THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY
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STUDY MATERIAL

"LEGAL & CONSTITUTIONAL HISTORY"

WORK SUBMITTED TO

THE DIRECTOR, SOEL

SCHOOL OF EXCELLENCE IN LAW

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PREFACE

The course material for the subject "legal and Constitutional history" is a simple version of the various topics contained in the syllabus. This traces the development of the legal system and judiciary from 1600 till independence in 1947. Adequate care has been taken to ensure that the students at the degree level will get an intimate knowledge about the changing structure of the governance and legal system, the charters and Acts passed from time to time and legislative changes as well, an understanding of which is of vital importance to a law student.

This material is an extract of sufficient information's collected from various texts on legal and constitutional history. I hope that definitely, this material will be a supportive one along with textbooks and other references.

I will be failing in my duty if I don't express my profound and sincere gratitude to Prof.P.Vanangamudi, our Hon'ble Vice Chancellor, and Prof.Dr.S.Narayana Perumal, Director U.G.Course, SOEL, for giving me this opportunity of preparing the course material.

I acknowledge sincere thanks and gratitude Tmt.S.Gayathri and Mrs.V.Poojasree, faculties, for their valuable and sincere efforts for their complete assistance in the outcome of this material.

Prof. Dr. N. Ebenezer Joseph,

HOD i/c Dept of Intellectual Property Rights,

THE TAMILNADU Dr. AMBEDKAR

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UNIT –I

CHAPTER-I

I. ADMINISTRATION OF JUSTICE IN PRESIDENCY TOWNS OF MADRAS, BOMBAY, CALCUTTA FROM 1600 TO 1726 AND THE DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS

1. ADMINISTRATION OF JUSTICE IN THE PRESIDENCY TOWN AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS UNDER THE EAST INDIA COMPANY(1600-1773)

INTRODUCTION:

1. The legal history of British India opens with the establishment of the East India Company.
2. It was incorporated in England by the Crown's Charter of 1600 or Charter Act of 1600 and the company was exclusively given trading rights in Asia(including India), Africa and America.
3. All the members of the company constituted themselves as General court and it was to elect the Court of Directors every year.
4. The court of Directors consisted of a Governor and 24 Directors who was to manage the entire business of the company.
5. The Court of Directors could be removed from their office even before the expiry of their term of office by the General court.

OBJECT OF THE COMPANY:

1. Initially the company had intention to carry on trade and commerce in Asia, Africa and America and it was conferred with only those powers which were necessary to regulate its business and maintain discipline amongst its servants and not for governing any territory.
2. But when the company entered India and found that the Indian kings were disunited and unaware of modern politics, the company gradually acquired territory of India.
3. Portuguese occupation of Indian territories also inspired the company to acquire territory in India and this acquisition was also beneficial from the commercial point of view also, because the company could capture market for its goods.
4. In short, at the time of incorporation the object of the company was only commercial but later it turned in to political.

5. The Charter of 1600 conferred powers only to regulate its business and maintain discipline amongst its servant, but when its object turned in to political, it needed the powers necessary for the maintenance of the territory and the British crown cooperated with it and conferred on it more powers for this purpose.
6. In early days the administration of justice in the settlements of East India Company was not of a high order and there was no separation of powers between executive and judiciary.
7. The judges were not law experts and the company gave lesser importance to judicial independence, fair justice and rule of law.

ADMINISTRATION OF JUSTICE AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS IN MADRAS BEFORE 1726:

1. In 1639, Francis Day acquired a piece of land from a Hindu Ruler for the East India Company and constructed a fortified factory.
2. Besides the Raja granted a village to the company known as 'Madraspatnam' and empowered the company to govern and dispose of the government of the village.
3. The people residing inside the factory were Englishmen and other Europeans and therefore the area of the factory came to be known as 'White Town' and the people residing in the village Madrasapatnam were mostly Indians and therefore it came to be known as 'Black town'.
4. The whole settlement consisting of white town and black tow came to be known as 'Madras'.

The judicial administration and development of courts and judicial institutions in Madras before 1726 may be studied in following stages:

FIRST STAGE: 1639-1665

WHITE TOWN:

1. Before 1665, Madras was not a presidency town and it was subordinate to Surat.
2. The administrative head was called as 'Agent' and he was to administer the settlement with the help of a council. The agent and the members of his council were to administer civil and criminal justice to the inhabitants of white town.
3. The serious criminal cases were often referred to them to the company's authorities in England for advice.

DEFECTS:

1. The judicial power of the agent and council was vague and indefinite. The serious criminal cases were referred by them to the company's authorities in England for advice which involved much delay.
2. The agent and the members of his council , who were to administer justice, were merchants and not lawyers. They were supposed to decide cases according to English laws, but actually they did not even have elementary knowledge of the English laws. Consequently, they used to decide cases according to their wisdom and common sense.
3. There was no separation between the executive and judiciary. The agent and council constituted both the executive and judicial authority for the white town.

BLACK TOWN:

1. The old judicial system was allowed to function and there was a village headman known as Adigar(Adhikari) who was responsible for the maintenance of law and order.
2. The Choultry court with Adigar as the judge was to decide civil and criminal cases of the natives according to long established usages and thus it was a court of petty cases and not to hear the cases of grave offences committed by the natives.
3. The appeals from the Choultry court was to be heard by the Agent-in-council.
4. An Indian native, Kannappa was appointed as Adigar but he misused his power and consequently he was dismissed from the office and the English servants of the company were appointed to sit at Choultry court.

DEFECTS:

1. There was no fixed procedure for the trial of serious criminal cases and the procedure varied from case to case.
2. The judge of the Choultry court was a layman and not a lawyer.
3. The Choultry court could decide only small civil and criminal cases. It was empowered to decide the serious criminal cases like murder etc.
4. There was no separation between the executive and the judiciary. The agent and council constituted both the executive and judicial authority and they were to hear appeals from the Choultry court.

CHARTER OF 1661:

1. In 1661, a charter was granted by the British Crown which conferred broad powers on the East India Company.
2. It authorized the Governor and council of each factory to hear the cases of all persons whether Indians or Englishmen or Europeans, while under the charter of 1600 only the cases of the company's servants could be heard.
3. The Charter of 1661 authorized the Governor and council to hear and decide all types of civil and criminal cases including the cases of capital offences and could award even death sentence, while under the Charter of 1600 capital offences could not be awarded and death sentence could not be awarded.
4. It is to be noted that the above said powers conferred on the company could only be exercised by the Governor and council appointed by the company and where there was no 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.

DEFECTS:

1. The charter of 1661 could not separate the judiciary from the executive. The Governor and council constituted both the executive as well as judiciary.
2. The Governor and the members of his council who were to administer justice were merchants and not lawyers and therefore even under this charter the administration of justice remained in the hands of laymen.
3. Under this charter even the cases of Indians were to be decided according to the English laws and consequently the Indian laws, customs and usages could not be protected.
4. The Governor and his council of members were not law experts and so they were deciding cases according to their common sense and sense of justice.

SECOND STAGE: 1665-1683

1. In 1665, One Mrs.Ascentia Dawes was charged with the commission of murder of her slave girl and the Agent –in-council referred the case to the company's authority in England for advice.
2. The company raised the status of agency of Madras to that of the presidency and status of Agent to that of Governor, because the powers conferred on the company by the Charter of 1661 could only be exercised by the Governor and council and not by the agent-in-council.
3. Under the Charter of 1661, the Governor and council were authorized to hear all types of civil and criminal cases including capital offences like murder.
4. After the status has been raised from Agent to Governor, the case of Mrs.Dawes was tried by the Governor with the help of jury as per the company's direction and an unexpected verdict of not guilty was given and consequently Mrs.Dawes was acquitted.
5. In 1678, the whole judicial administration was reorganized and the judiciary in both White Town and Black Town was improved to some extent.

WHITE TOWN:

1. The court of Governor and council was declared as High court of Judicature and it was empowered to hear all civil and criminal cases of the inhabitants of White town with the help of a jury.
2. Besides it was to hear serious criminal cases of Indian inhabitants in Black town and also appeals from Choultry court with the help of a jury.
3. The court was to meet twice a week and decide cases according to English laws.

BLACK TOWN:

1. The Choultry court was also reorganized and the number of judges were increased to three.
2. All the judges were Englishmen and atleast two of them were to sit in the court for two days in each week.
3. This court was empowered to hear petty criminal cases and civil cases up to 50 pagodas (pagoda was gold coin and one pagoda was equal to 3 rupees) and the cases of a higher value with the consent of the parties and appeals were referred to High court of Judicature.

MERITS:

1. During this period, arrangements were made for regular meetings of the courts. The High court of Judicature and the Choultry court both were to meet twice a week and this reduced the delay in the disposal of the cases.
2. The jurisdiction of the High court of Judicature and Choultry court was well defined.
3. There was a great need of a regular superior court. The High court of Judicature consisting of the Governor and council was established to meet the need.

DEMERITS:

1. The judges of the High court of Judicature and Choultry court were not lawyers but laymen. They did not even have elementary knowledge of English law and consequently they used to decide cases according to their wisdom and common sense.
2. The Governor and council like their predecessors, the Agent and council used to refer the serious criminal cases to the company's authorities in England for advice which involved considerable delay. In a case dated January 31, 1678 an Englishman who was charged with the commission of murder was confined to the prison for 31 months without trial as the case had been referred to the company's authorities in England for advice.
3. Inspite of having power to hear all types of civil and criminal cases including capital offences, the reason for such reference is only because of lack of legal knowledge and not lack of judicial power. The Governor and council were well aware of their lacking knowledge and so they was not dare enough to decide serious criminal cases.
4. The separation between the executive and judiciary was not maintained. The Governor and council constituted both the executive as well as High court of Judicature.
5. The Choultry court was empowered to take cognizance of small matters only. Thus it was conferred on any significant judicial power.

THIRD STAGE: 1683-1726

COUTS OF ADMIRALTY:

1. During this period two important courts were established, i.e, Court of Admiralty under the Charter of 1683 and 1686 issued by the British crown and Mayor's court under Charter of 1687 issued by East India Company and not by British crown.
2. The need for establishing the Admiralty court was under the Charter of 1600 only the East India company was conferred power to carry on with trading activities in Asia,

Africa and America and not the other British subjects and they wanted to do trading in India they are supposed to get a license from the East India company. But the rights of the company was being infringed by other British traders and on account of it a court having jurisdiction to punish such traders was felt.

3. The crime of piracy on the high seas was on increase. To deal with it the need of a court having jurisdiction to hear and decide the cases of piracy was felt.
4. In short the above said crimes attracted the company to establish courts having jurisdiction to hear and decide all maritime and mercantile cases.
5. Under the Charter of 1683, the court of Admiralty was to consist of a learned person in civil laws as a judge and two merchants to assist the judge was appointed.
6. It was empowered to hear and decide all types of maritime and mercantile cases and also cases of forfeiture of ships, trespass, injuries and wrongs.
7. I was to decide cases according to law of equity and good conscience and also laws and customs of merchants, but however it was bound to follow the British crown's direction in relation to its procedure.
8. The provisions of the Charter of 1683 were repeated by the British crown in another Charter granted in April 1686 with some new modifications.
9. It empowered the company to raise naval forces and appoint naval officers.
10. Under the Charters of 1683 and 1686 the court of Admiralty was established at Madras on 10th July 1686 and John Grey was appointed as judge of this court and two Englishmen were appointed as his assistants.
11. On 22nd July 1687, Sir John Biggs, who was a professional lawyer was appointed as Judge Advocate(Chief Justice) of the court.
12. Thereafter the jurisdiction of the Governor and council relinquished the judicial function and the jurisdiction of Admiralty court was extended to hear civil and criminal cases also.
13. In certain cases the appeals from Mayor's court was also heard by the Admiralty court.

MERITS:

1. The separation of the judiciary and executive was maintained. The Governor and council had executive power only and the judicial power was exercised by the court of Admiralty.

2. The administration of justice came to the hands of a professional lawyer and thus the Admiralty court was able administer justice according to English law, whereas before the establish of this court the judges were only laymen and they were deciding cases according to their common sense.

But the above good features in Madras did not continue for a long time because Sir John Biggs died in 1689. His death checked the progress of Admiralty court and it ceased to operate. There was no court having jurisdiction to hear appeals from Mayor's court. In this critical situation again the Governor and council temporarily established a court of Judicature having Governor as Judge and he was assisted by two Englishmen in regard to native language. This condition prevailed till 1692 when a new Judge Advocate, John Dolben was sent by company from England. John Dolben was well versed in law and used to decide cases impartially and he was even dare enough to give judgment against the company. The company was not satisfied and ultimately he was dismissed in the year 1694 on charge of taking bribes. Later he was again offered an appointment but he refused to accept. In the place of Dolben Sir William Frazer was appointed as Judge Advocate of the Admiralty court and from 1696, the company directed the members of the council to serve in succession as the Judge Advocate. This court was functioning regularly till 1704, but thereafter it ceased to sit on a regular basis and gradually disappeared and its jurisdiction was transferred to the Governor and council. Ultimately the separation of executive and judiciary came to an end. The company was neither in favour of appointing professional lawyers as judges of the courts in India nor in maintaining judicial independence, because it was afraid that the lawyers would be too independent and would decide cases strictly according to the principles of law which would not allow the company to use the judiciary tool to achieve its political object i.e to acquire Indian territories. Thus the company gave lesser importance to judicial independence, fair justice and rule of law.

