

## “History of Court”

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### **History of Courts**

In 1583 A.D three (3) English merchants Ralph Fitch, James Newsberry and William Heeds visited India. Britishers got information about the wealth of India from the writings of Ralph Fitch who travelled throughout India. The information about the wealth of the country inspired the Britishers to have trade relation with India.

On 24<sup>th</sup> September 1599, some merchants of London held a meeting under the chairmanships of the city mayor. The object of the meeting was to constitute themselves into a company for starting trade relations with the east Indies. They formed a company under the name and style “The Governor and Company of merchants of London trading into the East Indies”. The said company is known as East India Company. The Company applied to the crown for permission to trade with East Indies. On 31<sup>st</sup> December 1600 Queen Elizabeth issued a Charter and there by incorporated East India Company.

### **Introduction**

History comprises of the growth evolution and development of the legal system in the country and sets forth the historical process where by a legal system has come to be what it is overtime. The legal system of a country at given time is not creation of one man or of one day but is the cumulative fruit of the endeavor experience thoughtful planning and patient labor of a large number of people through generation.

With the coming of the British to India the legal system of India changed from what it was in the Mughal period where mainly the Islamic law was followed. The legal system currently in India bears a very close resemblance to what the British left with.

As per the need of the changing times the changes and amendments were made but the procedure which is followed not has its root in the era of British India. Little did the traders of the English East India Company (EIC) while establishing their trade in India know that they would end up establishing their rule for about 400 years here. But the evolution of law as it today did not come about in one go altogether. It was the presidency towns individually that were first affected by this change in hands of the governance of India after which the steps towards amalgamation of the judicial system were taken by the Charter 1726 and 1753. To improve upon this under the regulating Act 1773. Supreme Court in the presidency town and then under the Act of 1798 the recorders Court at Madras and Bombay were established. This were ultimately replaced by the establishment of High Court Act 1861 which are still running in the country it

was only after Independence in 1950 that the Supreme Court was established reforms and codifications were made in the pre-post-independence era and are still continuing.

### **The History of the Legal System in British:**

#### **India Opens with the Establishment of East India Company**

The company incorporated in England by the crowns Charter of 1600. The company was given executive trading right in Asia including India, Africa and America. All the members of the company constituted themselves as general court it was to elect annually the court of Directors. The Court of Directors consisted of a Governor and 24 Directors.

The court of directors was to manage the entire business the court of director were to be elected by the general court for 1 year but any of them might be removed from his office even before the expiry of his term of office by the general Court.

#### **Object of the Company**

Actually the company appears that to promote British trade and commerce in Asia. The company was conferred on only those powers which were necessary to regulate its business and maintain discipline amongst its servants and they were not at all adequate for governance of any territory.

But the company came to India and they were found the Indian Kings disunited and unaware of the Modern Politics. They realized they can dominate the territory in India the company gradually and gradually inclined to acquire territories in India. The company thereby could market for its goods. At the time of the incorporation the object of company was commercial but gradually and gradually its object became political also.

In early days the administration of justice in the settlement East India Company was not a high order. There was no separation between the executive and the judiciary the judiciary was under the control of the executive the judges were not a law experts. The company gave lesser importance to the judicial independence fair justice and rule of law. The administration of justice and developments of courts and judicial institution during this period may discussed under the following headings –

- 1600 to 1726 is the first period.**
- 1726 to 1773 is the second period.**
- Administration of justice and development of East India Company – presidency town.**

#### **Administration of Justice in Surat**

The East India Company established Ist factory in Surat in 1612. British crown sent an ambassador Sir Thomas Roe to the Mughal Emperor to request to grant certain facilities to the English man in India. In 1615 the Mughal Emperor on the pleading of Sir Thomas Roe issued a Firman, the Mughal Emperor allowed the Englishman to live according to their own religion and

laws and to settle dispute among themselves by their president, however the disputes between on Englishman and an Indian were to be decided by the native Judges.

