of corruption against the judges of the diwani adalat

To hear appeal if filed within three months from all decisions of the mofussil diwani adalat.

All people who were not satisfied with the District adalat decision got the right to file an appeal in this court.

The highest court in the judicial hierarchy was the Sadar Diwani Adalat in which Governor General and members of the council sat as judges. If matter was above 5000 the parties got the right to file an appeal in the King in council

Munsiffs were appointed to try suits up to Rs. 50 in value. Every ten miles one Munsiff was appointed so the complainant should not travel more than ten miles to file a complainat or suit.

With this Plan Cornwallis abolished the court fees, so poor Indians can also file the suits in judiciary.

Cornwallis to the steps towards development of Legal Profession Regulation VII of 1793 took the first steps.

The Sadar Diwani adalat was to appoint pleaders to plead the cause of the litigants in the various adalats by issuing Sunnuds to them.

A vakeel guilty of promoting and encouraging frauds was to be suspended.

vakeel were to charge moderate fees and the chart of fees was laid down in the Regulation.

They were forbidden to charge more fees.

Any Vakeel who for personal gains delayed the suits, was prosecuted for damages, if found guilty he lost his professional job. Suitors could prosecute a vakeel in a court for any bad practice. The court collected the fees of Vakeel and then paid it to the Vakeel. Provision was made for appointment of government pleaders.

Cornwallis introduced the Forms, style in which Regulation should be written. Regulation XLI introduced them.

Each Regulation must have title expressing subject matter. A preamble which will contain the reasons for the enactment of law. If any regulation was changed the reasons were to be mentioned why it was changed.

Every Regulation should be divided in sections and sections in clauses. Sections and Clauses were to be numbered.

The subject of each section and clause was to be written in the opposite margin in short.

All Regulation enacted in a year were to be recorded in the judicial department and then they were numbered and published.

These Regulations were translated into the Persian and Bengali languages so locals can understand them.

Regulation XLI started the process of compilation of a code of the Regulations.

In 1772 Warren Hastings Started the process of separation of judiciary and executive and Cornwallis completed that process.

## art 16 – Indian Legal History – Defects and Changes Made in 1793 Plan

Reality Views by sm –  
Monday, May 24, 2010

Cornwallis left India after establishing the plan of 1793. Cornwallis did not stay in India to see the actual implementation of plan of 1793. After Cornwallis left Shore took the charge and became the Governor General

## The Problems and Defects of Plan of 1793 –

Large volume of Cases and Pending Suits, which delayed the Justice.  
Example – In 1795 the number of Pending suits in district Adalat in Burdwan was 30 thousand.

But this shows that British People gave power and confidence that yes Indians can also demand justice and in result increase of suits.

The good thing was that Collectors were aware about the problem that numbers of pending suits are increasing and it will destroy the purpose of Court and Justice System.

Same Was Happening in Bengal, Bihar and Orissa increase in filing of cases and increase in number of Pending suits.

In Revenue cases delay meant collection of revenue was affected. In three provinces of Bengal, Bihar and Orissa only 26 diwani adalats were established.

The jurisdiction of registers and munsiffs was very small. There was need to increase the number of courts and judges but Shore did not

increase, he and his team believed that already courts are more and this is temporary phase, but shore was wrong, as the plan of Cornwallis encouraged the more and more Indians to file the suits as courts were became accessible to Indians.

Regulation VIII of 1794 –

To decrease the work load of diwani adalats Regulation VIII made the decrees of the register final in all suits for money or personal property valuing up to Rs.25. But Diwani adalat got the discretionary power to revise the decision of registers. An appeal had been provided to the provincial Courts of Appeal from registers in all cases of real property and in cases for personal property over Rs.25.

The Regulation XXXVI of 1795 lay down that appeals from the registers were to go to the district diwani adalats and not to the provincial courts of appeal. The decisions of the district adalats were to be final in all such cases and no further appeal was to be sufficient for purpose of justice.

Only two appeals had been provided for from the decision of the munsiffs who decided cases up to Rs. 50. First appeal – District Diwani Adalat  
2ND appeal – Provincial court of appeal  
But again this resulted in delay and in 1795 decisions of the District Diwani Adalats declared to be final in all such cases.

But after all these efforts the filing of suits and number of Pending suits kept increasing.

Because of financial matter Shore did not increase number of the courts and judges

Cornwallis had abolished Court fees so Poor can file cases and Appeals in 1793.

Shore thought that as there was no court fee people filed wrong cases; false

suits .Thus government felt that imposition of court fees will limit the filing of wrong cases.

Thus Regulation of XXXVIII of 1795 again imposed court fees.

One anna in the rupee was to be paid by a plaintiff for filing suits before a munsiff.

Thus court fee was fixed according to the amount of suit.

Regulation of 1797 increased the court fees on suits, witnesses, exhibits and appeals.

This regulation converted the institution of court fees into stamp duties.

This again made justice costly for Indians, and kept poor Indians away from demanding justice.

This is even noted and written by white judges. Many Indians started to think that justice is costly so do not demand justice.

On June 25, 1835 Lord Macaulay also criticized the levy of fees on institution of suits and at various stages in their progress.

In 1856 the second law commission suggested abolition of court fees but nothing changed and today in 2010 also we are following same.

In 1795 Company Government decided to introduce the same system of administration in the Banaras province. Thus series of Regulation were passed on 27th March 1795. The Banaras city was formed into a district and rest of the Banaras province was divided into three districts of Mirzapur, Gazipur and Jaunpur. In Banaras Company saw that Brahmins were treated as Gods so it was decided that no brahmin was to be punished with death penalty for any crime.

## Part 17 – Indian Legal History – Separation of Executive and Judicial Powers

1797 – 1813  
Reality Views by sm –  
Sunday, May 30, 2010

In 1797, It was not allowed to file a appeal to the Sadar Diwani Adalat in cases of personal property , to reduce the work load of Sadar Diwani Adalat .

But later it was realized that this is not helping to reduce the work load of courts. Therefore by Regulation V of 1798 [ Governor General Wellesley ] it was decided that appeals could go to Sadar Diwani Adalat only when the subject matter , case matter involved more than Rs.5000 in value irrespective of whether real or personal property was involved.

Governor General Wellesley understood that for good governance ,good justice system judiciary and executive powers should be divided . The process was started by the Lord Cornwallis and GG Wellesley took it further.

GG wrote the letter to Court of Directors regarding this , Wellesley himself wrote about the reducing the power of the post which Governor General enjoyed . Wellesley demanded the separation of Sadar Adalat and Government .

I am reproducing few lines of Governor General Wellesley what he wrote ,

It is equally necessary to the happiness of the people , to the prosperity of the country [ India ] and to the stability of the British Government , that such laws as the Governor General in council may sanction in his legislature capacity ,should be administered with ability , integrity , impartiality and expedition , all the provisions made by the British Constitution for precluding the legislative and the



executive powers of the state from any interference in the administration of the laws , are not only applicable to the government of this country , but , if it were possible demand to be strengthened .

All the powers , legislative , executive and judicial were concentrated in the hands of the Governor General in council and Lord Wellesley realized that this is wrong and not good for any nation .

Lord Wellesley penned his Minute on the 12th March 1801 demanding and advocating separation of the Sadar Adalats from the Governor General and council.

He said that in current system Government, executive can abuse the powers he got , this is one of the reason executive should not enjoy this power.

After this By Regulation II of 1801 the Sadar Diwani Adalat and the Sadar Nizamat Adalat were to presided over by three judges appointed by the Governor General in council.

The chief judge was to be a member of the council but neither the Governor General nor the commander in chief was to occupy this office. In this change only problem or defect was that still chief justice was a member of the Governor General Council .

In 1803 the jurisdiction of the Sadar Adalat was extended to the Oudh .and in next 2 years to the Bundelkhand.

In 1805, 2nd Time Lord Cornwallis became Governor General who started the process of separation of powers between the judiciary and executive in 1793.

In 1805 by Regulation X, a complete separation between the sadar adalats and the government was effected by Lord Cornwallis .