MAYOR'S COURT:

1. In 1688, a Corporation and Mayor's court was established under the Charter of 1687 issued by the company and not by the British crown.
2. The reason for establishment of this court was when the Madras Government levied house tax, it was strongly opposed by the Hindus of the Black town. They involved in resorting strike methods such as abandoning their duties, shutting up of shops etc.
3. The company thought of setting up of such corporation of the natives mixed with some Englishmen because in the view of the company such corporation could make taxation of that kind more acceptable to the native population and the appointment of caste leaders as Aldermen and burgesses, they would ready to tax themselves and inhabitants generally for various municipal purposes.

4. Such a Corporation was established in 1688 consisting of one Mayor, 12 Aldermen and 60 or more Burgesses.
5. The Mayor and 3 senior Aldermen were always British servants of the company and the remaining 9 Aldermen could be of any nationality.
6. 30 of the 60 Burgesses were to be the heads of several castes. Mayor, Aldermen and 29 Burgesses were nominated by the company. Mayor and 3 Aldermen belongs to the Governor and council.
7. Mayor was to continue in office for 1 year and Aldermen could continue till their lifetime or residence in Madras. However the out going Mayor could be re-elected by the electorate.
8. Vacancy amongst Aldermen was to be filled by the Mayor from amongst the Burgesses.
9. The Mayor could be removed by the Aldermen and Burgesses and an Aldermen could be removed by Mayor, Aldermen and Burgesses.
10. The Governor and council was given power to remove any Mayor, Aldermen and Burgesses to appoint anyone in place of vacancy.
11. Along with this Corporation the Charter of 1687 established Mayor's court also. The Mayor's court was a part of Corporation.
12. The Mayor and Aldermen constitute a Court of Record which was known as Mayor's court and Mayor and Aldermen were to be justices. But the judges were not law experts and therefore a provision was added to Charter of 1687 for the appointment of expert in law and a recorder to assist the judges of the Mayor's court in deciding cases.
13. Sir John Biggs the Judge Advocate of the Admiralty court was appointed as the 1st Recorder of the Mayor's court.
14. The Mayor's court was empowered to hear and decide civil and criminal cases. It was also authorized to punish offences by corporal punishments, imprisonment and fine.
15. It should decide cases according to justice and good conscience and laws enacted by the company.
16. Civil cases more than 3 pagodas and criminal cases where offender deserves death sentence or lose of limb, the appeals should be referred to Admiralty court.
17. But after 1704, since Admiralty court could not sit regularly, the appeals were referred Governor and council.

18. After 1712, it was made clear that the court could award death sentence in case of natives but it could not award death sentence in cases of Englishmen.

DEFECTS:

1. There was no separation between executive and judiciary. The Mayor, Aldermen were the members of Governor's council who was the executive government of Madras. The Governor and council could remove any Mayor, Aldermen or Burgesses and appoint anyone in the place of vacancy.
2. The judges of Mayor Court were laymen and not law experts and they had no knowledge of English laws and they used to decide cases according to their common sense. No uniform and consistency in their decisions. Although an expert was appointed as recorder to assist the judges, the condition could not be improved. Less importance was given by the judge to the advice and opinion of recorder.
3. The judges of the Mayor's court were not honest and impartial and they could be easily tempted.

CHOULTRY COURT:

During this period, the jurisdiction of the Choultry court was diminished. It could hear the cases of petty offences and civil cases up to 2 pagodas only. Two Aldermen were to sit twice a week at the Choultry to exercise its jurisdiction. In 1753 its civil jurisdiction was taken by the Court of Request, but it continued to exercise its criminal jurisdiction till 18th century. By 1800 the Choultry court was totally diminished.

CHAPTER-II

JUDICIAL ADMINISTRATION AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS IN BOMBAY BEFORE 1726

INTRODUCTION:

1. The Island of Bombay was acquired by the Portuguese from the King of Gujarat in 1534 and in 1661 this Island was transferred by Portuguese king to British crown as a dowry on account of his sister's marriage.
2. In 1668 this Island was transferred by the British crown to the East India company for an annual rent of 10 pounds as per Charter of 1668.
3. The charter empowered the company to make laws and ordinances for the good governance of the Island of Bombay and also to impose punishments (including death sentence), penalties etc and these laws and punishments should not be contrary to the laws of England.
4. The power to enact these laws was vested in the company's General court or their court of committees and the Charter empowered the company to establish courts to judge all suits.
5. Under the Charter of 1668 the company enacted the laws for Bombay and the laws so framed were brought to Bombay in 1670.

The administration of justice and development of courts and judicial institutions in Bombay before 1726 could be seen in 3 stages:

FIRST STAGE: 1670-1683

1. At an early stage, Bombay was under the control of Surat Presidency and the Governor of Surat was Ex officio Governor of Bombay.
2. Deputy Governor and council were appointed to administer Bombay under the control of Governor of Surat.
3. Mr.Gerald Aungier, the Governor of Surat and Ex officio Governor of Bombay was much interested in introducing sound judicial system in Bombay and due to his efforts, the judicial plans of 1670 and 1672 was made to improve the judicial system of Bombay.

JUDICIAL PLAN OF 1670:

1. According to this plan the whole Island of Bombay was divided in to two divisions, one division consisted of Bombay, Mazagaon and Girgaon, while the other division consisted of Mahim, Parel, Sion and Worly.
2. A separate court was established for each division and each court had 5 judges and 3 judges were to constitute a quorum.
3. The custom officer of each division who was Englishman was authorized to preside over the respective court.
4. Some Indian were also appointed as judges and they were not paid any emoluments.
5. The court was empowered to hear cases of small thefts and civil action up to 200 xeraphins and appeals from this court was referred to court of Deputy Governor and council and thus the court of Deputy Governor and council constituted a superior court.
6. Besides the cases beyond the jurisdiction of divisional court i.e civil cases over 200 xeraphins and all serious criminal cases like felony, murder, mutiny etc was to be decided by Deputy Governor and council.
7. An appeal from the court of deputy Governor and council was allowed to the Governor and council at Surat only in cases of absolute necessity.

DEFECTS:

1. The administration of justice was in hands of traders who did not even have even elementary knowledge of English law and consequently they used to decide cases according to their sense of justice.
2. There were no separation of powers between executive and judiciary and both the powers were vested in the same hands.

Mr.Aungier was aware of these defects and so he requested the company to send a law expert from England. But the company directed him to select an expert from the servants of the company in India. Mr.Aungier selected Mr.George Wilcox and with his advice, he prepared the judicial plan of 1672 for improving the existing judicial system of Bombay.

JUDICIAL PLAN OF 1672:

1. By a government proclamation on August 1, 1672, the Portuguese laws were totally abolished and replaced by English laws at Bombay and as per this plan the whole judicial system was totally reorganized.

2. A new court known as Court of Judicature was established and George Wilcox was appointed as its Judge.
3. This court was empowered to hear and decide all civil, criminal, probate and testamentary cases and it was to sit once a week to try civil cases with the help of a jury.
4. An appeal from court of Judicature was to be heard by the Deputy Governor and council of Bombay.
5. The court was to charge a fee of 5 % of the valuation of the suit from the litigants, however the provision was made to enable the plaintiff worth less than 60 xeraphins to sue as a pauper.
6. Besides court of Conscience was also established to hear petty civil cases up to 20 xeraphins without the help of jury.
7. This court was to sit once a week and no court of fee was to be charged from the poor persons.
8. Under this plan for the purpose of administration of criminal justice Bombay was divided in to four divisions – Bombay, Mahim, Mazagaon and Sion.
9. In each division Justice of peace was appointed who were to act not as a court but as a committing Magistrate to arrest the accused and examine the witnesses and also to send the record of his examination to court of Judicature.
10. All the justice of peace were to sit in the court of Judicature as assessors to help the judges in trying the criminal cases and appeals from the court of judicature were to be heard by the Deputy Governor and council of Bombay.
11. In 1673-74, several panchayats were also established which were authorized to decide cases amongst persons of their own castes, only if they were willing to submit their disputes before panchayats else their cases will be referred before Court of Judicature.

MERITS:

1. Under this plan regular courts with well defined jurisdiction was established and were to sit regularly which enabled the court in disposing the cases within a reasonable time.
2. The civil cases were to be decided with the help of jury by which impartial and fair justice was rendered.
3. The administration of justice was inexpensive and the court fee was very moderate.

4. The laws and procedures to be followed by the courts were settled. It was made clear that these courts would follow the English substantive and procedural laws as far as possible.
5. The establishment of court of Conscience and Panchayats to decide petty civil cases reduced the burden of court of Judicature as well as the hardships of litigants.
6. The judge of the court of Judicature was not allowed to carry on private trade or business, but he was granted a salary of Rs.2000 per year. This provision was made to encourage him to take interest in the judicial administration and also to put him above the temptation of bribery.

The above plan was implemented by Aungier with great pomp and ceremony. It was rightly stated by Fawcett (the first century of British rule in India) that Aungier showed a fearless determination to do his best to put the judges in a position of independence and above the temptation of bribery. However even during this period the separation of power between the executive and judiciary could not be maintained. Till the lifetime of Aungier judiciary was given much respect. George Wilcox who was the first judge of the court of Judicature died in the year 1674. After his death James Adams was appointed as the judge of the court of Judicature. He continued his office only for few months. In 1675 Niccolls was appointed as a judge who raised a laudable voice for judicial independence in India, but his behavior did not satisfy the Bombay council and subsequently dismissed him. The court of judicature attached the lands of Roberts Fisher for which the Bombay council directed him to remove the attachment. But he refused to follow the direction on the ground that he was only bounded by oath taken by him. Later Niccolls criticized the verdict of the jury in a case and the Bombay council found an opportunity to suspend him. He was suspended for his quarrel with Bombay council and quarrel was the result of his bold step to make the judiciary independent of the executive control. After his dismissal Grey was appointed as judge in his place and he continues his office till 1683 when Keignwin's rebellion held the Island of Bombay and thus the judicial plan of 1672 came to an end. As long as the Bombay Island was under the control of Keignwin's rebellion, the company's court stopped functioning.

SECOND STAGE: 1684-1690

1. The Keignwin's rebellion surrendered the Island of Bombay in 1684 and thereafter the company took every possible efforts to set up a regular judicial system in Bombay.
2. In 1684 a court of Admiralty was established under the Charter of 1683 with the same guidelines as in Madras.

3. It was empowered to decide maritime and mercantile cases initially, but later it got authority even to hear civil and criminal cases.
4. This court should consist of a judge who is well versed in civil laws and he must be assisted by two English men.
5. Dr.St.John, who was an expert in civil laws was appointed as Judge-Advocate of the Admiralty court.
6. But the authority of Admiralty court was not sufficient to cover all the civil cases and so a court of Judicature was established and Dr.John was appointed as its Chief Justice.
7. Dr.St.John was much spirited in having independent judiciary which caused much annoyance to the Bombay council and Governor Mr.Child who did not have any respect for the judiciary.
8. Dr.John took some evidence against Mr.Child and the Governor Mr.Child directed him not to take such type of evidences, but John refused to follow his direction on the ground that he was bounded by the oath not to conceal any information which was brought to his notice against any person.
9. The Governor had no faith on equality before law and therefore he was annoyed and an open conflict arose between John and Child and consequently the power of Dr.John to act as Chief Justice of the court of Judicature was withdrawn and the civil and criminal jurisdiction of the Admiralty court was also forfeited.
10. A new court was established having Vaux as judge to decide civil and criminal cases.
11. Dr.john criticized the appointment of Vaux as a Judge on the ground that he was not a member of Bombay council and also not a law expert.
12. Again a conflict between John and Bombay council arose over the issue whether Bombay council was empowered to hear appeals from the Admiralty court, because there was no such provision given to Bombay council as per the Charter of 1683.
13. Ultimately he was dismissed from his office on 1687 and Vaux remained as judge from 1685 to 1690.
14. In 1691, Siddi Yakub, an Admiral of Moghul Emperor attacked Bombay and the Judicial system in Bombay came to an end. From 1690 to 1718 there was no court in Bombay and the Governor-in-council was deciding civil and criminal cases roughly.

THIRD STAGE: 1718 – 1726

1. On 25th March 1718, the court of Judicature was restarted having an English Chief Justice, five English Judges and five Indian judges.
2. The five Indian Judges represented the five important communities of India namely Hindu, Muslims, Christians, Portuguese and Parsis.
3. The Chief Justice and English judges belongs to Governor and council and three English judges constituted a Quorum and this court was to sit once a week.
4. This court was empowered to hear all civil, criminal, probate and testamentary cases and the cases were to be decided according to law of equity, good conscience and company's rules and ordinances and to some extent Indian customs and usages were given consideration.
5. Notably jury trial was not allowed and appeals from this court was heard by the Governor and council in cases where the amount involved was hundred rupees or more.
6. However a notice to file an appeal was required to be given to the Chief Justice within 48 hours of the Judgment.
7. The power to pass capital sentence was reserved to the court of Governor and council and the court fee was moderate.