### **Administration of Justice in Madras Before 1726:**

In 1639 Francis Day acquire a piece of land from a Hindu Raja for the East India Company and constructed a fortified factory were Englishman and other Europeans and therefore the area of the factory came to be known as white town and the people residing in the village Madras, Patnam were mostly Indians and therefore it came to be known as Black Town. The Whole Settlement Consisting of white town and black town came to be known as Madras. In judicial administration in Madras divided in 3 stages. First, Second and Third.

#### **First Stage**

White town before 1665 Madras was not presidency town and it was subordinate to Surat. The administrative head was called ‘Agent’ and he was to administer the settlement with the help of Council. The serious criminal cases referred by them to the Company’s authorities in England for advice. But there was defects the judicial power of the agents and council was vague and indefinite and much delay also, they did not have any elementary knowledge about law. They were Merchant. There was no separation between executive and judiciary.

The president of the Surat factory and members of His Council constituted a court to decide dispute between the Englishman interest in accordance with their own laws and customs. They were to decide both civil and criminal cases.

Capital offences dealt by a jury there was no separation between executive and judiciary. The president and the members of his council who were to decide cases and administer justice were merchant. They did not have even elementary knowledge of English law.

The cases were decided by them according to their wisdom, commonsense. And the native judges were corrupt bribery was rampant. They had no respect for law and justice.

Surat was the chief trading center till 1687. But there after it lost its importance because in 1687 the headquarters of the president and council were transferred from Surat to Bombay.

#### **Black Town**

The old judicial system was allowed to function there was a village head man known as Adigar or Adhikari who was responsible for the maintenance of Law and Order. Adigar administered justice to the native at the Choulby Court. According to the long established usages, Choulby Court was court of a petty cases. The Company had no power to inflict death sentences under the Charter of 160 and the agent in Council could inflict such a sentence only under the authority of local sovereign. The appeals front the Choulby Court were to be heard by the agent in Council. An Indian native named Kannappa was appointed Adigar but he misused his power and consequently he was dismissed from the office and the English servants of the office and the English servants of the company were appointed to suit at the Choulby court.

## **Charter of 1661**

It was granted by the British Crown it conferred board powers on the East India Company. The charter authorized the Governor and Council of Englishmen inhabiting the settlement of the company. The Governor and Council of each factory to hear and decide all type of civil and criminal cases. Including the cases of capital offences also and it could award any kind of punishment. Including death sentences.

Under the Charter of 1661, the cases of Indians inhabiting in the settlement of the company were to be decided according to English law. The powers conferred on the company could only be exercised by the Governor the chief factor and Council were empowered to send offenders for punishment either to a place where there was a Governor and Council or to England.

## **Second Stage – (1665 – 1683)**

In 1665 one Mrs Ascentra Dawes was charged with the commission of Murder her slave girl and the Agent- in – Council referred the case to the Company's authority in England for advice. After raising the status of agent and Council of the factory at Madras to try Mrs. Dawes with the help of Jury and an unexpected verdict of not guilty was given and consequently Mrs. Dawes was acquitted. Later on 1678 the whole judicial administration was re-organized. The judicial administration in both the towns was improved.

### **White Town**

The court of Governor and Council was declared to be the High Court of Judicature. It was to hear all case of the inhabitance of both towns with the help of jury and also hear the appeals from the Choulby Court. It was to decide cases according to English Law. The Court was to meet twice a week.

### **Black Town**

The Choulby Court was also re-organized. The number of the judges was increased from 2 to 3. All the judges were Englishmen. At least 2 of them were to sit in the Court for 2 days in each week. The Choulby Court was empowered to hear petty criminal cases. It was also empowered to hear petty civil cases up to 50 pagoda and the cases of higher value with the consent of the parties.

## **Third Stage (1683 – 1726)**

Admiralty Court on August 9 1683 Charles II granted Charter to the Company to establish the courts which was to consist of persons learned in the civil law and two mercantile, maritime trespass, injury and wrongs etc. again April 12 1686 Charles II issued a new charter with same provisions. Chief Judge of the Admiralty Court was known as the Judge Advocate. The admiralty court having the jurisdiction to hear and decide all mercantile and maritime cases.