But again in 1807 during the period of Lord Minto , by regulation XV enacted on 23 July 1807 modified the constitution of the adalat by increasing the number of

the judges from 3 to 4 and one judge should be member of the governor general and council other than Governor General or Commander in chief .

Regulation XII of 1811 provided for appointment of a chief judge and such number of judges to the Sadar Adalats as the Governor General and council deem fit as per the work load of sadar adalats . This regulation does not mention that judge should be member of council .

Lord Minto realized the importance of separation of powers between the executive and judiciary .

Regulation XXV of 1814 laid down the necessary qualification for the appointment of judges of the sadar adalats . The Regulation laid down that no person was to be deemed qualified to be appointed as a judge of the sadar adalats unless he had previously officiated as a judge of a provincial court of appeal or of a court of circuit for a period of not less than three years and had been employed in the judicial department or in offices requiring the discharge of judicial functions whether of civil or criminal nature for a period of not less than nine years .

This provision was rescinded in 1823 by Regulation IV as it was proving difficult to find qualified persons to be appointed as judges . The sadar adalats subsisted till 1862 when they were merged in the newly constituted High Court at Calcutta .

Oudh was ceded to the company by the Nawab Vizier in perpetual sovereignty by a treaty on November 20, 1801 .

The Province of Oudh was divided into seven districts namely Moradabad, Bareilly, Etawah, Farrukhabad, kanpur , Allahabad and Gorakhpur.

On March 24, 1803 Same Judicial system was introduced in the Oudh .

The number of Pending cases in various courts on the 1st January,1802 was as follows

•	Courts	of	Appeal	–	882
•	District	diwani	adalat	–	12,262
•		Registrars	–		17,906
•		Munsiffs	–		131,929

In 1803 selection of Munsiff was made more easy . The judge of the diwani adalat got the power to appoint the Munsiff with the approval of the sadar diwani adalats . Not only zamindar but other qualified Indians also got right to become Munsiff

Till 1811 no distinction was made between revenue and judicial services .

District judges were appointed without consideration of any judicial experience as a result servants from the revenue, political , military or postal department servants suddenly became the District Judge who failed to do justice with their job because of lack of judicial knowledge and experience.

In beginning servants got the initial training at the Fort William college. Lord minto decided that junior servants were to make a choice between the judicial, revenue or postal service .Once an officer made his choice , he was to stay and receive promotions in the department only . Thus it tried to stop the postal department servant suddenly becoming the Judge

On January 1, 1814, the total number of cases in all courts stood at the 139,271.

See the thinking of British Rulers , what they said about this situation ,

We should be very sorry , that from the accumulation of such arrears, there should ever be room to raise a question , whether it were better to leave the natives to their own arbitrary and precipitate tribunals, than to harass their

feelings and injure their property by an endless procrastination of their suits ,  
under the pretence of deliberate justice .

Delay in Justice Resulted in –  
Bribery , corruption and extortion , taking laws in own hand , no fear of law.

In 1813 , the charter of company was renewed .

Today in India do we find such a thinking in Indian law makers and politicians ?

Part 18 – Indian Legal History – Lord Hastings Plan 1814 –

Reality Views by sm –  
Sunday, June 06, 2010

As we have seen that increasing number of suits increased the work load of courts  
and in result, increase in number of pending suits.

To reduce the accumulation of cases and suits a plan was introduced of referring  
land disputes to arbitration.  
Regulation VI of 1813 made provisions to this effect.  
Land disputed parties were free to take their matters to private arbitration and  
courts were to support and enforce the awards made by the arbitration.

Lord Hastings - Plan of 1814 -

Increased the court fees, started to charge the fees on every process undertaken  
and on every paper filed in the civil courts.  
This way judiciary became the revenue and money making factory as on every  
paper, judicial process the fee was charged.

The effect was that people started to keep away from the judiciary as it became costly affair.

Regulation V increased the strength of each provincial court to four.

Regulation XXVI tried to restrict the number of appeals. Only one appeal was allowed in every case.

This regulation laid down the qualification for the appointment of registers and district judges.

The persons who wanted to become register have to obtain the certificate from the Collage of Fort William.

From 1st February, 1815 no person was to be appointed a judge of provincial court unless he had at least 3 years of experience as a judge or magistrate in a district adalat.

Bengal Presidency 1814

The structure of Judiciary in Bengal Presidency 1814 –

We will start from the Bottom –

1. Munsiffs - jurisdiction up to Rs.64
2. Munsiff location - District
3. Appeals from munsiffs went to the district diwani adalat
4. Sadar ammens tried the cases up to Rs. 150
5. Sadar ammens located at district head quarters
6. Appeals went to Diwani adalat.
7. Registers tried cases up to Rs. 500
8. Appeals went to the District diwani adalat
9. Each Diwani adalat had one or two registers

10. One diwani adalat in each district
11. Diwani adalat tried cases up to Rs. 5000
12. Appeals went to the Provincial Court of appeal
13. Provincial court of appeal tried cases over Rs. 5000

In 1793 District Diwani adalat enjoyed unlimited power but in 1814 District diwani adalat got limited power , tried cases up to Rs. 5000 only .

## Part 19 – Indian Legal History - Criminal Court System 1790 – Defects and Changes

Reality Views by sm –  
Sunday, June 13, 2010

Cornwallis introduced, made changes in criminal system in 1790

- Lower Level - Magistrate
- Middle Level - Courts of Circuit
- Top Level – Sadar Nizamat Adalat

The judges of the district diwani adalats acted as magistrates. The main duty of the magistrate was to arrest the accused person; hold inquiries into the commission of crime find the evidence, if evidence was found against accused then commit them for trial to the Court of Circuit which visited each district once in six months. Cornwallis had instituted 4 Courts of Circuit to try criminal cases arising in Bengal, Bihar and Orissa.

In 1802 court of circuit tried 2,820 cases, charges involving 5667 accused persons.

1790 - Types of Crimes People committed -  
•Dacoity  
•Burglary  
•Gang robbery  
•Murder  
•Rape etc just named few

The main defect in this type of system was that accused was tried after long time after the commission of crime. In this period the accused was kept in a jail. If accused was innocent then he suffered in justice. Limited number of judges. – Only one magistrate in the district with civil and criminal both functions.

Changes Introduced –  
Regulation XIII Of 1796 – The assistants to the district magistrates were authorized  
To exercise the judicial powers vested in the magistrates.

Regulation XVI of 1810 provided for the appointment of magistrates other than the district judges as well as of joint and assistant magistrates. The Governor General in council got power to appoint any person as a magistrate in district.  
The joint and assistant magistrates were to have the same powers as the district magistrates but were to be subordinate to the district magistrates.

Regulation XII Of 1818 enhanced the powers of the magistrate to give sentence of 2 years imprisonment with hard labour and a corporal punishment not exceeding thirty stripes.

Regulation IV of 1821 authorized the Governor General in Council to appoint a collector or any other revenue officer to exercise the whole or part of the powers and duties of magistrates.

Part 20 – Indian Legal History - Lord William Bentinck period – July 1828 to March 1835 -

Reality Views by sm –  
Monday, June 21, 2010

Governor General - Lord William Bentinck period – **July 1828 to March 1835**  
2nd October 1815 Lord Hastings suggested the establishment of a separate Sadar Adalat for the Western Territory –  
The Reason – To get justice people have to travel 1000 miles many times to reach the Sadar Adalat. Because of this Poor people did not get opportunity to file appeals or get justice. 2nd Reason was Delay in getting justice. Eg. Agra to Calcutta travel for justice just thinks. But no change was made, but he gave the thought.

Lord Bentinck like the thought and idea of the Lord Hastings to establish another Sadar Adalat.  
So Lord Bentinck again forcefully argued for this cause. This time Lord Bentinck succeeded.  
Governor General Bentinck government established through Regulation VI of 1831, Sadar Diwani Adalat and Sadar Nizamat Adalat at Allahabad from January 1, 1832.  
Jurisdiction Area – Banaras Province, Districts of Meerut, Saharanpur, Muza



ffarnagar

and

Bulandshahar.

Bentinck Brought Changes in Criminal Judicature of 1793 which Lord Cornwallis established.