MERITS:

1. During 1690 to 1718, there was no court in Bombay and therefore the establishment of a court in 1718 was itself an important event. The functioning of this court till 1728 gave a clear way for establishment of Mayor's court after 1728.
2. The appointment of Indian Judges was also a good feature of the judicial system. They could enlighten the English judges with regard to the customs and usages of Indian traditions.
3. The court fee was moderate and the administration of justice was made cheap.

DEMERITS:

1. The whole judicial system was under the control of Executive. The Chief Justice Parker was dismissed in 1720 and Chief Justice Braddyll was dismissed in 1721 on account of quarrel with the Bombay council and the quarrel was the result of their refusal to subordinate their judgments to the wishes of the executive.

2. The laws and procedures to be followed by the court were not settled which resulted in grave injustice and lack of uniformity in punishing criminals.
3. No provision was made for a jury trial.
4. The status of Indian Judges was not equal to that of the English judges. Their role was that of assessors or assistants to the English judges.

The aforesaid judicial system continued till 1728, when it was replaced by the Mayor's court established at Bombay under the Charter of 1726.

CHAPTER-III

THE ADMINISTRATION OF JUSTICE AND DEVELOPMENTS OF COURTS AND JUDICIAL INSTITUTION IN CALCUTTA BEFORE 1726

1. The Englishmen landed in 1690 at Sutanati which is situated on the banks of river Hoogly and built a fortified factory known as Fort William.
2. In 1698 the Subedar of Bengal granted the Zamindari rights of three villages Calcutta, Sutanati and Govindpur to the East India Company.
3. After this grant the status of the company was raised to that of Zamindars and the company started to exercise the Zamindari rights in administration of Justice and collection of revenues under the Moghul administration.
4. The Zamindars had authority to collect revenues and administer justice to the people of his Zamindari.
5. In 1699 the status of Calcutta was raised to that of presidency town and a Governor and council was appointed for administration.
6. In 1700 an English officer known as Collector was appointed to act as Zamindar on behalf of the company.
7. The Collector was empowered to collect revenue, decide civil and criminal cases of Indian inhabitants.
8. The Collector used to decide civil cases in a summary manner according to Indian custom and usages and in their absence, he was to decide cases according to principles of natural justice and law of equity.
9. The appeal from the Collector's court was heard by the Governor and council.
10. The petty civil cases pertaining to Englishmen were heard by Collector and important civil cases were decide by the Governor and council.
11. The Collector was also responsible for the collection of Revenue from the natives and also empowered to hear revenue cases and the appeals could be heard by Governor and council.
12. The Collector was to decide criminal cases of the natives without jury and the important punishments imposed by him were whipping, work on road, imprisonment and fine.

13. The death sentence was not inflicted unless it was confirmed by the Governor and council and the appeals were to be heard by the Governor and council.

14. The Collector used to take cognizance of petty crimes committed by Englishmen but the serious offences were tried by the Governor and council.

15. The practice of the company was different from the other Zamindars in some aspects.

16. The death sentence passed by the Collector was to be confirmed by the Governor and council were to be confirmed by the Governor and council whereas the other Zamindars is concerned the death sentence is to be confirmed by Nawab of Murshidabad.

17. Besides the appeals from the Collector's court of other Zamindars lay to the Nawab's court.

DEFECTS:

1. The administration of justice was not of a high order because the Collector was given much burden and powers beyond his capacity. He was to administer civil justice, criminal justice and collection of revenue.

2. The whole judicial system was of executive oriented. The Collector, an executive officer was vested with judicial powers also. Thus the Collector and Governor and council were to exercise all the executive and judiciary powers.

This judicial system continued till 1727 when Mayor's court was established under the Charter of 1726 and this Judicial system was replaced by a new judicial system.

CHAPTER-IV

THE CHARTER OF 1726 AND WORKING OF MAYOR'S COURT

THE CHARTER OF 1726:

The Company emphasised the need for a proper and competent authority to implement an effective system of administration of civil and criminal justice to the British King George I through a petition.

1. As judges were laymen, they did not have adequate knowledge of English Law. So decided cases according to their own common sense notion of justice.
2. The Judicial Administration and working of Courts in the 3 Presidency Towns was unsatisfactory.
3. With the growth in company's trade, the population of British settlements had increased considerably. Therefore, more cases were coming to the Courts for adjudication.
4. Encouraged by the successful working of Corporation at Madras the Company wanted similar Corporations at Bombay and Calcutta.
5. Many Englishmen who settled in India died leaving behind considerable movable and immovable property. This created problem for the Company to dispose and distribute their assets. No doubt, the Mayor's Court of Madras (established in 1687) was empowered to decide testamentary cases but its decisions not recognised by the Court of England as it was a Court of the Company and not of British Crown. So there was a need of a Court in each Presidency which derives their authority from the British Crown. Finally the Judicial Charter was granted by the British King George I on September 24th, 1726.

PROVISIONS:

1. The Charter provided for the establishment of Corporation at Bombay and Calcutta like the one in Madras. The Corporation consisted of 1 Mayor and 9 Aldermen.
2. The Mayor and 7 Aldermen were to be natural born British subjects while 2 Aldermen could be of subjects of Indian Princely States friendly with Britain.
3. The first Mayor and Aldermen were to be appointed by the Charter itself and thereafter Mayor to be elected annually by the Aldermen. Aldermen were to hold office for life or till their residence in the Presidency town but they could be removed by the Governor in Council on a reasonable cause. An appeal against this could be made to the King in Council in England.

MAYOR'S COURT IN PRESIDENCY TOWNS:

1. The Mayor and Aldermen formed a Court of Record called **'MAYOR'S COURT'.** It was empowered to decide all civil cases. The Mayor together with two other English Aldermen formed the quorum.
2. The Court also exercised testamentary jurisdiction. It could grant probates of wills and letters of Administration in case of intestacy. An appeal from this Court lay to the Governor and Council.
3. A further appeal lay to the King in Council if the case involves the subject matter above 1000 pagodas.
4. The Court could commit persons for its contempt. The process of the Court was to be executed by the Sheriffs, who were initially nominated but subsequently chosen annually by the Governor and Council.
5. The Charter did not prescribe what law to follow but as the earlier Charter of 1661 provided that justice to be in accordance with English Law, it was presumed that the same law was to be followed.

BOMBAY:

1. In Bombay the conflict between Mayor's court and the Governor-in-council arose on the jurisdiction of Mayor's court over the natives in matters concerning their caste and religion.
2. A Hindu women of the Shimpti case changed her religion and became Roman Catholic and on account of it her son of 12 years of age left her and decided to stay with his Hindu relative.
3. The woman filed a suit against the Hindu relative before the Mayor's court on the ground that he was unlawfully detained some jewels and the boy and the court ordered to handover the boy to his mother.
4. The heads of the caste complained to the Governor who brought the matter before the council, for which it considered that the court had no authority under the Charter of 1726 to determine the cases of the natives' caste relating to their religion and the court was warned not to interfere in such cases.
5. The court opposed the view of the Governor and council on the ground that dispute before the court was not really religious and it had jurisdiction to decide it under the Charter.

6. The Governor and council struck to their previous opinion and took a serious view of the action of the court. The Governor on account of the bold view expressed by the Mayor's court was annoyed and removed the Mayor from the post of Secretary of the council.

7. The conflict was reported to the court of Directors of the company in England and it denounced the attitude of the Governor and council and issued general orders to prevent repetition of such tyranny.

8. In the same year, a conflict between the Governor in council and the Mayor's court arose in another case.

9. An Arab merchant was coming to India who was found in a burning boat and he was rescued by some persons.

10. The merchant filed a suit in the Mayor's court to recover the value of pears alleged to have been extorted from him by the rescuers.

11. The Governor and council suggested to the Mayor's court that the claim of the Arab merchant is not valid and the court considered the Act of the Governor in council against its independence, ignored the advice of the council and upheld the claim of the Arab merchant and on appeal, the decision was reversed by the Governor-in-council by the casting vote of the Governor.

MADRAS:

1. In Madras also the relation between the Governor in council and Mayor's court was not cordial and the dispute arose from the oath.

2. The Hindu witnesses were directed to take "Pagoda oath" instead of "Geeta oath". Many Hindu witnesses opposed it and refused to take pagoda oath and the Mayor court imprisoned those who refused.

3. The Hindus invaded the Fort and complained to the Governor who ordered them to releases on parole and the court was directed to pay due regard to the religious rites and ceremonies of the natives and to keep within the due bounds prescribed by the Charter of 1726 for which the Governor and council opposed it.

4. Again a conflict was found where the Mayor's court expressed its view that an out-going Mayor might be re-elected.

5. Naish an outgoing Mayor was re-elected but the Governor refused to allow him to take oath of office on the ground that an outgoing Mayor could not be re-elected as per Charter of 1726 and ultimately another Mayor was elected.

CALCUTTA:

1. In Calcutta also the condition was not better and similar conflict arose between the Mayor's court and Zamindari courts and also between the Mayor's court and Governor in council.
2. They committed blunder by annoying Indians by violating their religious sentiments.
3. In almost all the conflicts the Governor and council took the side of the Indians to gain their sympathy of the Indians would be of almost importance in suppressing the Mayor's court who dared to challenge the executive for judicial independence.

CRIMES AND PUNISHMENTS:

Mayor's Court had no criminal jurisdiction. The Governor and 5 Senior Members of the Council were appointed as Justice of Peace in each Presidency for the administration of criminal justice. They also constituted a Court of OYER, TERMINER AND GAOL delivery and were required to hold quarter sessions. So altogether they possessed complete criminal jurisdiction.

JURY TRIAL IN CRIMINAL CASES:

The Charter provided that criminal cases in Presidencies be decided with the help of Grand Jury and Petty Jury. The Grand Jury consisting of 23 persons and they were entrusted with the task of presenting persons suspected of having committed a crime. So they are called as **"Jury of Presentment". A**fter an offender was apprehended and brought before a justice of peace for preliminary enquiry, the latter examined both the parties and recorded evidence and sent it to the Court of Governor in Council for trial. Before the commencement of trial, all the evidences of prosecution, accusation or indictment was placed before Grand Jury. In case the Grand Jury returned a verdict of "no prima facie case" the accused was acquitted without trial. However if majority of the Jury was satisfied with a propriety of the case, then the prisoner was tried by Petty Jury.

If Petty Jury after hearing both sides returned a verdict of **'guilty',** the accused was sentenced by the Court of Quarter Sessions (Governor and Council).

As per the Charter, Company sent to each Presidency list of Statutes, Law books and instructions. This was intended to maintain uniformity in the functioning of Law Courts in all the Presidencies and follow English Law.

LEGISLATIVE POWERS UNDER THE CHARTER:

Until 1726 the law making powers were exercised by the Court of Directors of the Company in England. As they hardly had any knowledge about the local conditions in India, the Laws framed by them were ineffective. Therefore Charter of 1726 empowered the Governor and Council of each Presidency to make byelaws, rules and ordinances for the regulation of the Corporations and inhabitants of the Presidencies and they would also prescribe punishment for the breach of such Laws and Rules. But these rules and ordinances and punishments could not be effective unless approved by the Company's Court of Directors in England.

WORKING OF MAYOR'S COURT OF 1726:

From 1726 to 1753 frequent disputes between the Government and the Mayor's Court arises. Governor and Council did not have any voice in the appointment of Mayor as he was elected by the Corporation independently.

The Corporation and Mayor's Courts were completely independent of the executive Government.. The Charter of 1726 adopted the principle of independence of judiciary to a considerable extent which was a positive development in the legal history of India.

Some cases referred were:

1. Arab Merchant's Case (1746)
2. Hindu Woman's Case (1730)
3. Pagoda Oath Case (1736)
4. Mayor Naish's Re-election Case
5. Mayor and Secretary betting case

Re-electing as Mayor Case:

In 1734, a conflict arose over the Mayor's re-election. Naish was re-elected as Mayor but the Governor refused to allow him to take the Oath of Office on the ground that an outgoing Mayor could not be re-elected under the Charter of 1726. Ultimately another Mayor was to be elected.

Mayor and Secretary Betting Case:

Terrain the Secretary to the Madras Government and Mayor Naish met at a dinner party and entered into a bet which Naish lost and refused to pay. Terrain sued him in the Mayor's Court which ruled that Mayor was immune from prosecution. The Government later complained that its secretary had been treated with indignity by the Court.

CAUSES FOR THE CONFLICTS BETWEEN MAYOR'S COURT AND GOVERNOR IN COUNCIL:

THE DEFECTS IN THE CHARTER OF 1726:

1. The Charter did not lay down in clear terms the Law which the Mayor's Court was to apply. Thus the Court applied the principles of British Law. The Charter did not make any provision for the appointment of qualified legal persons as judges.

2. The Governor and Council were of despotic nature having no respect for the judiciary. So always interfered with the judicial function of the Mayor's Court. When the Mayor's Courts took that as the violation of judicial independence and avoided them, they were annoyed with them and made every attempt to lower down the judiciary in the public eyes and to punish its judges.

3. **SUPERIORITY COMPLEX OF JUDGES OF MAYOR'S COURTS:** They thought themselves as superior and independent of executive as appointed under the royal authority. This Court was staffed by people having no legal knowledge. So they lacked the discipline of legal training, and at times acted in a manner that would be derogatory to a Court.