In 1687 company sent from any land Sir John Biggs a professional lawyers learned in Civil Law to act as the Judge Advocate of Admiralty Court bestowed justice in all cases civil,

criminal as well as maritime. Sir Biggs died in 1689 and Governor again took the charge of judicial function. In 1692 the company sent John Dolben as new Judge advocate and in 1694 he was dismissed on the charge of taking bribes.

In 1696 company directed that members of the Council should in succession serve as the judge Advocate after Willian Fraser a Merchant was appointed as Judge Advocate. Later he resigned and no one was ready to become the Judge Advocate, so company made the Court registrar the Judge Advocate.

### **Madras Mayors Court (1688)**

At the time in England there they got London corporation and they got London mayors court as per the British Law. That time municipal corporation enjoyed the Judicial power also company issued the charter and started Madras corporation utilizing the power given by British Crown.

In the year 1687 Company established Madras Corporation and Mayor's 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 tax and Company faced problems and difficulties to collect 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 Indians population so it will become easy for the company officials to collect the tax.

The corporation came in to existence on September 29 1968 which consists of a Mayor, 12 Alderman and 60 to 120 Burgesses. It was decided that every year new Mayor will be elected from Alderman by Alderman and Burgesses and retiring Mayor can be re-elected by them.

The Alderman and Burgesses got the power to remove the Mayor if he is unable to perform his duties, only Englishman becomes the Mayor. The Alderman hold the office as long as they stayed in Madras City indirectly they hold the office for life long. Mayor, Burgesses holds the power to remove the Alderman from office also if he did not perform well.

Among the Alderman minimum three were required to be British Servants of the Company and other nine can belong to any nationality or religion.

#### **The First Alderman were as Follows**

- a) Englishman – 3
- b) Hindu – 3
- c) Frenchman – 1
- d) Portuguese- 2
- e) Jews and Americans – 3

The sanction named 29 Burgesses and after that outstanding Burgesses were delegated by the Mayor and Alderman. Among first 60 Burgesses the standing head were chosen as the Burgesses.

This was the idea of first partnership the Mayor and three Senior Alderman were to be the equity of the peace. The Mayor and Alderman were to frame a court of record which was approved to attempt common and in addition criminal case. This court was known as Mayors court.

The Mayor's Court was approved to give following disciplines –

Fine, detainment and bodily discipline. The persuaded individual inspires ideal to document engage the Admiralty Court.

As Mayor and Alderman did not have legitimate learning the arrangement was made for the arrangement of the recorder of the Court. He helped the Mayor with respect to the cases and he likewise got the ability to vote simply like Alderman. The Recorder of the Court was required to be apt in the law and the hireling of the Company. The Charter designated the Judge Advocate Sir Biggs as the first Recorder. Just in the year 1712 the court inspired energy to give capital punishment to local individuals.

The Mayor Court did not take after uniform discipline for a similar wrongdoing. It relies upon the Judge tact for this, the reason was that the Mayor and his group did not have any lawful information. Sir Biggs got the experience of filling in as a recorder in the London however here in Madras the issue was that Sir Biggs sat in the Admiralty Court were went. Be that as it may, organization disregarded this reality after the demise of Biggs. No recorder was named. Like this in the period 1686 to 1726 in Madras three Courts Functioned.

- 1) Mayor's Court
- 2) Choultry Court
- 3) Admiralty Court.

After 1704 Governor and Council heard the interests from the Mayors Court as Admiralty Court to stop work. In this period additionally the Criminals were so long kept in prisons, that even individuals overlook the violations. Equity framework was moderate and nobody pestered. The death penalty was given by hanging. Theft was rebuffed with death, which make was rebuffed with fine.

## ADMIRALITY COURT

In 1683 King Charles II issued a Charter. It enabled the Company to set up Courts of Admiralty in India. The Court of Admiralty was approved to attempt all merchants who carried out different violations on the high oceans. The court was enabled to hear and decide all cases concerning oceanic and trade exchanges. The court was additionally approved to manage all instances of relinquishment of Ships, Piracy, Trespass, Injuries and Wrongs. It was expressed that the court would be guided by the laws and traditions of vendors and in addition the tenets of value and great inner voice in the assignment of organization of equity.