Bentinck realized that the people are not getting speedy justice. Bentinck said that these courts had become the resting place for those members of the service who were deemed unfit for higher responsibilities. [He said this about the English People.]

### **Bentinck Brought Changes in Circuit Court –**

Regulation I of 1829 appointed Commissioners of Revenue and circuit. Power of Commissioners – To superintendence and control over the magistrates. Police, collectors, and other executive revenue officers. The got all the powers of Court of Circuit. Each Commissioner controlled small area so people will get cheap and fast justice.

Bengal Presidency was divided into 20 Divisions and for each division one commissioner was appointed. With this change Provincial Courts of Appeal stop to work as the Circuit Courts. The one of the object was that to make supervision and control of the revenue authorities more effective.

Regulation II of 1829, any order or decision passed by a magistrate or joint magistrate was made appealable to the commissioners. And the order of the commissioner was made final.

The plan improved the justice system. But the work load of Commissioner increased.

Again one person got revenue and judicial function which Cornwallis changed in the past.

Regulation V of 1831 declared that magistrate may refer any criminal case to a Sadar Ameen or a principal sadar Ameen for investigation. Ammen was an Indian servant of British Judiciary. In 1832 the powers of Ammen and Indian law officers were increased.

Changes Made By Lord Bentinck in Civil Procedure – Powers of Munsiff increased. They used to get the fees from suits, it was cancelled and they started to get the monthly allowance. Any Indian can become Ammen no discrimination based on Religion.

Sadar Ammen and Munsiff – appeal went to district diwani adalat. The order of district diwani adalat was final. But special appeal was allowed to Sadar diwani adalat.

The judicial powers of registers were removed. The munsiff was the poor man's justice provider, he was nearby them so he got speedy justice.

**Lord Bentinck Introduced Jury system –**

Regulation VI of 1832 made provision for the governor general in council to invest any European civil judge in a trial of civil suit original or appellate with powers to avail himself of the assistance of the Indians in one of the three ways. First judge could refer the suit to panchayat and they will give him report of investigation.

Secondly judge could constitute 2 or more persons as assessors which help the judge during the examination of witness and each assessor gave separate report. Thirdly judge can appoint any person as jury who will suggest the judge points of investigation or inquiry.

Regulation XIV of 1834 power to try revenue cases was given to collector.

In 1837 the act was passed which gave power to Principal sadar Ammen to try suits of any amount referred to them by district diwani adalat.

Act X 1859 made all kinds of revenue cases cognizable by the collectors.

In 1885 Bengal Tenancy Act was passed which authorized civil courts to determine disputes between landlords and tenants

## Part 21 – Indian Legal History – Regulation and Non Regulation Provinces

Reality Views by sm –  
Tuesday, June 29, 2010

For many years British India was comprised of only three provinces of Bomaby, Madras and Bengal and later added Bihar and Orissa.

In 17th century East India Company started as a trading company and with intelligence, using tricks very slowly took the controlled of India from the Muslim King of Delhi, who ruled the Land of Bharat.

We should not forget the fact that once there was a country of Bharat, then Muslims from Arab world came here and won our land and kingdoms Same way English people came and won the same land and kingdoms from Muslim Kings.

Each presidency got the Provincial Government which got right and power to make the laws for the territories under its control. Thus each province came to have a separate code of Regulation and 3 provinces were known as the Regulation Provinces.

Act II of 1800 enacted that it should be lawful for the court of Directors to declare what part or parts of the company's territorial acquisitions would be subject of the government of which Presidency.

As company was slowly expanding and acquiring the new territories under its control, but it was not feasible, easy to implement the same regulation laws of established provinces. Thus the new territories were known as Non Regulation provinces. New territories were not annexed to any Presidency but were formed into distinct units of administration; Governor General in council administered the new territories under the executive capacity.

Punjab, Assam, central provinces and Oudh were governed as Non-Regulation Provinces.

Punjab was annexed by Lord Dalhousie in 1849. And Board of administration, having a president and two members got the power to control and supervise all departments. The Board also acted as Sadar court of Judicature. In 1853 board was abolished and its powers and functions were vested in chief commissioner assisted by a judicial commissioner and a finance commissioner. Sir John Lawrence was appointed as the chief commissioner and on 1 January 1859 as the Lieutenant Governor. The district officer known as the deputy commissioner acted as the collector, magistrate and civil judge.

Assam was annexed in 1826 and was added to Bengal. In 1874 it was detached and placed under a chief commissioner.

Nagpur came under in 1854.

Oudh was annexed in 1856

In this provinces officers enjoyed unlimited powers.

The regulation system got the fixed rules and non regulation system got discretion.

The non regulation system was based on the will of head or officer. But using executive power, governor general and council passed many rules and orders.

But few people doubted the validity of such rules and orders. Thus in 1861, section 25 of the Indian Councils Act legitimized the non regulation law

In 1861 All India Legislative council was established. And it started to make the changes in judicial system of Non regulation provinces.

In 1853 under administration of Lawrence the Punjab Civil Code was compiled. Punjab laws act was enacted in 1872 which declared that customs will rule and decide nearly all civil matters like succession, property etc.

The Indian Penal Code was enacted in 1860 and already civil procedure and criminal procedure code were in operation.

Part 22 – Indian Legal History – British Citizens and Company Courts in India -  
Reality Views by sm –  
Sunday, July 04, 2010

In beginning when Company established the judicial system in their Presidencies British citizens were exempt from the jurisdiction of the company courts.

As per Regulating act British citizens were only subject to the Supreme Court of

Judicature at Calcutta.

But in 1793 Cornwallis started to reform this situation in Bengal. Cornwallis was also a British Person. Cornwallis Prohibited British citizens from residing beyond ten miles of Calcutta unless they executed a bond placing themselves under the jurisdiction of the mofussil diwani adalats in cases up to Rs.500. Cases where amount was more than 500 Rs. were tried in the Supreme Court of Calcutta.

Madras and Bengal adopted this same law in 1802 through Regulation XVIII and Regulation III of 1799.

The section 107th of charter act of 1813 stated that British Citizens staying, trading and holding immoveable property at a distance of more than ten miles from the presidency town were subject to the company courts brought against them by the native people. But British citizens got special right regarding appeal to the Majestys courts. But that court also followed the same company rules.

Again in 1814 Lord Hastings reformed the civil law. Munsiffs and sadar ameens were not allowed to take cognizance of cases in which a British or European or American citizen were involved. Only district court got the authority to take cognizance, try cases against the British, European or American citizens.

Again law was changed.

Regulation IV of 1827 gave power to the Sadar Ameens to take cognizance of cases in which Europeans were party. This was the law up to 1831.

In 1831, Lord William Bentinck changed the law and munsiffs and sadar ameens were forbidden to try cases involving British or European or American citizens.

The charter act of 1833 gave British Citizens right to stay in India and purchase property in India.

Section 85 of the charter act of 1833 said that it is the duty, obligation on the government to protect Indians from insult and outrage in their persons, properties, religion and opinions.

Macaulay the first law member of the government of India [1833] was of the opinion that the judicial system should be uniform as far as possible and that no distinction ought to be made between one class of people and another.

In 1836 Legislative council of India passed the act which took away the right of British people to file appeal in the Majestys court which they enjoyed as per the charter act of 1813.

In 1839 again law was passed act III declared that no person by reason of place of birth or descent be exempt from the jurisdiction of the revenue courts or munsiffs courts.

In 1843 English people were also brought under the munsiffs courts. Munsiffs courts Indians were judges and in sadar ameens also Indians were judges.

Regarding criminal justice also same type of reforms kept happening but very slowly.

Provincial small cause courts –

In 1753 Courts of Requests were created in the three Presidency towns. In 1850 Legislature abolished the courts of requests and established courts of small causes in their place.

These courts are the courts of minor jurisdiction and provide quick justice in cases of small monetary value. These courts were constituted by the Provincial small cause's courts act, XLII of 1860 which was amended by act of XI of 1865. Again this act was replaced by new legislation, act IX of 1887.

The act gives power to state government to establish courts of small causes and these courts can take cognizance of civil suits up to a value of 500 rupees but state government may extend their jurisdiction to one thousand rupees. Following types of cases are excluded from the purview of these courts.