4. Personal hatred, jealousy, prejudices among the Company's servants manifested itself in the conflicts between the executive and the court.

5. As Indians were unfamiliar regarding British Laws and suffered a lot with the working of the Mayor's Court, the executive always sided with the Indians. They asked the Courts not to interfere with Indian customs and religions and if any differences among them arises, it was to be settled as per their own customs.

DISTINCTION BETWEEN THE COMPANY'S CHARTER OF 1687 AND THE CROWN'S CHARTER OF 1726:

THE COMPANY'S CHARTER OF 1687	THE CROWN'S CHARTER OF 1726
The Mayor's Court established in Madras only.	Established in Madras, Bombay and Calcutta.
This Court was Company's Court.	This Court was King's Court i.e. Royal Court.
This Court decided all civil and criminal cases. Appeals were to be allowed in the Admiralty Court.	This Court decided only civil cases. Governor in Council were the appellate authority.
No specific rules of laws and procedures.	English Law was followed.
A Law learned person was appointed in the Court. So it was called Recorder's Court.	There was no such officer in this Court.
Some Indians sat as Judges together with English Aldermen in the Court.	Out of 9 Aldermen, 7 were British subjects and 2 were required to be subjects of Indian princely states friendly with Britain.
The administration of justice was entrusted only to the Mayor's Court and the Admiralty Court in Madras. Executive had no power in this respect.	The Charter mixed executive and judiciary. It granted original criminal jurisdiction and appellate civil jurisdiction to the Governor and Council who were already entrusted with executive powers of Presidencies.

CHAPTER-V

WARREN HASTINGS PLAN OF 1772 AND REFORMS UNDER THE PLAN OF 1774 AND REORGANIZATION IN 1780

GRANT OF DIWANI TO THE EAST INDIA COMPANY:

1. The East India company defeated the Nawab of Bengal in the Battle of Plassey in 1757 and it also defeated the combined forces of Mir Kasim (Nawab of Bengal), Shuja-ud-daula (Nawab of Oudh) and Emperor Shah Alam in Battle of Buxar. These two battles established the company's might.
2. In 1765, Lord Clive was sent from England to act as Governor of Bengal and he entered in to a treaty with the Puppet Mughul Emperor Shah Alam who granted the Diwani of Bengal Bihar and Orissa to the company for an exchange of 26 lakhs to be paid by the company to the Emperor annually.
3. During the Mughul period the Nawab and Diwan was the two high dignitaries. The Nawab was responsible for administration of criminal justice and maintenance of military and law and order, while the Diwan was responsible for maintenance of administration of civil justice and collection of land revenue.
4. But the company was much interested in military and consequently the under an agreement the Nawab handed over his right to maintain army to the company in exchange of Rs.53 lakhs rupees to the Nawab annually for his maintenance and also for the maintenance of the military administration.
5. Thus the year 1765 is said to be the turning point of the Anglo Indian History.
6. The company executed its Diwani functions not through its servant but through the Natives under the supervision of company's officials.
7. Mohammed Reza Khan was appointed as the company's Diwan at Murshidabad and Raja Shitab Roy was appointed at Patna. Two Englishmen was also appointed at both the places to supervise the working of these two native officers.
8. But soon the dual system of government was not much useful, because the Indian officials had no effective power in enforcing their decision and also they could not dare to take any action against the English servants of the company.
9. The Company's English servants misused their powers and exploited the people of Bengal Bihar and Orissa and everywhere only corruption and bribery was prevailing.
10. In 1767, Clive left India and in his place Verelst was appointed as Governor of Bengal and he made several attempts to improve the condition by appointing English servants

as Supervisors to supervise the collection of Revenue and administration of justice, but however this plan was also frustrated.

11. The Supervisors misused their powers and exploited the people and they had no legal knowledge and administrative experiences and they were given functions beyond their capacities.

12. On account of Famine in 1771 there was all round hunger and starvation and the company blamed the Indian officials for this situation.

13. The company changed its policy and decided to execute its diwani functions not through the Indian officials but through the company's servants.

14. For this purpose Warren Hastings was appointed as Governor of Bengal in 1772 and the revenue collection and civil justices were brought under the direct control of the company's servants. However criminal justice continued to be in the hands of the Nawab.

JUDICIAL REFORMS OF WARREN HASTINGS:

1. As soon he was appointed as Governor of Bengal he took efforts to find out and eradicate the evils of Bengal, Bihar and Orissa.
2. He abolished the system of dual government and executed the company's diwani functions through the company's servants.
3. He created a committee having Governor and four council of member to find out the causes of the evils in the existing administration and revenue collection.
4. The committee prepared a first plan known plan of 1772 and this plan is known as Warren Hastings plan of 1772.

PLAN OF 1772

1. Under this plan The territories of Bengal, Bihar and Orissa were deivided in to districts and in each district an English officer known as Collector was appointed.
2. The Districts was selected as unit of administration and collection of revenue and Collector was responsible for it and separate provisions were given for administration of civil and criminal justice.

CIVIL JUSTICE:

In each District a court called Moffusil Diwani Adalat was established and appeals from this court was to be heard by Sardar Diwani Adalat. Apart from this there was a Small Causes Adalat which was to hear petty cases up to Rs.10.

MOFFUSIL DIWANI ADALAT:

1. It was established in each and every districts of Bengal, Bihar and Orissa and it was presided by Collector.
2. It was empowered to hear civil cases such as real and personal property, inheritance, caste, marriages, debts, disputed accounts, partnerships and contracts.
3. The religious affairs like inheritance, marriages, castes etc were to be decided according to Korans with regard to Muslims and according to Shastras with regard to Hindus.
4. The decision of this court was final up to Rs.500 and appeals for the cases more than Rs.500 would be sent to Sardar Diwani Adalat.

SARDAR DIWANI ADALAT:

1. It was established at Calcutta and was empowered to hear appeals from Moffusil Diwani Adalat for all the cases valued more than Rs.500
2. It was presided by Governor and council and was considered as the court of Superior jurisdiction.
3. A court fee of 5% was required to be paid on the petition of appeal.

SMALL CAUSES ADALAT:

1. The Head Farmers of the Parganas were empowered to decide finally for the civil cases valued up to Rs.10.

CRMINAL JUSTICE:

In each district Moffusil Faujdari Adalat was established and appeals from this court were referred to Sadar Nizamat Adalat.

Moffusil Faujdari Adalat:

1. It was established at each and every districts of Bengal, Bihar and Orissa to hear all criminal cases.
2. It was presided by Kazi and Mufti assisted by two Maulvies, the Maulvies were to expound the law of Kazi and Mufti were to decide cases accordingly.
3. The Collector was to supervise the working of the court and it could not pass capital sentence without the approval of the Sardar Nizamat Adalat, the highest criminal court.

SARDAR NIZAMAT ADALAT:

1. It was established at Calcutta and to hear appeals from the Moffusil Faujdari Adalat.
2. It was presided by an Indian Judge called as Daroga-i-Adalat who was assisted by Chief Kazi, Chief Mufti and three Maulvies and they were appointed by Nawab on the advice of the Governor.
3. The Governor and council were empowered to supervise the proceedings of the Sardar Nizamat Adalat and the death warrant was to be signed by the Nawab who was considered as the head of Nizamat Adalat.

REVENUE ADMINISTRATION:

1. The collector of the district was to collect land revenue under the supervision and control of Board of Revenue consisting as Governor and council.

MERITS:

1. The personal laws of Hindus and Muslims were protected. The religious affairs were decided according to Korans and Shastras with regard to Muslims and Hindus respectively. Warren Hastings realized that the personal laws were based on the sentiments and customs of the natives and violation of these laws would cause much annoyance. Thus his step to safeguard the personal law was his wisest step. He made attempt to correct defects of ancient judicial and revenue system without destroying local traditions and customs. He tried to prove that Indians were not slaves and they had their own customs and usages which should be respected and he also helped in preparing a digest of Hindu law for the guidance of civil courts.
2. Under this plan the districts was selected as unit of administration and justice was not costly.
3. The jurisdiction of civil administration and criminal administration was well defined.
4. The judges of these courts were Englishmen and they were not aware of personal laws of the natives and this defect was removed by Warren Hastings by appointing native law officers to expound personal laws.
5. The commission basis was replaced by court fee which was to be deposited with the Government and not with the judges and thus fair and impartial judges was rendered.

Thus this plan was a step in the direction of the impartial and fair justice and a foundation for sound judicial system was laid down by him. He was also praised as 'Infant Administrator', especially Lord Cornwallis built up the super structure on the foundation of the sound judicial system.

DEMERITS:

1. The personal laws were applied to only certain matters like inheritance, caste, marriages etc and thus the application of the personal law was not complete.
2. The facility of the application of the personal laws was allowed only to Hindus and Muslims, but not to other communities eg. Christains, Parsis etc.
3. Only the Korans and Shastras were to be consulted in deciding the disputes among the Muslims and Hindus respectively, but the personal laws is not confined to Korans or Shastras. Korans is only a source of Muslim laws and similarly Shastras is only a source of Hindu laws.
4. The judges were Englishmen and did not have the knowledge of the provisions of the Koran and Shastras and the appointment of the native officers to assist them were criticized by several scholars. The judges were easily misguided by wrong interpretation of personal laws by the native assistants.
5. The Collector was conferred more powers. He was to collect revenue, decide civil cases and supervise the working of the criminal courts. It was not possible for him to pay due attention to all these affairs. There was no separation between the executive authorities for their self interest.
6. There was no separation between the revenue collection and the administration of the civil justice. The Collector and the governor in council was responsible for revenue collection as well as judicial administration in the district. Under these circumstances it was natural and unavoidable, the collection of revenue on which the collector's credit and promotion in service may depend. Sir John Shore tried to defend Warren Hastings on the ground that "it is impossible to draw a line between the revenue and judicial department in such a manner as to prevent their clashing", but Warren Hastings tried to prove that it is difficult, but not impossible to separate judicial administration from revenue collection and also by his subsequent plans he tried to separate the both for a larger extent. Besides Lord Cornwallis was also successful in separating judicial administration from the revenue collection. He followed simple and easier method and did not take the trouble to separate the judicial administration from the revenue collection. He also realized that the plan should be modified and a new plan was prepared on 23rd November, 1773 and it was implemented in January 1774.

PLAN OF 1774:

This plan was prepared to remove the defects in the plan of 1772.

CIVIL JUSTICE:

1. The entire territories of Bengal, Bihar and Orissa was divided in to six divisions having headquarters at Calcutta, Burdwan, Dinajpur, Dacca, Murshidabad and Patna and each divisions consisted of several districts.
2. In each division a Provincial council was established which consists of four or five English servants of the company.
3. In each district in place of Collector an Indian officer known as Diwan or Amil was appointed by the Governor General and council on the recommendation of Provincial council.
4. He was to act as the judge of the Moffusil Diwani Adalat and the appeals from the Moffusil Diwani Adalat were to be heard by the provincial council.
5. The decision of the Provincial Council was final up to Rs.1000, but where the suit is more than Rs.1000 the appeal from the provincial council was to be heard by Sardar Diwani Adalat at Calcutta.
6. Besides the Provincial council was also empowered to hear cases of original jurisdiction.

REVENUE ADMINISTRATION:

1. The Diwan was to collect revenue in districts under the supervision of provincial council and the provincial council was responsible to collect revenue in divisions.
2. The provincial councils were under the control of Board of Revenue.

CRIMINAL JUSTICE:

1. The working of Moffusil Faujdari Adalat and Sardar Nizamat Adalat under the supervision of Collector and Governor in council came to an end .
2. The Sardar Nizamat Adalat was shifted from Calcutta to Murshidabad which was to work under the control of Nawab and Mohammed Reza Khan was appointed as Nawab.

MERITS:

1. The English Collector was replaced by an Indian Officer known as Diwan and thus the judicial administration was put in the hands of Indians. Similarly the working of the criminal courts was also placed in the hands of the Indians.

2. The establishment of Provincial council reduced the burden of the Sadar Diwani Adalat. Under the plan of 1772 it was empowered to hear all appeals valued more than Rs.500, but under this plan cases up to Rs.1000 was heard by the Provincial council.
3. The establishment of Provincial council in each divisions also reduced the hardships of the litigants and made justice cheaper. Under this plan the appeals could be filed before the Provincial council and the litigants need not go to Calcutta from the interior districts.
4. Under this plan, all cases decided by the Moffusil Diwani Adalats were appealable to the Provincial Council irrespective of their values, while under the plan of 1772 the appeals from the Moffusil Diwani Adalat could lie only in the cases up to Rs.500 and there was no provision for the appeal in cases up to Rs.500.

DEMERITS:

1. The Provincial councils were conferred excessive powers. They could not be controlled by the Governor in council at Calcutta.
2. The separation between the civil justice and revenue collection could not be maintained. Diwans and Provincial council were responsible not only for collection of revenue but also the administration of civil justice.