The arrangement of the Charter of 1683 was rehashed by James II in a sanction issued in 1686. On tenth 1686 the court of chief of naval operations' office was set up at Madras John Gray was named judge of the court and to help him 2 other English man were named as his associates on 22nd July 1687. Sir John Biggs who was a Professional Lawyer learned in Civil law was designated as Judge Advocate in Chief Judge of the Court.

From that point the Governor and Council surrendered the legal capacity and stopped to sit as court. The Jurisdiction of the Admiralty court was not limited to Mercantile and Maritime Cases. It additionally chose both common and criminal cases. Advance it heard interests from the Mayor's Court. Consequently it turned into a General Court of the Settlement. The Admiralty court was working routinely till 1704, yet from there on it stopped to sit on normal premise and step by step it vanished, and its purview was exchanged to the Governor and Council.

### THE CHOULBY COURT

The old Choulby Court was perceived and permitted to proceed by the Governor. The quantity of Judges was expanded to Three – Two Judges were required to direct the trial of cases. The Court met 2 days in every week. The court was enabled to attempt common cases up to 50 Pagodas (Pagoda was a gold Coin, One Pagoda was equal to 3 Rupees) and insignificant criminal cases. The High Court of Judicature was approved to hear advances from Choulby Court.

### THE HIGH COURT OF JUDICATURE

The court of Governor and Council was assigned as the High Court of Judicature. The Court met twice every week. The Court chose all Civil and Criminal cases with the assistance of jury of 12 men.

Importance of the Words:

#### 1) Mayors

The Name of a court generally settled in urban communities, made out of a Mayor, recorder and council member. For the most part having Jurisdiction of offense submitted with in the city.

#### 2) Alderman

An individual from the civil, administrative body in a town or city. In numerous purview, an individual from the higher branch of the civil or precinct chamber in England and Ireland before 1974. One of nearby board chose by alternate Councilors.

#### 3) Burgesses

A judge of a ward by and large the central officer of the organization who performs with in the precinct (regulatory division) a similar sort of obligations which a leader does in a city. In England the word is in some cases connected to every one of the ineptitudes of a district who are called burgesses. In some cases it means the agents of a ward in parliament.

## Organization OF JUSTICE IN BOMBAY

### PERIOD 1668 – 1726

Portuguese were the first European to gain the island of Bombay in 1534 from the King of Gujarat in 1661. Portuguese King Alfonsus VI exchanged the island to Charles II as Dowry on the marriage of his sister Catherine with the British King. Charles II exchanged it toward the East India Company in 1668 for a unimportant yearly lease of 10 pounds.

### Judicial System

Before 1726, the Judicial system the Island of Bombay grew in Three Stages –

- 1) **First Stage – (1668 – 1683)**
- 2) **Second Stage – (1683 – 1690)**
- 3) **Third Stage – (1781 – 1726)**

### Charter of 1668

The political position of Bombay was quite different from that of Madras, the King of Gujarat and from that of Madras, the king of Gujarat and from that time onwards it was under the political control of the Portuguese. In 1668, the charger authorized the company the other comprised of Mahim, Parel, Sion and Worli. A separate court of judicature was established. For each division at Bombay and Mahim. Each court consisted of Five Judges, the custom officers of each division, an Englishman, was empowered to preside over the respective court. Three Judges formal the quorum of the court. As it was not possible for an Englishman to have adequate knowledge of India Laws, some Indians were also appointed Judges to assist him in the court of each division. The courts were authorized to hear, try and determine cases of small thefts and all civil actions up to 200 (it was a Portuguese Coin 20 Xeraphins were equal to nearly Rs.150) in value. An appeal from the court of each division was allowed to the court of Deputy Governor and Council. A part from the appellate Jurisdiction the court of Deputy Governor and Council also had original jurisdiction in important. Felonies which were to be tried with the help of Jury and the laws of the company. Englishman was under the jurisdiction of this court. Further appeal to the president and council at Surat was discouraged except in rare cases to legislate and to exercise judicial authority in the island of Bombay. It was further stated that such laws should be consonant to reason and not repugnant or contrary to the laws of England and they were also required to be as near may be agreeable to the laws of England. The system of courts and procedure was to be similar to that established and used in England. The Charter of 1668 resulted in a transition of the company from a trading association to a territorial sovereign invested with powers of civil and military government.