- Suits regarding government acts
- Possession of immoveable property etc

A suit cognizable by a court of small causes is not to be tried by any other court. The decision of small cause courts are final but the High Court exercises a power of revision.

A court of small causes is subject to the administrative control of the district court and to the superintendence of the High Court. Advantage of small cause court is that speedy justice in petty litigation. These courts follow summary procedure. If civil judge is given this type of work, it loses all the merits and in small cases also people do not get the speedy justice.

A civil court was established in the Madras under the Madras city civil court act, VII of 1892.



In 1955 the state government took power under the act to extend its jurisdiction up to rupees 50,000. These courts try civil cases only and appeals from it lie to the High court. Bombay city civil court act, 1948 was passed by the Bombay legislature which created civil court just like Madras civil court. The main reason to establish this court is to reduce the workload of High courts. Calcutta civil court was established in 1957 under legislation passed by the west Bengal Legislature in 1953.

Village Panchayat Courts – Village Panchayat is very old traditional system of law in Hindu India as well as Muslim India. Art.40 Directive Principle in the Indian Constitution declares the state shall take steps to organize village panchyats and give them such powers and authority to enable them to function as units of self government. Every state in India has enacted legislation to regulate the composition, constitution and powers of the village Panchyat. Punjab Tenancy Act 1887 Punjab Gram Panchyat Act 1952

For me I think India does not need Panchayat system, India needs more educated judges and courts, the number of courts should be increased in India. Only an educated person, layman, judge can give justice to any person. Panchayat means it brings the ghost of caste and religion while giving the justice. Justice should be always given without consideration of caste and religion.

art 24 – Indian Legal History - Indian High courts act 1861

Reality views by sm – Monday, July 19, 2010

Company kept judicial and executive functions separate since year 1793.

But this system was not perfect; the appointment procedure of judges was faulty. Executive became judge and judge became executive vice versa because of lack of experience judiciary suffered as executive failed to do justice to judiciary.

In 1868, company officers pointed out that native judges and pleaders who had received a regular legal education at the Calcutta University had a better knowledge than the civilian, executive judges. Therefore Bengal officers proposed the establishment of a separate judicial service.

Sir Henry Maine in 1868 condemned the [British] district judges as shamefully inefficient.

In year 1872 Law member Stephen supported the idea of a separate judicial service but nothing happened. In 1924, the Rankin committee disfavoured appointment of civilian as district judges, saying that the subordinate judges got more knowledge than civilian judges as subordinate judges got experience and legal education. But nothing happened.

The Indian High Courts Act 1861 –

The Indian High Courts Act was passed by the British Parliament on the 6th August, 1861 and was titled as an act for establishing high courts of judicature in India.

This legislation contained only 19 sections only. Its main function was to abolish the supreme courts and the Sadar Adalats in the three Presidencies and to establish the high courts in their place. The records and document of the various courts became the records and documents of the High Court concerned. It gave power authority in Her Majesty to issue letters patent under the great seal of the United Kingdom, to erect and establish High courts of judicature at

Calcutta, Madras and Bombay.

Each High court was to consist of a chief justice and as many puisne judges not exceeding fifteen as her majesty might think to fit to appoint. Who became the high court judge or who was eligible to become the high court judge?

Judges were selected out of the following categories of persons

1. Barrister must have 5 years or more experience
2. members of the covenanted civil service of not less than ten years standing who should have served as Zillah judges for at least three years of that period
3. Persons who shall have held judicial office not inferior to that of principal sadar amen or judge of small cause court for a period of not less than five years.
4. Person who have been pleaders of a Sadar court or high court for a period of not less than ten years.

But the rule was made that, not less than one third of the judges in a High court, including chief justice were to be barristers and not less than one-third of the judges were to be members of the covenanted civil service. The judges of the High court were to be held office during her majesty's pleasure.

Each high court was to have and exercise all such civil and criminal admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction and original and appellate

The High Court was to have superintendence over all courts subject to its appellate jurisdiction.

It got power, authority to call for return, to transfer any suit or appeal from one court to another and to make and issue general rules for regulating the practice and proceedings of such courts.

The charter for the Calcutta high court was issued on May 14, 1862 and was published in Calcutta on the 1st July 1862 establishing the high court from the next day.

The charter for the high courts of Bombay and Madras were issued on June 26,

1862 and these courts were inaugurated on the 14th and 15th august 1862.

## Part 25 - Indian Legal History - Charter of Calcutta High Court 1865

Reality views by sm –  
Monday, July 26, 2010

The Indian High Courts Act 1861 was a permissive legislation and gave power to the crown to establish High Courts in India. The charter for Calcutta high court was issued on May 14, 1862 and was published in Calcutta on the 1st July, 1862 establishing the High Court from the next day.

No law is perfect, as per this common natural rule, later it was found that charter of 1862 got the defects, problems thus the new charter was issued on 28th December 1865 with few modifications in the charter of 1862.

The provisions of charter of Calcutta High Court –  
1.The High court of Calcutta was constituted into a court of record.

2.The court was to have an ordinary original civil jurisdiction within the local limits Calcutta or within such local limits as may from time to time be declared and prescribed by any law by any competent legislative authority in India.

3.High court took the place of Supreme Court which was abolished.

4.The High court even got the power to exercise try matrimonial causes of the

non Christians on the civil side.

5.The High court got power under extraordinary original civil jurisdiction under which it was authorized to remove and try any suit pending in any court subject to its superintendence whenever it thought proper to do so, either on the agreement of the parties, or for the purpose of justice. This way High court got power to try cases of other courts when if High court felt that the lower court may not be able to do justice in that particular case.

6.Where plaintiff had several causes of action against a defendant such causes not being for immoveable property and if the High court had original jurisdiction in respect of one of such causes, the court could call on the defendant to show cause why the several causes of action be not joined together in one suit and the court could make such order for trial of such causes as it deemed fit.

7.The high court got power to hear appeals from civil courts subordinate to it, which is appellate civil jurisdiction.

8.A new provision was added in this appellate power, it was that whenever in a civil court judgment one of the judge or from division bench whenever such judges were equally divided in opinion, these types of appeals were known as letters patent appeals as they are based not on any law but on the specific clause in the charter. Under this provision the court could hear an appeal from its original civil jurisdiction.

9.Appeals in other civil cases lay from the High court to the Privy Council

10.The high court enjoyed extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any court subject to its superintendence.

11.The High court got power, authority to try at its discretion any person brought before it on charges preferred by the advocate general or by any magistrate or any

other officer specially empowered by the government in that behalf. The main purpose behind this provision was to enable the high court to hold trials for offences committed out of the presidency town.

12.High court got power to hear appeals as well as be a court of reference and revision from the subordinate criminal courts.

13.High court got power to transfer criminal cases or appeal from one court to another.

14.The High court was required to apply the Indian Penal code 1860 while acting as court of original criminal jurisdiction or a court of appeal, reference or revision. Point to be noted today also we Indians use the British India made laws.

15.High court was given jurisdiction as an insolvency court.

16.High court got power to try all civil , criminal and maritime jurisdiction [ court of Admiralty ]

17.High court also enjoyed testamentary and intestate jurisdiction.

18.High court was supposed to follow civil procedure code 1859 and criminal procedure code 1861.

With the establishment of High court in Presidency towns, it unified the Supreme Court and sadar diwani adalat. Supreme Court got power from the crown and sadar adalat got power from company, but establishment of High court unified both systems of law. This way first time all courts were brought under the one superior high court. Before this Supreme Court and sadar adalat clashed with each other, but High

court solved this problem. All the other High courts established in other Presidency towns enjoyed same powers with little difference

## Part 26 - Indian Legal History – Creation of Allahabad High court and The Indian High Courts act 1911

Reality views by sm –  
Wednesday, August 04, 2010

The Indian High courts act 1861 gave power, authority to her majesty to issue letters patent to establish a high court for any area, territories not included within the local jurisdiction of another High court.