REORGANISATION IN 1780:

1. Under this plan the powers of the provincial council was divested of their judicial functions and they were only to collect revenue and decide revenue cases.
2. The power to decide civil cases were given to a new court called as Provincial court of Diwani Adalat which was presided by an English servant of the company called as Superintendent of Diwani Adalat.
3. He was appointed by the Governor-General in council for his life time and could be removed on the grounds of misbehavior.
4. The Provincial Council of Diwani Adalat was given power to decide civil cases like property, inheritance and contract.
5. It could also refer small cases involving Rs.100 or less to the Zamindar or Public Officer who resided near the residence of the parties.
6. The decision of the provincial court of Diwani Adalat was final in all suits involving up to Rs.1000 and the appeals could lie to the Sardar Diwani Adalat which consisted of Governor-General and council.

MERITS:

The separation between the revenue collection and judicial functions was maintained and attempts were made to separate the executive and judiciary.

DEMERITS:

1. There were only six provincial courts in the whole territories of Bengal, Bihar and Orissa and it was much less than what was required.
2. The judges of the Moffusil Diwani Adalats and the Provincial court of Diwani Adalat were neither experts in law nor properly trained in judicial work.
3. Zamindars or public officers whom the cases involving Rs.100 or less could be referred for decision were to act as Judges without any remuneration. This tempted them to charge fees from the parties for their time and labour. They misused their power for their own interest.
4. The provincial councils were empowered to collect revenue as well as to decide revenue cases. This arrangement has been much criticized. It was not justified to empowered the provincial council which was to collect revenue to decide revenue cases because it was in effect appointing a man a judge in his own cause.
5. The separation between judiciary and executive was not complete.

CHAPTER-VI

SUPREME COURT AT CALCUTTA– ITS COMPOSITIONS, POWERS AND FUNCTIONS

INTRODUCTION:

The Regulating act empowered the British Crown to establish a Supreme Court at Fort William (Calcutta) by issuing a charter. So British Crown issued a charter in 1774 establishing the Supreme Court of judicature which superseded the provisions the charter of 1753 and resulted in abolition of mayor court of Calcutta.

1) Composition: The Supreme Court was to consist of a Chief Justice and 3 puisne judges to be appointed by the Crown. Only those persons who were barristers of not less than 5 years standing could be appointed as judges. They were to hold office during the pleasure of the Crown.

2) Function:

1. The Supreme Court was a Court of Record. It was conferred extensive jurisdiction over civil, criminal, admiralty, and ecclesiastical cases. It was also a court of equity and therefore, it was given the power to administer justice according to the principles of equity and good conscience.

2. It could regulate its own procedure and make rules for this purpose. These rules could be approved, modified or rejected by the King in Council.

3. The Supreme Court was to nominate three persons annually to the Governor General and Council who would select one of them as Sheriff.

4. The primary duty of the Sheriff was to execute the orders of the Supreme Court and detain in prison the persons committed by the Court. The Supreme Court was authorized to enroll attorneys and advocates.

5. It could appoint sub-ordinate officers but their salaries required approval of the Governor General and Council. The Supreme Court was also authorized to regulate the court fee with the approval of the Supreme Council.

6. It was to exercise, supervision and control on sub-ordinate courts (Court of collector, quarter sessions, court of requests, sheriffs.) It was authorized to issue writs of certiorari, mandamus, Quo-warranto to these courts.

3) JURISDICATION: It can be explained under the following heads:

1) CIVIL JURISDICTION: The Supreme Court was conferred with wide jurisdiction in civil matters. It was conferred original jurisdiction in civil matters.

a) This jurisdiction extended to the East India Company, mayor and Alderman of Calcutta.

b) His Majesty's subjects and british subjects residing in Bengal, Bihar and Orissa.

c) Any other person directly or indirectly under the employment or service of the company.

d) the inhabitants of Bengal, Bihar and Orissa if they consented in writing to refer their disputes to the Supreme Court provided the subject matter of the suit exceeded rupees 500.

2) CRIMINAL JURISDICTION:

1. The Supreme Court was made a Court of Oyer, Terminer and Gaol delivery in and for the town of Calcutta. The factory of Fort William and factories sub-ordinate thereto.

2. It employed the services of Grand jury and petty jury for trial of criminal cases of British subjects. The Supreme Court did not have jurisdiction over the native inhabitants of Calcutta and territory of Bengal, Bihar and Orissa.

3. Its jurisdiction extended to His Majesty's subjects and persons in the service of the company.

4. Significantly, the Supreme Court did not have jurisdiction over Governor General and members of the council for any offence excepting treason or felony.

5. The Governor General, the councillors and the judges of the Supreme Court acted as justices of Peace and held quarter sessions.

6. Besides, the Supreme Court was also empowered to reprieve or suspend the execution of any capital sentence if in its opinion it was a fit case for mercy. In that case, it could refer the case to the British Crown with reasons for recommending mercy. The final decision in this regard was however left to the pleasure of the crown.

3) ADMIRALTY JURISDICTION:

1. The Supreme Court was to be the Court of Admiralty for the territories of Bengal, Bihar and Orissa. In this capacity, it could try all cases – civil and maritime and all crimes committed upon vessels, ships, ferries and high seas and off-shores of Bengal, Bihar and Orissa with the help of petty jury consisting of British subjects residing in Calcutta. This jurisdiction extended to all his majesty's subjects and persons who were directly or indirectly in the service of the company, residing in Calcutta and territories of Bengal, Bihar and Orissa.

ECCLESIASTICAL JURISDICTIONL:

This jurisdiction extended to all British subjects living in Bengal, Bihar and Orissa according to the Ecclesiastical law prevailing in the Diocese of London. Thus it could grant probates of wills to the British subjects within the territories of Bengal, Bihar and Orissa and also letter of administration of the British subjects dying inter-state. It could also appoint guardians and keepers for infants and insane persons and their estates in accordance with the rules prevalent in England.

EQUITY JURISDICTION: In this capacity, Supreme Court was to administer justice in a summary manner according to the rules and proceedings of the Chancery court of England. B) The court of Chancery of England was not bound by technicalities of law and could administer justice according to the principles of equality and good conscience.

WRIT JURISDICTION: Being a Supreme Court, it could issue writs to court and officers sub-ordinate to it - Court of Collector, Court of requests, Quarter sessions, Sheriff, etc. It could issue writs of certiorari, mandamus, error or procedendo.

PROVISION FOR APPEALS:

In Civil cases, appeals from the decision of Supreme Court could be taken to the King in Council. Its decisions were final in England provided the subject matter in dispute exceeded 1000 pagodas. Such an appeal could be filed within 6 months of the date of judgment.

Supreme Court under Regulating Act

In criminal cases, the Supreme Court enjoyed absolute discretion to allow or not to allow appeal to the King-in-council. Besides, the King-in-council reserved the right to refuse or admit an appeal as a special case upon the terms and conditions as it thought fit.

Cases tried by the Supreme Court:

The trial of Nanda Kumar

Raja Nand Kumar, a Hindu Brahmin was a big zamindar and very influential person of Bengal. He was loyal to the English company ever since the days of Clive and was popularly called as **Black colonel** by the Company. Three out of 4 members of Governor General's council were opponents of Warren Hastings. So Francis, Clavering and Manson instigated Nanda Kumar to bring charges of bribery and corruption against Warren Hastings.

In march 1775 Nanda kumar gave a letter of complaint to Francis one of the member of the council that Hastings accepted from him bribery of more than Rs. 100000 for appointing son Gurudas, as the Diwan. Another allegation that Hastings accepted 2.5 lakhs from Munni Begum as bribe for appointing her as the guardian of minor Nawab Mubarak-

Ud-Daullah. Nanda kumar attached vouchers also. Discussions took place in the council about this. But Warren Hastings opposed this and dissolved the meeting of the council. Majority of the members joined and appointed Clavreing as president of the council. They declared that the charges levelled against Hastings were proved. So asked him to deposit an amount of Rs. 3,54,105 in treasury of the company

This event made Hastings a bitter enemy of Nanda kumar. A few months later Nanda kumar was arrested with Fawkes and Radhacharan for conspiracy.

In the trial Fawkes was fined but Nanda kumar judgment was reserved because again he was charged for forgery , manipulated by Hastings. A man by name Mohan Prasad charged him for forgery of a bond (1770) related to debt. Supreme Court took this case. Finally judgment was delivered by Impey the Chief justice with the consultation of other judges. Death sentence was given under English Act of 1729 for forgery

From 16th June to 4th July 1775 several efforts were made to save the life of Nanda kumar. The defense council wanted to appeal to the King in Council which was rejected by the Supreme Court. Another petition recommending the case for mercy to the British council was also turned down by the Supreme Court.

At last Nandakumar was hanged on August 5th 1775 at 8 A.M at coolly bazar at fort William

The judgment not only shocked Indians but also foreigners residing in India. Neither under Muslim law or Hindu law was forgery a capital crime. It was considered most unfortunate and unjust. On return to England Impey and Hastings were impeached by the House of Commons for execution of Nandkumar

The Patna case (1777-1779):

A native of Kabul (Afghanistan) Shahbaz Beg Khan came to India and served in the company's army for some time and retired. He earned considerable wealth and settled in Patna and married Nadirah Begum. Having no issues, he expressed his desire to adopt his nephew Bahadur Beg as his son and made him the heir of his property. But before giving effect to his wish, he died in December 1776

After his death, both Nadirah Begum and Bahadur Beg claimed his whole property as their own. Nadira Begum asserted her claim to the said property on basis of three documents namely dower deed, gift deed and acknowledgement executed by her husband but Bahadur Beg that he was living with his deceased uncle as an adopted son claimed the property

Bahadur Bag first filed petition before the provincial court at Calcutta. Mohammedan law officers Kazi and Muftis heard this case. The provincial council ordered the division of the property into 4 parts. One was given to Nadirah Begum and other 3 parts

to Bahadur Beg. But Begum did not accept this. She moved an appeal before SadarDiwaniAdalat which consisted of Governor General Warren Hastings and council members. The case was pending for a long time. An action was taken. Then she filed a suit before the supreme court against Bahadur Beg, Kazi and Mufti for assault for entering forcibly into her house and other personal injuries and claimed damages to the tune of rupees six lakhs. The supreme court ordered in favour of her and issued a warrant of arrest against mohammedan officers and Bahadur Beg. Court awarded the damages of rupees three lakhs for the plaintiffs and Rs. 9208 at costs. As there were not able to the pay damages, they were ordered to be imprisoned . They were sent to Calcutta and remind behind bars until the enactment of the Settlement Act of 1781underwhich they were directed to be discharged. However old Kazi died while being taken to Calcutta.

An appraisal of the case

1. Entire judicial work was entrusted to be native law officers of the provincial council as the English judges of the company where quite ignorant about the languages, laws and the customs of the natives
2. Sadar Diwani Adalat at Calcutta (Governor General and council) hardly had any time to attempt to the judicial work as they were mostly occupied with the other works and avenging their mutual rivalries .
3. Supreme court's contention that it had jurisdiction over Bahadur Beg as he was a farmer of land revenue of the company (So a servant of the company) does not appear to be correct . A farmer was only a person who paid the land revenue to the company. Only revenue collector was a person employed by the company on regular fixed salary. This created a panic and fear among the native farmers of Bengal, Bihar, Orissa and tried to relive themselves of their farms.

The Cossijurah Case (1779-80)

There was a clash between Supreme Court and Supreme Council over the issue of supreme court's jurisdiction over zamindars. Raja Sundaranarayan was zamindar of Cossijurah in the district of Midnapore in Orissa. He was to pay to the company a fixed sum of money as the land revenue annually. He was under a heavy debt to kasinathBabu. Having failed to recover the money from the raja through Board of Revenue at Calcutta, Kasinath filed a debt suit against the Raja in the supreme court at Calcutta. His contention was that Raja being revenue collector was in the service of the company and so came under the jurisdiction of Supreme Court. Supreme court issued a writ of Habeas for the arrest of the Raja but he absconded

In the meantime the collector of Midnapure reported the matter to the Governor General and council complaining that the revenue collection in the district is adversely affected

because of the absence of Raja. So Supreme Council instructed the Zamindar not to obey the supreme court

Supreme Court sent sheriff along with 60 men to execute the writ. Zamindar used force and drove away these officers. He even alleged that sheriff's men entered his house, injured his servants, forcibly broke open the doors and committed outrages upon the place of religious worship. So sheriff and his fellows were arrested and kept in confinement for 3 days

So the Supreme Court ordered the councillors to appear before them for charges levelled against them for arrest of sheriff and the motive to deprive kasinath of the recovery of his debts from Raja. But Attorney- general advised councillor not to appear before Supreme Court. The Supreme Court felt offended and put the Attorney General of the company north Naylor in prison where he died. It was at this stage that Kasinath Babu withdrew his suit against Raja of Cossijurah and Governor General and council in view of the serious consequences arising out of the case.

CASE OF KAMALUDDIN(1775):

Kammaluddin was an ostensible holder of a salt farm at Hijili on behalf of Kant Babu, who was the real farmer. In 1775, he was arrested by the order of the Revenue Council of Calcutta on the ground that he defaulted payment of arrears or revenue. He was committed to prison without bail. Kamaluddin approached the Supreme Court and obtained the writ of Habeas Corpus. The Supreme Court directed to set him free on bail and it even granted him the bail.