The president of Surat, Sir George Oxenden, received the Company's order in September 1668 to visit the Island of Bombay and establish the executive government under a Deputy Governor and Council. Oxenden visited Bombay in January 1669. He died in July 1669. The next Governor of Surat – Gerald Aungier, made same reforms in the Island of Bombay in 1670

## Judicial Reforms of 1670

As per the reforms of 1670 the Portuguese Laws and Customs were allowed to continue the Island of Bombay was divided into two divisions. One division consisted of Bombay, Mazgaon and Girgaon. The other comprised of Mahim, Parel, Sion and Worli. A separate court of judicature was established for each division at Bombay and Mahim. Each court consisted of Five Judges. The customs officer of each division, an Englishman, was empowered to preside over the respective court. Three judges formed the quorum of the court. Three Judges formed the quorum of the Court. As it was not possible for an Englishman to have adequate knowledge of Indian Laws, some Indians were also appointed Judges to assist him in the Court of each division. The Courts were authorized to hear, try and determine cases of small thefts and all civil actions up to 200 xeraphins (it was a Portuguese coin 20 xeraphins were equal to nearly Rs.150) in value. An appeal from the court of each division was allowed to the court of Deputy Governor and Council. Apart from the appellate jurisdiction the court of Deputy Governor and Council also had original Jurisdiction in important Felonies which were to be tried with the help of jury and the Laws of the Company. Englishman was under the jurisdiction of this Court. Further appeal to the President and Council at Surat was discouraged except in rare case.

## New Judicial Plan of 1672

It was realized within the next 2 years that the judicial system of 1670 was defective in various respects. Augier the Governor was himself not satisfied with the working of the Courts. The Judges of the Superior and Inferior Courts had no knowledge even of the elementary principles of law, they were Merchants. The judicial and executive powers were exercised by the same person. As consequences, the abuse of power created various new problems. Order to remove these defects a new plan was prepared in 1672 for the administration of Justice in Bombay.

According to the new plan the government issued a proclamation on 1<sup>st</sup> August 1672 declaring the introduction of English Law into Bombay. The Portuguese Laws and Customs were totally abolished under the new plan. The Judicial Machinery was again organized. A new central court known as the Court of Judicature was established. The Court of Judicature was empowered to exercise its Jurisdiction over all Civil and Criminal and Testamentary cases. George Wilcox appointed its Judge assisted by other Justice. The Court sat once a week to try civil cases with the help of jury. The court charges a fee of five percent of valuation of the suit from the litigants.

The judges were prohibited from carrying on private trade or business and instead he was granted a salary of Rs. 2000 per year to meet his expenses. An appeal from the court of Judicature was allowed to the Deputy General and Council. Juries were duly employed and paid. Attorneys were allowed to practice. English procedure including arrest and imprisonment was followed. As far as possible the English substantive law including statute law was made applicable. In framing the new scheme Augier was primarily concerned with the speedy and impartial administration of Justice.

Justice of the Peace was appointed to administer criminal justice. For this purpose Bombay was divided into four divisions, namely, Bombay, Mahim, Mazagaon and Sion. In each division a Justice of the Peace, an Englishmen was appointed. They acted as committing Magistrate to arrest the accused and to examine the witness. The record was then placed before the Court of Judicature which met once a month to decide criminal cases with the assistance of the Justice of Peace, who acted as assessors in the Court.

The scheme of 1672 also created a Court of Conscience to decide petty civil cases. Once a week the court dealt summarily with civil cases under twenty Xeraphins. The decision of the Court was final and no further appeal was allowed. No Court-Fee was charged from poor persons and, as such the Court became famous as, "Poonam's Court". George Wilcox, Judge of the Court of Judicature, also presided over the Court of Conscience which met only once a week to deal with petty civil cases.

George Wilcox, the first Judge of the Court of Judicature died in 1674. James Adams was chosen to succeed Judge Wilcox but he was not well – versed in law. After a few months in 1675, his assistant Nicolls was appointed judge in his place. In 1677 Nicolls was suspended and later dismissed by the Council in various charges. Gary succeeded Nicolls as Judge and remained in the office up to 1683. During this tenure, the salary and rank of a Judge was reduced and the Council became superior in power and position.