Meaning of Letters Patent –

Letters patent is a type of legal instrument in the form of an open letter issued by monarch or government ,granting an office , right , monopoly, title or status to a person or to some entity such as corporation. Letters patent are used for the creation of corporations or government offices. In the United Kingdom letters patent are issued under the prerogative powers of the head of state, royal prerogative, this is a type of legislation without the consent of the parliament. Letter patent may be used to grant assent to legislation.

Majesty meaning –

- Majesty means –
- A royal personage.
  - The greatness and dignity of a sovereign
  - Supreme authority or power: the majesty of the law.

Majesty is Used with His, Her, or Your as a title and form of address for a sovereign.

The territorial jurisdiction of the Calcutta high court was confined to Bengal, Bihar and Orissa and did not extend to the North western Provinces where Sadar adalats continued to function as usual.

On March 17 Queen Victoria issued a charter and a High Court was established at Agra for the North Western Provinces which abolished the sadar diwani adalat and the sadar nizamat adalat. The court started its working on June 11, 1886 and was shifted to Allahabad in 1875 which was known as High court of Judicature at Allahabad. The powers of this High court were similar to the high court of Calcutta.

In 1865 in Oudh a non- regulation territory a judicial commissioners court was established.

Oudh civil courts act 1877 declared a judicial commissioners court as highest court of appeal for Oudh.

In 1925, U.P. Legislature passed the Oudh Courts act 1925 and gave status of chief court to the judicial commissioner's court as per the demand of Oudh talukdars and population.

That time Utter Pradesh was known as united provinces. That time 2 separate courts of appeal functioned one at Allahabad and other at Lucknow.

After Independence on July 26, 1948, the territorial jurisdiction of the Allahabad High court was augmented by the amalgamation of the Oudh chief court with it. The Allahabad High Court however maintains a bench at Lucknow also.



The Indian High courts act 1911 modified few provisions of the Indian high courts act 1861.

The act of 1861 fixed the number of High court judges at 15 excluding the chief justice.

The act of 1911 increased the number of High court judges at 20 including chief justice.

The act of 1861 allowed establishing another High court in an area which does not come under the local jurisdiction of the other High court.

The act of 1911 modified this provision and gave power to the crown to establish additional or High courts in any territory within his majesty's dominions in India

which changed the local jurisdiction of High court.

The act also fix that the salaries of the Judges or temporary judges were to be paid out of the revenues of India.

art 27 - Indian Legal History the Government of India Act 1915

Reality views by sm –  
Friday, August 13, 2010

The Government of India Act 1915 –  
On 29 July 1915 British Parliament passed the Government of India [consolidating] Act 1915.

Reason to pass this Act - purpose behind this act was to consolidate and reenact existing statutes relating to the government of India.

The act reenacted all the provisions made by the Indian High courts acts of 1861 and 1911 in relation to the High courts.

This act made one change with respect to the ordinary original civil jurisdiction of the High courts of Calcutta, Madras, and Bombay, the act laid down that these courts may not exercise any original jurisdiction in any matter concerning revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force. This provision did not serve any purpose.

This act made a very wrong provision in the act. Below is that provision. The governor general, governor, lieutenant governor, chief commissioner, members of the executive council of the governor general or the governor or lieutenant governor and a minister were to be exempt from the original jurisdiction of the High courts for anything counseled, ordered or done by any of them in his public capacity. None of these officials was to be liable to be arrested or imprisoned in any suit or proceeding in any high courts on its original side or was to be subject to the original criminal jurisdiction of a high court in respect of any offence not being treason or felony.

A high court of judicature was set up at Patna through letters patent issued by his majesty on February 9, 1916, in pursuance of S.113 of the Government of India act 1915.

In 1865, the Punjab Chief court was established at Lahore through an act of the Indian legislature act XXIII of 1865. The chief court was raised to the status of the High court on 21 March 1919 by a charter issued by George V in pursuance of the Government of India 1915. The High court was to have jurisdiction over the Punjab and Delhi.

Reality Views by sm –  
Monday, August 23, 2010

In 1935, British Parliament enacted the government of India act to bring the constitution of the country on federal lines.

This act contained many provisions regulating the composition, constitution and working of the High courts.

The Government of India Act 1935 was passed during the "war Period" and was the last pre-independent constitution of India. In 1947, a relatively few amendments in the Act made it the functioning interim constitutions of India and Pakistan.

The Act was originally passed in August 1935 (25 & 26 Geo. 5 c. 42), and is said to have been the longest (British) Act of Parliament ever enacted by that time. Because of its length the Act was retroactively split by the Government of India (Reprinting) Act 1935 (26 Geo. 5 & 1 Edw. 8 c. 1) into two separate Acts:

- 1.The Government of India Act 1935 (26 Geo. 5 & 1 Edw. 8 c. 2)
- 2.The Government of Burma Act 1935 (26 Geo. 5 & 1 Edw. 8 c. 3)

The act made provision for the  
1.establishment of a "Federation of India", to be made up of both British India and some or all of the "princely states"  
2.the introduction of direct elections, thus increasing the franchise from seven million to thirty-five million people  
3.Sind was separated from Bombay

4.Burma was completely separated from India  
5.Aden was also detached from India, and established as a separate colony  
6.the introductions of direct elections, thus increasing the franchise from seven million to thirty-five million people and in 1937 first elections were held.

The Indian High courts act 1911 fixed the maximum number of judges in a High court at 20.  
The act of 1935 removed this limit and gave authority to the King in council to fix the number of judges for each High court from time to time.

Before 1935, High court judges hold office during His Majestys pleasure.

In England in 1701 act of settlement was passed to achieve the independence of the judiciary from the executive.

The act of 1935 fix the retirement age for the judges that is age sixty.

The act of 1935 added the rule that barristers and advocates of ten years standing were to be qualified for appointment as the High court judges.

On January 2, 1936 George V issued a charter and the Nagpur High court was established in place of the chief court.

The High court of Assam was created through the Assam High court order 1948 issued by the Government of India under s.229 [1] of the government of India act 1935 as adapted by the India Provisional Constitution amendment order 1948.

State of the Nagaland was created by the states of Nagaland act 1962. and High court of Assam became the common High court of the states of Assam and Nagaland.

This High court was renamed as the Gauhati High court by the North Eastern area reorganization act 1971 act 81.

The state of the Mizoram was created by the state of Mizoram act 1986.  
The state of the Arunachal Pradesh was created by the state of Arunachal Pradesh  
act 1986.

The High court of Orissa was created for Orissa under the Orissa High court  
order 1948.

State of Andhra was created by the Andhra state act 1953 and High court of  
Andhra was established with effect from 1st January, 1956.  
The state was renamed as the state of Andhra Pradesh by the states  
Reorganization act, 1956.

Like this many more High courts were created in India.

Part 29 - Indian Legal History – Importance of Privy Council or King in council  
towards Indian Legal History -

Reality views by sm –  
Wednesday, September 01, 2010

Once England ruled the world and Privy Council or King in council heard appeals  
from more than 150 countries in all types of cases civil, criminal etc.  
The jurisdiction of the Privy Council originated at the Norman Conquest with the  
premise that:

“The King is the fountain of all justice throughout his Dominions, and exercises  
jurisdiction in his Council, which act in an advisory capacity to the Crown.”

At the beginning of the fourteenth century, receivers were appointed to aid the dispensation of justice in Parliament. One group was appointed for Great Britain and Ireland, and one for the Channel Islands. Appeals from the Channel Islands became the first regular appellate business of the King's Council, now the Judicial Committee of the Privy Council. With the growth of the British Empire, this business increased with appeals and petitions from the Royal Council, and Privy Council Committees were formed.

From 1833 the Privy Council was officially known as or called as the judicial committee of the Privy Council.

Privy Council - Abolished the Sati system of India.

In 1831 the Privy Council heard an appeal against the East India Company "from certain Hindus of Calcutta complaining of a regulation of the Governor General... abolishing the practice of Sati system". In India Sati is a custom in which after the death of Husband it was a rule that the wife should commit suicide or burn herself with her dead husband. The ban was upheld by the Privy Council, but it was heard by an unusually large board of nine judges.

This court was highest court of appeal for over two centuries, setting high standard of justice system in India.