The judges further directed that he should not be imprisoned again until the real farmer Kant Babu had been called upon to pay the arrears. The members of The Supreme Council expressed their resentment against this. According to them, the Company was confirmed as Diwan of Bengal by the Regulating Act, so the council had exclusive jurisdiction. The Supreme Council ordered for the imprisonment of Kamaluddin (without paying attention to the order of the Supreme Court). But Governor General Warren Hastings refused to support the proposed steps of the Supreme Council.

This case was an eye-opener disclosing defective provisions of the Regulating Act due to which the Supreme Court and the Council came into conflict.

The cause for the conflict relating to jurisdiction and powers of the Supreme Court are as follows:

1. The difficulty arose because the various terms like 'British Subjects', 'His Majesty's Subjects',' persons employed by or directly or indirectly, in the service of the Company' or 'the persons employed by, or directly or indirectly in the service of any

of his Majesty's subjects' etc. were not defined. So the whole jurisdiction became vague.

2. It was not clearly stated whether Hindu, Muslim, Christian or the English law was to be followed. But the Judges knew only English law. The Supreme Court replaced the Mayor's Court which administered English Law and therefore it appears that the Supreme Court was to administer the English law.

3. The Supreme Court also claimed to have jurisdiction over the revenue collectors of the Company for the wrongs done by them. E.g.: Kamaluddin case.

4. The proceeding of the Supreme Court proved to be very expensive. Even the preliminary proceedings in a case caused heavy expenses, because litigants were required to engage an English Barrister and had to cover long distances to attend to their cases.

5. In Criminal matters, the Supreme Court invariably followed the provisions of the British Criminal Law which were quite foreign to the Indians. The substantive provisions of the criminal law were also punitive and harsh. For minor offences, a person could be hanged which was an added cause of resentment against the Supreme Court by the Indians. E.g.: Rajan Nandhakumar Case.

6. Even in civil cases, their technical procedures had undesirable features. In a case being filed by a plaintiff after swearing an affidavit to the effect that the defendant fall within the jurisdiction of the court, the court would issue 'writ of habeas' ordering the arrest of the defendant with provision to release him on bail. But the amount of bail had been very high which the defendant failed to pay, he had to remain in prison till the initial plea regarding the Court's jurisdiction was disposed of. This rule of procedure appeared very much oppressing to the Indians.

7. There was much uncertainty and confusion as to the relation and jurisdiction of the Supreme Court and the Company's Adalats.

8. There was uncertainty and confusion as to the writ jurisdiction of the Supreme Court. The Act of settlement was passed in 1781 to remove the defects of the Regulations Act, 1774.

Merits of the Supreme Court:

1. While the judges of the Mayor's Court were mostly the English servants of the Company and quite ignorant of the legal system, the judges of the Supreme Court were professional lawyers appointed by His Majesty.
2. The Supreme Court exercised Common law, Equity, Admiralty, Ecclesiastical jurisdictions and an improvement even on the judicial system of England.
3. The Charter of 1774 made praise-worthy attempt to make the Supreme Court independent of the Executive council.
4. This court was empowered to superintend the Court of Collector, Quarters sessions, Court of Request, Sheriffs. For this purpose, it could issue writs in the nature of certiorari, Mandamus, quo warranto. This shows the Court was conferred on with wider jurisdiction.
5. The judiciary was made independent and got divorced from the executive.

CHAPTER-VII

ACT OF SETTLEMENT,1781

NEEDS AND OBJECTS:

1. This Act was enacted to remove the defects of the Regulating Act.
2. The conflict between the Supreme court and Supreme council was very serious and a petition against the Supreme court's activities in Bengal was submitted to the British Parliament by the Supreme Council.
3. Besides a petition signed by Zamindars, the company's servants and other British servants inhabiting in Bengal was also sent to the British Parliament against the Supreme court.
4. The British Parliament appointed a Parliamentary Committee to make inquiries in to the matter and prepare a report.
5. The Committee presented a report on the conflict between the Supreme council and the supreme court in 1781 and based on that report the British Parliament passed as Act in 1781 known as Act of Settlement,1781.
6. The main defect of the Regulating Act,1773 was that its provisions were very vague and that was the cause of the conflict between Supreme Court and Supreme council.
7. It failed to define with certainty of the jurisdiction of the Supreme court and its relation with the Supreme council and the company's court and on account of it they both interpreted the provisions of the Act to their own favour.
8. Therefore the Act of Settlement,1781 was passed to settle the disputes as to the jurisdiction of the Supreme court and its relation with the Supreme council and company's court.
9. The preamble of this Act makes it clear that the Act was passed to amend the Regulating Act, 1773 and to provide relief to certain persons imprisoned at Calcutta in Bengal under the judgment of the Supreme court in Patna case and also to indemnify the Governor-General-in-council of Bengal and other officers who had acted under their orders or authority.

PROVISION OF THIS ACT:

I. RESTRICTIONS ON THE JURISDICTION OF THE SUPREME COURT:

1. This Act provided that the Supreme court had no jurisdiction in any matter concerning the revenue or acts ordered or done in its collection according to the usage or practice of the country or the regulations of the Governor-General in council.
2. Thus this Act did not allow the Supreme court to interfere with the matters of revenue or in any act done in collection.
3. This Act further provided that no person could be taken within the jurisdiction of the Supreme court merely because he happened to be a land owner, land holder, farmer of land revenue or zamindar collecting revenue for the company etc.
4. The Act provided that the Governor-general and council would not be subject to the jurisdiction of the Supreme court for any Act done by them in their public capacity and acting as Governor- general and council.

II. THE ACT OF SETTLEMENT VIRTUALLY RESTRICTED THE JURISDICTION OF THE SUPREME COURT ONLY TO TOWN OF CALCUTTA:

This Act provided that the Supreme court would decide all actions and suits against the inhabitants of Calcutta provided that their inheritance and successions of lands, rents and goods and all matters of contract and dealing between party and party would be determined in the case of Mohammedans by the laws and usages of Muslims and in case of Hindus by the laws and usages of Hindus and where only one of the parties would be a Muslim or Hindu by the laws and usages of the defendants.

III. RECOGNITION OF THE COURTS OF THE COMPANY:

1. This Act gave recognition to the company's provincial courts. The Sardar Diwani Adalat was accorded recognition as a court to hear appeals from the decisions of the Mofussil courts in civil cases.
2. Thus the appellate jurisdiction of Sardar Diwani Adalat was confirmed by this Act.
3. The judgment of Sardar Diwani Adalat was to be final and conclusive except upon appeal to the king in council in civil suit of the value of 5000 pounds.
4. The status of the Sardar Diwani Adalat was thus made equal to that of Supreme court and he was empowered to act to hear and determine cases of all offences, abuses and extortions committed in the collection of revenue and to punish the same according to its discretion.

IV. POWER TO FRAME REGULATIONS FOR THE PROVINCES:

1. The Governor-General-in-council were also empowered to frame rules and regulations for the provincial courts and provincial councils.
2. The copies of such regulations were to be sent to the court of Directors and the Secretary of State within 6 months of their passage.
3. The king-in-council could disallow or amend any such regulation within 2 years.

CHAPTER-VIII

JUDICIAL MEASURES OF LORD CORNWALLIS 1787,1790 AND 1793

INTRODUCTION:

1. Lord Cornwallis succeeded Warren Hastings in 1786. The Governor- General ship of Lord Cornwallis which extended from 1787-1793 constitutes a very remarkable and a highly creative period in Indian legal history.
2. Lord Cornwallis brought with him the instructions from the Court of Directors, dictated with a view to carry out the object of the Parliament aimed at securing inter alia the happiness of the native population. He bought reforms in revenue, military, civil, criminal judicial system in India in his tenure.
3. Lord Cornwallis introduced the concept of administration according to the law for the first time in India and it was due to his devotion to the concept of justices that he recognised and over haled the Adalat system left by his predecessor in such a way that he won the praise of all.

JUDICIAL PLAN OF 1787:

1. He was dissatisfied with the exciting system of the administration of justice. Cornwallis reformed the whole system of civil and criminal justice by the method of trial and error.
2. In the judicial system Cornwallis introduced reforms in three periods in 1787, 1790 and 1793 respectively.
3. The Directors gave instructions to Cornwallis to bring simplicity, economy and purity into the judicial system. Revenue and judicial functions were united.
4. The number of districts were reduced from 36 to 23. Each district was in the charge of a collector, an Englishman. The collector was responsible for the collection of revenue.
5. He was also to act as judge in the Mofussil Diwani Adalat of the district and decide civil cases. He also got magisterial powers. His revenue functions in the revenue court known as the Mal Adalat

APPEALS:

1. From the collector's revenue court, first appeal goes to the Board of Revenue at Calcutta and final appeal goes to the Governor in Council on the executive side.

2. The collector followed local customs and usages while dealing with the succession to zamindaris etc. Appeal from Mofussil Diwani Adalat lay to Sadar Diwani Adalat in matters more from 1000 rupees.
3. Sadar Diwani Adalat consisted of the Governor General and members of his council. They were assisted by native law officers. Where the valuation of suits was 5000 pounds or more a further appeal was allowed to the king in council in England
4. The collector also acted as the magistrate in the district. In this capacity he was to arrest the criminals and send them to Mofussil Diwani Adalat for the trial.
5. The criminal powers of the collector as the magistrate increased dealing affray(breach of peace) and inflicting punishments not exceeding15 strokes or imprisonment not exceeding 15 days. However in serious cases, the offenders were committed to the Mofussil DiwaniAdalat

OFFICE OF THE REGISTRAR:

1. In addition Indian Registrar was appointed in each district civil court to try petty cases up to Rs.200. Decrees passed by the Registrar was countersigned by the Collector.
2. As per the judicial reforms of 1787 Cornwallis united the judicial office and the administration in the hands of one Englishman i.e. the Collector

Defects:

1. The collector was over empowered
2. The collector was more interested in revenue than in the administration of justice
3. The justice was made subservient to the needs of the revenue collection

JUDICIAL PLAN OF 1790

1. From 1786 to 1790 , Cornwallis wanted to modify criminal administration. Robberies, murder and other crimes relating to life and property of the native were increasing .
2. He found two causes. One is defective state of the Mohammedan criminal law. Secondly defects in the constitution of the trial courts due to which they failed to deal with the criminals

3. Cornwallis abolished the authority of the Nawab over the criminal judicature. The Governor General and member of his council presided over Sadar Nizamat Adalat.
4. They were assisted by Chief kazi of the province and two Muftis who expounded the law and issued Fatwa(Islamic legal pronouncement issued by an expert in religious law) . Full record of the court was maintained.
5. Neither parities nor their lawyers were allowed to plead and present their cases before the court. The court decided cases in appeal on the basis of the report of the trial magistrate, proceedings of the circuit court and written pleading and the defence of the parties.
6. At this time the Chief kazi and Muftis assisted the Appellate court in deciding the cases.
7. Mofussil FaujdariAdalats were abolished. The whole Diwani area was divided into four divisions of Calcutta, Murshidabad, Dacca, and Patna.
8. In each division a criminal court was established which was called the court of Circuit. Each court of circuit was presided over by two covenanted servants of the company who were Englishmen. This was a moving court and the appeals laid down in the Sadar Nizamat Adalat at Calcutta.
9. Magistrate court was the lower criminal court. It tried and punished criminals in petty offences. Magistrate was to send the criminals to the court of circuit for trial and punishment and monthly report to the SadarNizamatAdalat.

REFORMS INTRODUCED IN MOHAMMEDAN CRIMINAL LAW:

1. Lord Cornwallis made the following reforms in the Mohammedan criminal law and all Adalats were directed to decide cases according to the following modified Mohammedan law
2. The reforms were undertaken by the government of Cornwallis in the area of criminal justice in 1790 shows humaneness
3. In determining the punishment to be inflicted for the crimes of murder, the intention of the parties rather than the manner of instrument employed, should be taken into account
4. The punishment of mutilation were abolished and imprisonment and hard labour for 14 years and 7 years were substituted for the loss of two limbs and that of one limb respectively

5. The law of evidence were modified so as to make provision that the religion would not be a bar to be a witness and thus the rule that a Hindu could not be the witness against the Mohammedan was abolished
6. The relation of the murdered person could not grand pardon to the offender so as to do away with the trial
7. The Sadar Nizamat Adalat could pass death sentence instead of grating blood money to the heir as provided under Muslim law
8. Abolished the practice of attachment of property to those committed to stand their trials for criminal offence

JUDICIAL PLAN OF 1793:

A set of regulation, which were prepared by Cornwallis were known as Cornwallis code. They dealt with the commercial, civil and criminal justice, with the police and with the land revenue

Separation of Judicial and Revenue functions:

In 1793 Mal Adalator revenue court was abolished. The trial of these suits was transferred to the Mofussil Diwani Adalat. The collector was in charge of the revenue. Judicial powers were given to the Diwani Adalat

Reorganisation of the civil courts:

1. Cornwallis appointed 28 judges in the civil courts in the district and established 4 courts of circuit which were civil courts of appeal.

2. The four courts of circuit were called the provincial court of appeal having four headquarters at Patna, Dacca, Calcutta and Murshidabad. Each of them presided by three covenanted servants of the company.