Keignwin's rebellion, which began in December 1683, and continued up to November 1684, gave a death – blow to Aungie's judicial system in the Island of Bombay.

### **Admiralty Court (1684 to 1690)**

As stated above, the development of Courts at Bombay was interrupted due to the Keignwin's rebellion. After the rebellion was suppressed, efforts were made to set-up a regular judicial system at Bombay. The Company found its authority to establish courts under the earlier Charter of 1683 granted by Charles II. The Charter provided for the establishment of Courts at such places as the Company might direct for Maritime causes of all kinds, including all cases of Trespasses, Injuries and Wrongs done or committed upon high seas or in Bombay or its adjacent territory, and each Court was to be held by a learned judge in civil law assisted by two persons chosen by the company. Such Courts were required to decide cases according to the rules of equity and good conscience and the laws and customs of merchants. Accordingly, an Admiralty Court was established at Bombay in 1684. Dr. St. John was also authorized to act as Chief Justice of the Court of Judicature. The Court of Judicature was again created, as the authority of the Admiralty Court was not sufficient to cover all other civil business.

John Child, Governor of Bombay at Surat, was not in favour of accepting the theory of judicial independence which was adopted by Dr. St. John in his judicial decisions. It gave rise to conflicts between the Governor and the Chief Justice. Dr. St. John's judicial independence was interrupted by the Governor John Child as insubordination towards himself. In 1685 the powers of Dr. St. John to act as Chief Justice of the Court of Judicature were withdrawn by the Governor. Vux, a member of the Bombay Council was appointed as judge to preside over this Court, in place of Dr. St. John. These steps further developed the existing conflict between the

Governor and the Chief Justice. Dr. St. John strongly criticized the transferring of his power to Vaux, a new judge, who according to him was ignorant of civil laws. In due course the Governor and Dr. St. John's dismissal, Sir J. Wyborne, Deputy Governor of Bombay, was appointed as the Judge of the Admiralty Court. In 1688 Vaux succeeded Sir J. Wyborne and remained in the office up to 1690.

In 1690, Siddi Yakub Admiral Emperor invaded the island of Bombay and the judicial system of Bombay came to an end. From 1690 to 1718, in fact, the machinery to administer justice was almost paralyzed in Bombay. Thus the period from 1690 to 1718 is a dark period in Bombay's Legal History.

### **Court of judicature**

A new period in the Judicial history of Bombay began with the revival and inauguration of a court of judicature on 25<sup>th</sup> March, 1718 by Governor Charls Boone. It was established by the order of the Governor and Council which was later on approved by the Company authorities. The court of Judicature of 1718 consisted of ten Judges in all. It was specially provided that the Chief Justice and Five Judges will be Englishman. The remaining Four were required to be Indian representing Four different communities, namely, Hindus, Mohammedans, Portuguese – Christians and Parsi. All English Judges were also members of the Governor's Council and enjoyed status superior to Indian Judges. Three English judges formed the quorum of the court. The Court met once a week. Indian Judges, who were also known as "Black Justice" were included mainly to increase the efficiency of the Court and their role was mostly that of assessors or assistants of the English judges. They do not appear to have enjoyed equal status with English judges.

The Court of 1718 was given wide powers. It exercised jurisdiction over all civil and criminal cases according to law, equity and good conscience. It was also guided by the rules and ordinance issued by the Company from time to time. It was necessary for the Court to give due consideration to the customs and usages of the Indians. Apart from its jurisdiction over probate and administrative matters, it was further authorized to act as a Registration House for the registry of all sales concerning houses, lands and tenements.

An appeal from the decision of the Court of Judicature was allowed to the Court of Governor and Council in cases where the amount involved was Rs. 100 or more. A notice to file an appeal was to be given within Forty-Eight hours after the judgment was delivered to the Chief Justice of the Court of Judicature. Moderate fees were prescribed by the Court for different purposes. For filing an appeal a fee of Rs. 5 was to be paid.