In 1726 for the first time a right to appeal to the king in council was granted from the courts in India. From period 1726 to 1833 more than three hundred appeals were disposed of by the Privy Council. During its period as the highest court of appeal from India the Privy Council rendered more than 2500 judgment which for a great body of precedents. These judgments constitute the fountain source of law on many points. Privy Council was situated and bases in London and distance was 5000 miles or more.

All the Privy council documents are kept at the Public Record office, London. If ever you read their letters, discussions about the slave colonies in England parliament you will realize how less our own Politicians discuss about the progress of India in our own parliament. Today our politicians wait for Supreme Court of India to order them in writing to give free food to poor people of India, give free medicine or reduce the medicine prices.

K.M. Munshi, a lawyer-statesman observed – The British Parliament and the Privy Council are the two great institutions which the Anglo Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law but coordinated the concept of right and obligations throughout all the dominions and colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important. It has been a great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our constitution.

Alladi Krishnaswami Ayyar, an eminent lawyer-member of the constituent assembly observed regarding work of Privy Council, he said, There can be no doubt that the record of the judicial committee of the Privy Council has been a splendid one.

On 6th February,1950 at a sitting of the Privy council a message was read from the Government of India paying a tribute to the Valuable services rendered by Privy council to India over a period of more than two centuries . Government of India act 1935 started the federal policy in India. This act established, made provision for the establishment of federal court in India.

Federal policy, constitution means distribution of power between centre and the

constitutional unit.

Federal court is one which solves disputes between the centre and the constitutional unit.

Federal court was formally inaugurated on the 1st October, 1937  
The viceroy administered the oath of allegiance to the first three judges of the court namely,

- Sir Maurice Gwyer – chief Justice from 1 October, 1937 to 25 April, 1943
- Sir Shah Muhammad Sulaiman
- M.R. Jayakar.

The court held its first sitting at New Delhi on December 6, 1937.  
The governor general was not bound to accept the opinion of the Federal court.  
Governor General = Today's Prime minister and his council  
From Federal court appeals went to the Privy Council.  
The judges of the federal court were appointed by his Majesty.  
They were to remain in office till they reached age of 65 years.  
A judge could be removed from office for misbehavior or infirmity of mind or body.

In India federal court worked for only 12 years but the job done was excellent.  
Federal court is predecessor of the present day supreme court of India.

Indian Constituent Assembly passed the abolition of Privy Council jurisdiction act on the 24th September, 1949 to abolish the jurisdiction of Privy Council in respect of appeals from India.  
The act came into force on the 10th October, 1949.

The last appeal from India was disposed of by the Privy Council on December 15, 1949 and with this came to an end India's 200 year old connection with Privy Council.

On January 26, 1950, the federal court itself was converted into the Supreme Court and all the federal court judges on that day became the judges of the Supreme Court.



Thus Indian Legal history started its new era.

In short I will here mention about the current working and role of The Judicial Committee of the Privy Council around the world.

The Judicial Committee of the Privy Council is the highest court of appeal for many current and former Commonwealth countries, as well as the United Kingdom's overseas territories, crown dependencies, and military sovereign base areas.

It also hears very occasional appeals from a number of ancient and ecclesiastical courts. These include the Church Commissioners, the Arches Court of Canterbury, the Chancery Court of York, prize courts and the Court of Admiralty of the Cinque Ports.

- United Kingdom appeals
- Commonwealth appeals
- Overseas territories and sovereign base appeals
- Appeals to local head of state

United Kingdom appeals

The Judicial Committee hears domestic appeals to Her Majesty in Council as follows:

- Jersey, Guernsey and the Isle of Man
  - the Disciplinary Committee of the Royal College of Veterinary Surgeons
  - against certain schemes of the Church Commissioners under the Pastoral Measure
- 1983

The Judicial Committee also has the following rarely-used jurisdictions:

- appeals from the Arches Court of Canterbury and the Chancery Court of York in non-doctrinal faculty causes
- appeals from Prize Courts
- disputes under the House of Commons Disqualification Act
- appeals from the Court of Admiralty of the Cinque Ports

Additionally, Her Majesty has the power to refer any matter to the Judicial Committee for "consideration and report" under section 4 of the Judicial Committee Act 1833.

Under the Constitutional Reform Act 2005, devolution cases from the regions of the United Kingdom are now heard by The Supreme Court.

Commonwealth appeals

To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

In criminal cases, it is unusual for the lower court to have the power to grant leave unless your case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice.

Appeal therefore lies from these countries:

- Antigua and Barbuda
- Bahamas

- Barbados
- Belize
- Cook Islands and Niue (Associated States of New Zealand)
- Grenada
- Jamaica
- St Christopher and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Tuvalu

Legislation enacted in New Zealand in October 2003 abolished appeals from New Zealand to the Privy Council in respect of all cases heard by the Court of Appeal of New Zealand after the end of 2003. This New Zealand legislation does not affect rights of appeal from the Cook Islands and Niue.

Appeal to the Judicial Committee also lies from the following independent republics within the Commonwealth:

- the Republic of Trinidad and Tobago
- the Commonwealth of Dominica
- Kiribati
- Mauritius

The circumstances in which appeals may be brought are similar to those in which appeals lie to Her Majesty in Council as above, except that from Kiribati an appeal lies only in cases where it is alleged that certain constitutional rights of any Banaban or of the Rabi Council have been or are likely to be infringed.

Overseas territories and sovereign base appeals

The Judicial Committee hears appeals from the following overseas territories of

the United Kingdom:

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Monserrat
- Pitcairn Islands
- St Helena and dependencies
- Turks and Caicos Islands

Additionally, appeals are heard from sovereign base areas in Cyprus:

- Akrotiri
- Dhekelia

Appeals to local head of state

In civil cases only, an appeal lies to the Judicial Committee from the Court of Appeal of Brunei to the Sultan and Yang di-Pertuan.

By agreement between Her Majesty and the Sultan these appeals are heard by the Judicial Committee, whose opinion is reported to the Sultan instead of to Her Majesty.

Part 30 - Indian Legal History – Criminal law system in India Prior to British Rule , East India Company Rule

Reality views by sm –  
Wednesday, September 08, 2010

Criminal law in India -

Before the rule of British king on India, India was ruled by the Muslim kings who were also outsiders. As king was the Muslim, Muslim criminal law was the law of the land for administration of criminal justice in India.

More than 100 years East India Company [ Period of Diwan ] also did not change the criminal law system in India, they also followed Muslim criminal law.

Criminal law in India started to change with the introduction of Indian Penal Code in 1860. Please Note – Today also in 2010 we are using same Indian Penal Code. An Indian Penal Code is a law given by a king for his slave nation called as India.

**Let us Understand Muslim law in India between 1772 to 1860-**

The judge under Islamic Law is not bound by precedents, rules, or prior decisions as in common law exception is Hadd.

When we talk about the Muslim law please understand that in Islam God is law and law is God , Islam does not have theory of Separation of church and state .

So Muslim criminal law in short we can say is that nothing but obeying the Quran

, surrendering to the will of Mohammad , God.

Islamic law is known as Shariah Law, and Shariah means the path to follow God's Law.

The first and primary element of Shar'iah Law is the Qur'an.

The second element of Shar'iah Law is known as the Sunna, the teachings of the Prophet Mohammad. The Sunna contain stories and anecdotes, called Hadith, to illustrate a concept.

The third element of Shar'iah Law is known as the Ijma. The Muslim religion uses the term Ulama as a label for its religious scholars. When the Ulama's reach a consensus, agree on an issue, it is interpreted as Ijma. In Muslim law Qazi performed all the duties of Judge. Qazi or Kazi means Judge.

The traditional Muslim law is classified under following 3 categories.

1. **Crime against god** - includes crimes such as apostacy, drinking intoxicating liquors, adultery etc.

2. **Crime against sovereign** – includes crime such as theft, highway robbery, robbery with murder etc

3. **Crime against private individual** – includes crimes such as murder, maiming, offences against human body.

As Per Muslim law there are **4 types of punishments** which are given for the various types of crime.