3. These courts were empowered to hear appeals from the district Diwani Adalats. In cases involving sums less than Rs.1000 their decision was final. Where the amount exceeded Rs.1000, a second appeal was allowed to the SadarDiwaniAdalat. If the valuation of the suit was 5000 pounds or more, a further appeal was allowed to king in council.

4. In each district, Sardar Amins and Commissioners were appointed to decide the cases up to Rs.50. they were known as Munsifs. The Munsifs were selected out of the landholders or the agents who were expected to do the job honorary and were getting some commission on the sums involved in the litigation. Indians were allowed to be Munsifs.

Native law officers:

They were authorised to assist all the courts by expounding the Hindu and Mohammedan laws in cases like marriage, inheritance, caste, religion, wages and institutions. Native law officers were appointed by the governor general in council

Courts authorised to control executive machinery:

The injured party had a remedy to approach the court against corruption and excesses of the executive officers

Abolition of the court fees:

Cornwallis abolished the court fees from the litigants

Reforms in the criminal courts:

The magisterial powers of the collector were taken away and the judges of the DiwaniAdalat were empowered to exercise the jurisdiction. The judges exercised magisterial powers. Provincial courts and the circuit courts were united in the civil and criminal matters

Legal profession:

Cornwallis realised the importance of the well organised and regulated professional lawyers. Those who joined the legal profession were given Sanad certificates after they qualified in the prescribed minimum requirement of the education and honesty

Uniform pattern of regulation:

It was made necessary to divide each regulation into sections and sections were divided into sub sections and clauses, which were duly numbered in serial order. It was made compulsory to keep a complete and regular code of all regulations passed in each year. It facilitated their ready reference while administering justice. It enabled the members of the legal profession and the public to know what the law was on a particular point. This process of the collection of regulations, periodically in the set form, introduced certainty and uniformity of law

Permanent settlement of land revenue:

The zamindars were regarded as land owners. They were required to pay 9/10 of the revenue to government through the collectors and the Talukdars or those holding less land were required to pay directly through sub collectors. Efforts were made to protect the cultivators and ryots from oppressions and corruption of revenue officers.

Merits:

1. The separation between the judicial and the revenue functions were maintained
2. The separation between the judicial and the executive functions were maintained to some extent
3. The organisation of the courts was improved
4. Provincial court of appeal were established for the first appeal
5. Legal professions, for the first was organised in India
6. Court fee was abolished

Demerits:

1. The judicial arrangements of 1793 were expected to caste an additional sum of four lakhs of rupees of the company
2. The abolition of the court fee resulted in a great increase in the litigation
3. The appointment of English judges only led to the failure of administration of justice on account of their ignorance of the customs and traditions of the country
4. An anxiety to make the system perfect resulted in making it complicated and encumbered

John strachy said that "although much has been done by warren Hastings to perform and organize branches of the public service, the main foundation of the administration of judicial system in India was laid down by Cornwallis"

Cornwallis reforms in 1787 aimed

1. Economy
2. Modification
3. Purification

1790 reforms introduced criminal justice and 1793 reforms aimed at separation of revenue from judiciary.

UNIT-II

CHAPTER-I

DUAL SYSTEM OF ADMINISTRATION OF JUSTICE AND AMALGAMATION OF COURTS

INTRODUCTION:

Prior to the passing of the Indian High Courts Act, 1861, there existed dual system of Courts in India, namely the Crown's courts and the Company's courts. The Supreme Courts established in the Presidency towns of Calcutta, Madras and Bombay were the Courts of British Crown while the Adalats established in the mofussil areas were the courts of the East India Company. They had two different sets of organizations jurisdiction and powers; which created great confusion and uncertainty. They mainly differed in the following aspects :

1) The Supreme Courts consisted of professional lawyers who were Barristers of at least 5 years standing as Judges, but the Judges of the Company's Adalats were mostly lay persons without any professional or legal experience.

2) The Judges of Supreme Court held office during Crown's pleasure whereas the Judges of Company's Adalats held office during Company's pleasure.

3) There was no hierarchy of courts in Crown's court but a regular hierarchy of courts (Civil & Criminal) in company's judicial arrangements. The Sadar Diwani Adalat and Sardar Nizamat Adalat of the Company had only appellate jurisdiction but Supreme Courts had both original and appellate jurisdiction.

4) Initially, Supreme Courts applied English Law. The Company's courts applied native laws in cases relating to inheritance, succession, contracts, etc. However, consequent to the passing of the Charter Act of 1833, Supreme Court was also bound by the regulations passed by the Governor-general-in-council.

5) The Supreme Court mostly followed English law of evidence whereas the Company's courts mostly followed the customary law of evidence as derived from Hedaya and applied Anglo-Mohammedan law in deciding Criminal cases. The uncertainty about the jurisdiction & the law applicable made Sir Charles E. Grey, the Chief Justice of the Supreme Court at Calcutta to emphasize the need for fusion of these two rival courts.

THE PROCESS OF UNIFICATION WAS HOWEVER COMPLETED IN THREE DISTINCT PHASES:

1) A central legislative council was established in India under the Charter Act of 1833. The laws and regulations passed by the Council were especially binding on all the Courts whether the Crown or Company. The result was that the Supreme Court lost its privileged position. The Act of 1833 provided for a Law commission to workout a uniform system of law and police for the Country.

2) The Law commission stressed on the need for a codified procedural law before such fusion. The Bill for the fusion of these two sets of Courts was finally introduced by Sir Charles Worel in 1853. Consequently a codified civil procedure was enacted in 1859 and Penal Code was enacted in 1860.

3) The East India Company was dissolved by the Crown's Act of 1858 and the responsibility of the entire Government of India was passed on to the British Crown. Initially, the Indian High Courts Act was passed by the British Parliament in 1861 – The Supreme Court and Sadar Adalats were merged together to be known as High Court of Judicature at Calcutta, Madras and Bombay.

TENDENCY FOR AMALGAMATIONS OF THE TWO SYSTEMS OF COURTS:

1. No doubt, it was realized that the merger of the company's court and supreme court was the only remedy to avoid confusion and conflict, but there were many difficulties in their merger on account of disparities between the two sets of the courts in respect of law and procedure.
2. In 1833, an all India Legislature was created and the laws made by it were binding on all courts, whether the crown's courts or the company's court.
3. The Charter of 1833 which created this all India Legislature specifically provided that the Acts passed by the legislature specifically proved that the Acts passed by the legislature would be binding on the crown's courts as well as on the company's courts.
4. Thus in the matter of law the uniformity was maintained between the company's court and crown's courts.
5. The other step taken to bring about uniformity in respect of law to be applied by these courts was the introduction of the provisions in the Charter Act of 1833 for the appointment of Law Commission for the codification of the Indian law and the Charter of 1853 made provisions for the appointment of the second law commission.

6. In 1858 the east India company was dissolved and the Government of India was taken over by the British crown and consequently the distinction, between the company's court and the crown's court came to an end. Thus the background to the merger of the Supreme court and Sardar Adalats was prepared, but the merger could actually take place in 1861 when the Indian High court Act was passed.

CHAPTER-II

HIGH COURTS ASCT,1861

INTRODUCTION:

The British Parliament passed the Indian High Courts Act in August 1861. This Act empowered the crown to establish a High Court in each of the Presidency towns. Thereupon, the existing Supreme Court and the Courts of Sardar Diwani Adalat and Sardar Nizamat Adalat were abolished.

Constitution: Every High Court will be a Court of Record consisting of a Chief Justice and not more than 15 puisne judges

a) of whom not less than $1/3^{rd}$ were to be barristers of minimum 5 years standing and

b) $1/3^{rd}$ were to be members of the Company's Civil Service having not less than 10 years standing including minimum experience of three years as a ZILA Judge .

c) the remaining judges could either be from the Bar or the Civil Service, i.e., the persons who had practiced as Pleaders in the Sardar Adalat or the Supreme Court for at least 10 years or persons who held judicial office as a Judge of a Small Cause Court for not less than 5 years.

d) it was further provided that the Judges of the Supreme Court and the Sardar Adalat automatically became Judges of the newly created High Court.

e) the Chief Justice of the Supreme Court was to be the Chief Justice of the High Court of Calcutta.

f) the Judges of the High Court were to hold office during Her Majesty's pleasure.

Every High Court shall have superintendence over every subject to its appellate jurisdiction and has power to

a. call for returns,

b. make Rules and prescribed forms for regulating the practice and proceedings of such courts

c. prescribed forms for keeping books, entries and accounts for the officers of such court

d. settle tables of fees for the Sheriffs, Attorneys, clerks and officers of courts subject to the existing law and approval of the Governor.

As before no High Court shall have any original jurisdiction in any matter concerning the revenue unless and until with the previous sanction of the Governor-General or Governor in his discretion.

Proceedings are to be in English. Expenses are charged on provincial revenues.

His majesty by letters patent constitutes or reconstitutes a High Court or amalgamate two High Courts or extend the Jurisdiction of any High Court beyond the limits of the Province where it is situated.

The powers, authority and jurisdiction of the High Courts were as per the letters patent.

I. CIVIL JURISDICTION

a) ORDINARY, ORIGINAL, CIVIL JUIRSDICTION

This extends only within the limits of the Presidency town. It was empowered to try and determine suits in which the cause of action arose within the local limits of Calcutta or at the time of commencement of the suit, the Defendant resided or worked for gain or doing business within the limits of Calcutta. It could decide all civil suits excepting those in which the subject matter involved was less than rupees 100 in value which were tried by the Small Cause Court.

b) EXTRAORDINARY, ORIGINAL CIVIL JURISDICTION

Whenever expediency or justice required or on the agreement of parties, the High Court could transfer to itself any suit pending in any court under its superintendence.

c) APPELLATE CIVIL JURISDICTION

It was authorized to hear appeals from the inferior Civil Courts. The jurisdiction is as that of its predecessor, Sardar Diwani Adalat.

d) High Court exercised the same power over the persons and estates of the infants, idiots and lunatics as that of Supreme Court.

e) One of the Judges of the High Court was to function of insolvency Court for the insolvent debtors.

II. CRIMINAL JURISDICTION:

a) ORDINARY, ORIGINAL CRIMINAL JURISDICTION:

It extended to the limits of the Presidency town, and European and British subjects.

b) **EXTRAORDINARY, ORIGINAL CRIMINAL JURISDICTION:**

To try and determine the offences committed by persons residing in places within the jurisdiction of any court which was subject to its superintendence, and control.

c) **APPELLATE JURISDICTION**

It was a Court of Appeal from subordinate Criminal Courts. Also, a Court of Reference and Revision from these courts. It could thus hear and determine all references made to it by the sessions judge and revise proceedings of the lower criminal courts.

d) It applied the law found in the Indian Penal Code.

III. ADMIRALTY AND VICE ADMIRALITY JURISDICTION:

High Courts was vested with the power of the now abolished Supreme Court as Court of Admiralty (Civil, Criminal and Maritime Jurisdiction)

IV. MATRIMONIAL JURISDICTION OVER CHRISTIANS:

High courts were authorized to native rules and orders for regulating its proceedings in civil cases but such rules and orders must not be contrary to the Provisions of the Code of Civil Procedure of 1859. It was extended to her Majesty subjects professing the Christian Religion.

In criminal cases, same procedure as that of of its predecessor Supreme Court and to follow the Code of Criminal Procedure, 1861.

V. High Court was to admit and enroll Advocates and vakils. It could also take disciplinary action against them.

Appeals: The decision of the High Court was final in Criminal cases. However in civil cases, appeal from High Court lay to the Privy Council provided pecuniary value was not less than Rs. 10000/- or the High Court certified the case as fit one to appeal to the Privy Council.

VI. TESTAMENTARY AND INTERSTATE JURISDICTION:

The High Court was vested with the power to grant probates of wills and letter of administration relating to the property of deceased persons died without writing a will inter-state. This jurisdiction was inherited from the Supreme Court.

RESULTS OF ESTABLISHMENT OF HIGH COURTS:

1) The distinction between law and equity was to be abolished and effort was made to fuse law and equity.

2) The uniformity in the procedural law was achieved as one Code of Civil Procedure was to followed.

3) On the original side each High Court had to apply the same law as the Supreme Court. On original side, it was to apply English law on Civil appellate it was to apply the laws applied by the Mofussil Adalats. However in the area of Criminal Administrative Substantive law, uniformity was achieved as the IPC 1860 was to be applied.

CHAPTER-III

THE FEDERAL COURT OF INDIA

As early as 1921, Sir Hari Singh Gour (who was the president of the High Court Bar Association in Nagpur and Member of the Constituent Assembly that framed India's Constitution) realized the necessity of establishing an all India Court of final appeal in India in place of Privy Council. He introduced a resolution in the Central Legislative Assembly as follows:

1. The Judicial committee of the Privy Council was not a tribunal or a court but merely an advisory body constituted and intended to advise the King in his capacity as the highest tribunal for his Dominions.

2. When Canada, Australia and South Africa had such a tribunal, why we should not have a Supreme Court of our own in this country.

3. The expense of an appeal to the Privy Council was to be disallowed.

4. The distance from India of the Privy Council resulted in unnecessary delay in the final disposition of cases.

5. The Judicial committee was not equipped to decide cases involving the intricacies of Hindu and Mohammedan laws

6. The Privy Council refused to hear criminal appeals unless there had been a gross failure of justice in the Indian court.