1. **Hadd**

2. **Tazir**

3. **Kisa or Qisas** - meaning retaliation, and following the biblical principle of "an eye for an eye."

4. **Diya** or **Diyut**

**Let us understand Hadd Punishment –**

Hadd crimes have fixed punishments because they are set by God and are found in the Qur'an. Hadd crimes are crimes against God's law and Tazir crimes are crimes against society. Hadd means limit or boundary. Hadd crimes are the most serious under Islamic Law, and Tazir crimes are the least serious.

When offence or crime of person was against god or against public justice, anti social and anti religious that time this according to the Hadd Principal the punishment was given to the criminal.

In this type the punishment was fix and no one was allowed to increased or decrease or change the punishment.

Once the crime was proved then punishment was given without any change. The judge did not enjoy any discretion. No judge can change or reduce the punishment for these serious crimes.

Only eye-witness testimony and confession were admitted. For eye-witness testimony, the number of witnesses required was doubled from Islamic law's usual standard of two to four. Moreover, only the testimony of free adult Muslim males was acceptable.

The purpose behind Hadd Punishment is to deter people; people should fear the law to do act against the religion or God or go against Quran. Example of Punishment –

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

Any person who is not liable for the hadd punishment for zina because of any of the limitations may still be prosecuted under the criminal law of discretionary punishment that is ta'zir.

**Let us understand Tazir Type of Punishments – when offence is against the sovereign** –

Tazir punishment corporal punishment up to death  
Under the principal of Hadd ,kisa or diya very few offences or crimes are mentioned thus Tazir becomes very important in the Muslim criminal law system and majority nearly all crimes come under Tazeer.

Indirectly every crime came under the Tazir , if judge found that he can not punish the criminal using the hadd or kisa the he punished that criminal using Tazir doctrine.

Tazir means discretionary punishment.  
Judge was free to decide the nature of punishment [scope for corruption]  
Punishment is not fixing in this type of crime.

These punishments include imprisonment, exile, and corporal punishment, boxing on ear, humiliating in public place.

Tazir Punishments change as per place and state , they are not written or codified.

Siyasatan means exemplary punishment imposed on habitual offenders or dangerous characters.



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

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

### Let us understand Kisa or Qisas and Diya Type of Crimes and Punishment-

Kisa or Qisas - meaning retaliation, and following the biblical principle of "an eye for an eye."

A Qesas crime is one of retaliation.

If you commit a Qesas crime, the victim has a right to seek retribution and retaliation. The exact punishment for each Qesas crime is set forth in the Qur'an.

If you are killed, then your family has a right to seek Qesas punishment from the murderer.

Punishment can come in several forms and also may include "Diya." Diya is paid to the victim's family as part of punishment. Diya is form of restitution for the victim or his family.

The Qesas crimes require compensation for each crime committed. Each nation sets the damage before the offence and the judge or Qazi then fixes the proper Diya.

The family also may seek to have a public execution of the offender or the family

may seek to pardon the offender. Traditional Qesas crimes include:

1. Murder (premeditated and non-premeditated).
2. Premeditated offences against human life, short of murder.
3. Murder by error.

One of the problems in Muslim law is that when murder was committed it was the duty of the victim's family to demand justice. State did not interfere until the victim's family demanded justice, state treated it as a personal matter, private matter. Murder is not the matter of state, suo motto state does not take any action against accused person.

Now you will understand the problem with Muslim criminal law system with this little story,

Suppose there are 4 brothers from 4 wives, one of the brother kills the father and 2 brothers to get half share of the property. Now there are only 2 brothers left behind, one brother who should complain about murder accept the diya or kisa punishment or he pardons other brother who murdered his father and 2 step brothers. In this case both brothers now enjoy the half share of property.

This is actual case which happened in 17th century. Five men were convicted in case of robbery and murder. But later complainant pardoned them all for just Rs.80. Thus they did not any punishment and with paying Rs.80 their crime became legal.

The price of Human life was very cheap and still today we Indians behave in same manner we have no value for life.

As per Muslim law if one of the heirs of the murdered person pardoned the murderer or compounded with him by accepting diya then all other heirs were debarred from demanding kisa, they were entitled merely to their share of the

money . This money is many times called as blood money.

No Muslim could be convicted capitally on the evidence of a non Muslim. October 3, 1791 in case of keetoo choudhury and kaloo choudhury in this case chief kazi declared that as their names did not indicate whether they were Hindus or Muslims if they were Muslims the evidence of Hindus against Muslim could not be allowed or considered but if they were Hindus they deserved severe punishment

This type of cases are mentioned in the old records like Cornwallis Minute of 1790

Thus to earn more money or because of fear , majority times heirs pardoned the murderers and criminals. So if you are powerful poor people were unable to get justice.<http://www.blogger.com/img/blank.gif>

Part 31 – India Legal History – Changes and development in criminal Law system in India from 1772 to 1860

First time 1772 Warren Hastings introduced only one change in criminal law system that was severe punishment for dacoity in Bengal, Bihar and Orissa. But this law was never used. Thus in 1772 Warren Hastings did not change anything in the Muslim criminal law system.

1773 - Warren Hasting again created a draft regarding changes in Muslim

criminal law system.  
He wanted to change the law regarding the relation of murder, willful murder and classification of weapon.  
Hastings said that Murder is a murder and there should not be any distinction regarding murder weapon and punishment depending on the nature of weapon.

2ndly Hastings wanted to change the right of kin and relatives to forgive the murderer which encouraged and saved the murders from their crime and punishment.

And also wanted to increase the fine amount to deter the criminals from doing crimes.

Hastings submitted his proposals to the council for consideration and approval but council took no decision.

In 1790 Cornwallis started to change the Muslim criminal law system in India which was defective and helped and saved the criminals.

A regulation passed on December 3, 1790 changed the relation of weapon and murder.

And gave importance to the intention of the murder.  
Before this when criminal was punished he got punishment according to which weapon criminal has used to murder the person like stick or poison etc.

This regulation also lay down that the relation be in future debarred from pardoning the offender and that the law be left to take its course up on all persons convicted without any reference to the will of the kindred of the deceased

In cases where the heir pardoned the murdered or claimed dyut instead of Kisa, the trial court was not to pass the sentence or punishment itself but was to forward the record of the trial to the Sadar Nizamat Adalat for sentence.

The governor general in council resolved on the 10th October 1791 that the punishment of mutilation of limbs, or amputation of legs and arms or other cruel

mutilation should not be inflicted on any criminal in future instead of such punishment the criminal should be given punishment of imprisonment of 14 years with hard labour if punishment is for cutting of 2 limbs, if it is cutting of 1 limb then punishment should be for 7 years.

On 13th April 1792 the governor general in council laid down that if heirs refused to prosecute the criminal the court of the circuit were to proceed with the trial in the same manner as if the slain had no heir and the Muslim law officers attached to the courts were to render the fatwa on the supposition that the heirs had been the prosecutor and were present at the trial. Thus it helped to stop the heirs forgiving the criminal for his own personal gains. The Muslim law did not permit a Hindu to testify against a Muslim accused.

On 27th April, 1792 the governor general in council resolved that the religious tenets of witnesses be no longer considered as a bar to the conviction or condemnation of a prisoner but in cases in which the evidence given on a trial would be deemed incompetent by the Mohammedan law on the plea of the persons giving such evidence not being of Mohammedan religion the law officers of the courts of circuit were to declare what would have been their fatwa supposing such witnesses was Muslim.

Imprisonment during pleasure this type of punishment was very common in that time in Muslim courts which kept criminals in jail forever. In 1791 and 1792 Sadar Nizamat Adalat reviewed all cases of such imprisonment and they were released who served more punishment than they should.

The Cornwallis code of 1793 reenacted all the above changes.

Regulation XIV of 1797 granted relief to the persons already in prison on account of their inability to pay blood money. Thus fines should be imposed not for the benefit of private parties but for the benefit of government.

Regulation VIII of 1799 changed the theory of justifiable murder and this regulation changed that and said in all cases of murder the criminal should be given death sentence.

Regulation also provided that it was not to be any justification for a willful murder that the person slain desired the murderer to kill him. In such cases also criminal should be given death.

Regulation LIII of 1803 enacted, stated that to guard against the infliction of any punishment without sufficient evidence of guilt and to maintain the uniform and adequate punishment of offenders when convicted according to the criminality of the offences established against them. This regulation also brought changed in punishment of Robbery crime.

Regulation III of 1805 increased the punishment for the crime of robbery.

Regulation II of 1807 – increased the punishment for perjury and forgery.

Regulation VIII of 1808 – enhanced punishment for dacoity.

Number of changes were introduced in the law not expressly through the Regulation but by requiring references to be made to the Sadar Nizamat Adalat.

By Regulation XVII of 1817, the law relating to adultery was rationalized and modified.

Offence of adultery came under the Hadd type of offence. And required 4 competent male witnesses to convict the accused person and punishment was stoning or death.

This regulation changed that and stated that conviction for the offence of adultery could be based on confessions, creditable testimony or circumstantial evidence. The maximum punishment to be given for the offence of adultery was fixed at 39 stripes and imprisonment with hard labour up to seven years. This regulation also laid down that if the Muslim law declared the evidence of a witness inadmissible on grounds which appeared to the judge unreasonable and

insufficient this was no longer to be followed the evidence had to be taken and the Islamic law officers had to give their fatwa on the assumption that there was no objection against the witness.

In 1817 the Sadar Nizamat Adalat was given power to convict and sentence an accused acquitted by its law officers. In 1822 Sadar Nizamat Adalat got power to acquit an accused ignoring fatwa of conviction.

In 1825 women were declared completely exempt from corporal punishment by stripes.

1829 Brought great, great and great Reform in Indian Hindu society.

In 1829 through Regulation XVII the sati system was abolished. The custom of Sati or burning alive of Hindu Widow was declared to be illegal and was made punishable in the same way as culpable homicide. Even persons guilty of aiding and abetting sati were to be punished by fine or imprisonment or both. The regulation declared that sati was revolting to the feelings of human nature and was in violation of the paramount dictates of justice and humanity. The evil of Sati was made a criminal offence in 1830.

Regulation VI of 1832 brought a great change in criminal justice system. This regulation marked the end of the Muslim criminal law as a general and compulsory system of law applicable to all Muslims and non Muslims alike. The judge was authorized to avail himself of the assistance of respectable Indians in one of the three ways while conducting a criminal trial. First the judge could refer the entire case or any point therein to a panchayat of persons who would carry on their enquires apart from the court and report the result to the judge. Secondly the judge could constitute two or more persons as assessors so that he could obtain the advantage which might be derived from their observations in the

examination of witnesses. Each assessor was to give his opinion separately. Thirdly the judge could employ the Indians more nearly as the jury. In a case in which any of the above three methods was adopted then the fatwa of Muslim law officer became unnecessary and can be ignored by the judge. The regulation also provided that if the accused person was not Muslim and he demanded that he should not be tried under Muslim law then it was the duty of the judge to try the case using any one of the 3 methods which are mentioned above.

Thus after the Regulation of 1832 it became optional for the criminal court to seek fatwa from the Muslim law officer.

In 1833 as All India Legislature was created During 1833 to 1860 few changes were made in the criminal law.

In 1852 Sir George Campbell described the Indian criminal system as follows.

The foundation of our criminal law is still the Mohammedan code but so altered and added to by our regulation that it is hardly to be recognized and there has in fact by practice and continual amendative enactments grown up a system of our own well understood by those whose profession it is and towards which the original Mohammedan law and Mohammedan lawyers are really little consulted. Still the hidden substructure on which the whole building that is criminal law rests is this Mohammedan law take which away and we should have no definition of or authority for punishing many of the most common crimes.

Bombay Province —  
Bombay was not ruled by the Muslim kings. Thus British administration used personal law of crimes in Bombay. Section 36 of Regulation V of 1799 enacted that —  
To Christians and Parsees the English criminal law was to be applied Thus offenders were to be punished according to three systems of criminal law that is English law, Hindu law and Muslim law.



In 1827 Mountstuart Elphinstone, governor of Bombay enacted a series of Regulations which came to be known as the **Elphinstone Code**. The Regulation had only 41 sections and defined and classified the acts and omissions which constituted punishable offences along with the scale of punishment for each offence. **The merit of this Regulation was that it was the first attempt to codify and digest criminal law in India.** This code was used for 30 years until the introduction of Indian Penal code 1860

The time English law was also developing and evolving in England and was changing

In India Supreme Court of presidency followed English law. That time English law also gave strict punishment in England also example is that for stealing the accused was given death sentence in England.

The above changes in the criminal law system are only bare and brief summary of the amendments introduced by the British administration in the Muslim criminal law before the enactment of the Indian Penal Code in 1860.

**English law kept changing as per times in UK and Our Indian law did not change as per times it became static after our Independence.**

Part 32 – Indian Legal History - British Rule in India and development law and administration –

To develop Indian laws British people took more than 200 Years. This trial and error journey started in year 1661.

Only after doing trial and error British people were successful in giving India a good justice system and administration with loopholes to save the king and administrative officials who work for the king of England and now today's our politicians.

1774 – First time Supreme Court was established by Regulating Act. This brought British barristers and lawyers into India.

1781 – The act directed Supreme Court of India to apply personal laws of Hindus to Hindus and Muslim laws to Muslims in certain cases.

Never Forget the truth that when someone wins the nation, that nation has to follow the rules and laws of New King. Before British Empire India used to follow the rules and laws of Muslim Kings and then Sikh Kings and Maratha Kings and other kings.

Prior to Formation and birth of India by British Crown in a reality there was no India , no kingdom was their named or called as India .

British came, saw, won all the states and formed the India and before leaving India formed Pakistan.

The English people who traveled outside England and found new territories, settled on that land carried their own laws with them that is English law. This English law was called as Common law. Once the state was won by the British People the English law became the common law of the new country. Also British law stated that whatever place British citizen may go he must follow British rules and he will be always under British Crown or parliament.

Australia, U.S.A and Canada also follow in this category,they were ruled and

governed by the British people and crown but when these countries got independence the intelligent people of these nations removed the bad things from the law and made such provisions that their own civil servant or politicians will not enjoy protection from corruption thus became super powers in few years.

Regarding British Crown, British Citizens and British Parliament they got their own laws and powers from that time which kept changing here I am not mentioning about those powers of king on colony and powers of British Parliament on British Colonies.

But in India we never removed the bad civil, criminal procedure and laws from these British laws after our Independence and we kept those bad laws and result is that uneducated, criminal people are ruling us Indians

today now position is that we Indians will never be able to change this without peaceful civil war as all political parties have already united but Indians do not understand and realize that they are still fighting on name of religion and caste.

When British came to India, Indians followed laws which came from Religion and religion can not act as law but we followed Religion as a law.

Following religion as a law in a human society is a one step, and in democracy religion has nothing to do, human rights are more important than religion.

British people never introduced complete English law in India. Indian laws were developed here in India by trial and error by British People which was based on the British law.

British People always tried to follow Hindu laws for Hindu and Muslim laws for Muslims.

English law of will, English law property, English law of marriage these are few examples which were never fully applied.

Act of Settlement 1781 –  
Section 17 of act said , directed that questions of inheritance and succession and all matters of contract and dealing between party and party should be determined in case of Hindu as per Hindu law and in case of Muslim as per Muslim law.

After this very interesting question one will ask, what if two parties belong to different religion one is Hindu and other is Muslim or English.

Section 17 of the act of 1781 said that, when parties to a suit belonged to different persuasions, then the law of the defendant was to apply.

What does law of the defendant mean?  
In general terms one will say that law of defendant means that if plaintiff is Hindu and defendant is Muslim then use Muslim law and if defendant is Hindu use Hindu law or if defendant is English use English law.

This was confusing law and courts decided as per case and follow English law also and Hindu as well as Muslim law as per the case.

Regarding contracts Supreme Court normally used the English contract laws.

In Presidency of Bombay and Calcutta law of Damdupat was applied to Hindus. Damdupat under this a Hindu could not claim as interest more than the amount of the principal lent.  
The court held as not a moral but it is a rule of law.