Jinnah, Gandhi and Sir Taj Bahadur Sapru were supporting Gour's resolution for establishment of a Supreme Court.

As a result the British Parliament passed the Government of India act of 1935 which provided for the establishment of a Federal Court in India.

Under the Govt. of India Act, a federal government consisting of provinces as its component units was formed in India. There might arise disputes between the centre and the units or between the constituent units themselves in a federal polity. Therefore Federal Court was established to act as an guardian of the constitution and to settle disputes between the centre and the units or between the units themselves.

On 1st October 1937, the Federal Court was inaugurated at Delhi and the Viceroy administered the oath of allegiance to three judges of the court, namely Chief Justice and two Puisne judges.

The Federal Court was a court of record. It sat at Delhi and at such other places as the Chief Justice of India may declare, with the approval of the Governor General of India, from time to time.

COMPOSITION:

1. The Federal Court consisted of a Chief Justice of India and not more than 6 puisne judges, all of them appointed by his Majesty under the Royal Sign Manual.

2. They were to hold office until the age of 65years.

3. A judge could resign even before the age of 65, by addressing his resignation to his Majesty.

4. His majesty was empowered to remove a Judge from his office on the grounds of misbehavior or infirmity of mind or body on the recommendations of the Privy council.

For appointment of a Judge ,Act of 1935 provided that a person having any one out of the three qualification will be qualified.

Qualification:

1. 5yrs experience as judge of the High Court or
2. a Barrister or an advocate of 10yrs standing or
3. a pleader in a high court of 10yrs standing.

As regards Chief Justice, it was provided that a person should have either 15yrs experience of standing in a High Court as a barrister, advocate or pleader or have been one when 1st appointed as a judge.

The salaries, allowances, leave and pensions of the judges of the federal court including the Chief Justice were to be determined by King -in-council. The court was completely independent of the federal provincial and state governments. At that time Chief Justice got a salary of Rs.7000/-per month and other judges Rs.5000/-per month.

Jurisdiction of the Federal Court:

It was given 3 kinds of jurisdiction

1. Original 2. Appellate 3. Advisory.

1. Original Jurisdiction: Original jurisdiction was confined to disputes between units of the Dominion or between the dominion and any of the units. The Federal Court had no power to entertain suits brought by private individuals against the Dominion.

The federal court in the exercise of the original jurisdiction shall not pronounce any judgment other than a declaratory judgment. The federal court was not authorized to enforce its decision directly. Therefore, section 210(1) provided that "All authorities civil and criminal throughout the federation, shall act in aid of the federal court". But their decisions were not final. It could be appealed to the Privy council.

2. Appellate Jurisdiction: The Federal court exercised appellate jurisdiction in constitutional cases under the Act of 1935.This jurisdiction was extended to civil and criminal cases from 1948.

a. Appellate Jurisdiction in Constitutional Cases: An appeal shall lie to the federal court from any judgment, decree or final order of a High Court if the High court certifies that a case involves a substantial question of law as to the interpretation of their act or any order-in-council or any order.

b. Appellate Jurisdiction in Civil Cases: Section 3 of the Act of 1947 provided as follows "as from the appointed day (i.e. 1st February1948)

1) An appeal shall lie to the Federal court from any judgment of a high court in civil cases:

- Without the special leave of the Federal court if an appeal could have been brought to his Majesty in council without special leave under the provisions of the code of civil procedure 1908 or any other law inforce immediately before the appointed day.
- With the special leave of the federal court in any other case.

2) No direct appeal shall lie to his Majesty-in-council either with or without special leave from any such judgment.

c. Appellate Jurisdiction in Criminal Matters: The Federal court exercised criminal jurisdiction as like Privy council.

Advisory Jurisdiction:

If at any time it appears to the Governor general that a question of law has arisen or is likely to arise which is of public importance that it is expedient to obtain the opinion of the Federal court upon it, he may refer the question to that court for consideration.

The Federal Court Was a Court of Record:

The law declared by the Federal court was binding on all the sub-ordinate courts in British India and the state courts.

Appeals to Privy Council:

Appeals from the decision of the Federal court lay to the privy council in cases where,

1.The judgment was given by the federal court in exercise of the original jurisdiction or any other case, by leave of the federal court or special leave to appeal by the Privy council.

Conclusion:

In 1949, the Constituent Assembly passed the abolition of the Privy council jurisdiction act. It severed all connections of the Indian Courts with Privy council. It transferred all pending cases to the federal court for final disposal.

The federal court functioned until the coming into force of the Indian constitution with effect from January 26, 1950 when it gave way to the Supreme court of India. Nevertheless, its contribution to Indian Judicial system in setting healthy traditions of fair play and justice has earned it a unique place in the legal and constitutional history of India.

CHAPTER-IV

HIGH COURTS UNDER THE INDIAN CONSTITUTION

Articles 214 to 232 of the Constitution of India provide for the establishment, powers and jurisdiction of the High Courts in India.

According to article 216, every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.

Appointment of Judges:

The Judges of the High Court are appointed by the President after consultation with the Chief Justice of India, the Governor of the state and in case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court.

Qualifications:

According to the Article 217(2) of the Constitution, a person shall not be qualified for appointment as a judge of High Court unless he is a citizen of India and

a) Has at least held 10 years' judicial office in the territories of India (or)

b) Has for at least 10 years been an advocate of a High Court or of 2 or more such courts in succession. **Appointment of acting Chief Justice:**

When the office of the Chief Justice of a High Court is vacant or when he is unable to perform the duties of his office, the duty shall be performed by one of the other judges of the court as the President may appoint for the purposes.

Appointment of Additional and Acting Judges:

1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work, it appears to the President that the number of the Judges of that court should be for the time being increased, the President may appoint duly qualified persons to be additional judges of the court for such period not exceeding 2 years as he may specify.

2) When any judge of a High Court other than the Chief Justice is absent or for any other reason, unable to perform his duties or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as judge until the permanent judge resumes his duties.

3) No person appointed as acting judge shall hold office after attaining the age of 62 years

Appointment of retired Judges at sittings of High Courts:

As per the article 224.A of the Constitution, the Chief Justice of a High Court for any state may at any time, with the previous consent of the President, request any person who has held the post of a judge of that court or of any other High Court to sit and act as a judge of the High Court. Every such person so acting be entitled to such allowances and privileges of, but shall not otherwise be deemed to be a judge of that High Court.

Oath or affirmation by judges:

Every person appointed to be a judge, before entering upon his office, make before the Governor of the state or some person appointed on his behalf, an oath or affirmation according to the form set out for the purpose in the third schedule.

Restriction on practice after being a permanent Judge:

No person who has held office as a permanent judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the High Court.

Salaries and allowances of judges:

Salaries of the judges be determined by the Parliament, even allowances and such rights in respect of leave of absence and pension may from time to time be determined by the Parliament under law and until so determined to such allowances and pension as are specified in the 2nd schedule of article 221 of the Constitution.

Tenure, resignation and removal of judges:

A judge of the High Court has been guaranteed security of tenure. He may hold office till the age of 62 years.

A judge may resign at any time by writing under his hand addressed to the President. If the letter of resignation is signed by the judge, it will be sufficient for the purpose.

A judge may be removed from his office by the president on grounds of proved misbehaviour or incapacity. Transfer of a judge from one High Court to another:

The president may, after consultation with the Chief Justice of India, transfer a judge from one High Court to another. When he is so transferred (as per the Constitution (Amendment) Act 1963) he shall during the period he serves as a judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowances determined by Parliament by law and until so determined by the order of the President.

Powers and Functions of the High Court (Article 225)

The Govt. of India Act 1935 laid down that no High Court shall have the jurisdiction in

any matter concerning revenue. However, with the commencement of the Constitution, this restriction concerning the revenue or any act done in the collection thereof was done away with.

The Writ Jurisdiction (Article 226)

Every High Court possess original, appellate and supervisory jurisdiction. The High Court shall have the powers throughout the territories in relation to which it exercises jurisdiction to issue any person or authority or to any government within those territories orders or writ in the nature of Habeas Corpus,

Mandamus, prohibition, Quo warranto and Certiorari. As regards interim orders, it provides a simple procedure stating when an interim order is passed against a party (ex parte), that party may make an application to the High Court for the vacation of such an order. If the High Court fails to dispose of such an application within two weeks, the interim order shall stand vacated after the expiry of the two weeks.

Power of Superintendence over all Courts (Article 227)

The High Court may

a) Make and issue general rules and prescribe forms for regulating the practice and proceedings to such courts

b) Prescribes forms in which books, entries and accounts shall be kept by the officers of any such courts.

The High Court may also settle tables of fees to be allowed to the Sherriff and all clerks and officers of such courts and to attorneys, pleaders and advocates practising therein. However, any rules made, forms prescribed can't be inconsistent with the provision of any law for the time being in force and requires the previous approval of the Governor.

Transfer of certain cases to the High Court (Article 228)

It empowers the High Court to withdraw the cases if it is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, the determination of which is necessary for the disposal of the case.

The High Court may either dispose of the case itself or return the case to the court from which the case was withdrawn, together with a copy of the judgment as such question. The said court shall on receipt proceed to dispose of the case in conformity with such judgment.

Appointment of Judges and Administration of Expense (Article 229)

The Chief Justice of the Court, or such other judge as he may direct can appoint officers, servants of the High Court as per the rules made by the Chief Justice of the Court or by a judge or officer authorized by the Chief Justice for such a purpose. The administration expenses of a High Court including all salaries, allowances and pensions of servants and officers of the Court shall be charged upon the consolidated fund of the state. (Includes fees or other money taken by the Court)

Other powers:

1. The High Court can punish persons for the contempt of court.
2. It has been given the power to hear appeals in civil and criminal cases.

Issue of Certificate for appeal to Supreme Court:

The Constitutional 44th Amendment Act 1978 provides for appeal to the Supreme Court:

1. As the High Court may deem fit to do so.
2. Shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing of such judgment, final order or sentence.

Comments:

The present Constitution has accorded most dignified status to the High Courts. They have become not only the guardians of the civil liberties and protector of legal rights of the citizens but also, the true embodiments of equitable as well as legal justice as the High Court is more easily accessible to the citizens in the State than the Supreme Court.

CHAPTER-V

DEVELOPMENT OF RULE OF LAW

INTRODUCTION:

1. The British people strongly believed in the Divine Theory of State. The king was given the power to govern the people by the Divine Authority (God). This theory propagates that, "King can do no wrong, king is above law".
2. Parliamentary Democracy based on the principle of equality rooted in Britain. All persons are governed by the same law and same set of rules and regulations is called the Rule of Law.
3. The Rule of Law was first originated by Sir Edward Coke, the Chief Justice in England at the time of King James I. Coke was the first person to criticize the maxims of Divine Concept.
4. He strongly believed that the King should also be under the Rule of Law. The Rule of Law doctrine was later developed by A.V. Dicey in his book, "Introduction to the Law of Constitution (1885)."
5. The Rule of Law according to Dicey means that no man is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above the law. The term Rule of Law thus, means the paramount of Law over Government.

Three principles proposed by A.V. Dicey

1. Absolute supremacy of Law

2. Equality before law

3. Predominance of legal spirit.

Dicey's rule of law consists of following three meanings:

1. Equality before the law:

Dicey says it emphasizes the impartiality of law. It means that there shall be no distinction between the rich and the poor, officials and non-officials, majority and minority, no one can be degraded and no one can be upgraded. Law gives equal justice to all.

2. Rule of Law alone:

The Rule of Law rejects all kinds of arbitrary and discretionary powers of the government or public officials. It implies that a man may be punished for a breach of law but

he can't be punished for anything else. An alleged offence is required to be proved before the ordinary courts in accordance with the legal procedure.

3. Constitutional Law stems from ordinary law:

It is generally presumed that the written constitution is the source of legal liberties of citizens. However, it is not true as Britain has an "unwritten Constitution." Legal spirit is the real source of law in England. The legal spirit is seen in its customs, conventions and judicial decisions. Dicey opines that the individual rights and liberties are more safely protected in Britain than France.

The basic features of Rule of Law as per Dicey:

a) Law does not recognize any special rights for any individual or group of individuals.

b) Law does not recognize any distinction between one individual and the other on the basis of religion, race, sex, etc.

c)None is punished without proper trial.

d)All will be tried by the same court under the same law.

e)The rule of law does not give scope to absolute and arbitrary powers to the executive.

Merits of the Rule of Law:

1. It reverses the tyranny or anarchy.

2. It puts legal barriers to governmental arbitrariness.

3. It provides safe guards for the protection of individuals.

4. It echoes the Magna Carta's saying, "No free man shall be taken or imprisoned or diseased or outlawed or exiled nor will we go or send for him, except by the lawful judgment of his peers or by the law of the land.

5. Rules of law are rooted in conventions and customs of the country.

6. It gives freedom to the judiciary to control the executive who exceeds their jurisdiction.

7. Public welfare should be the dominant consideration.

Criticisms:

Dicey explained the concept Rule of Law in 1885. Many changes have taken place since then. So, it is in different shapes due to the following conditions:

1. Certain privileges are granted to the officials in UK through enacting the Public Authorities Protection Act.

2. With the development of Welfare State concept, the role of state had expanded. It gave power of adjudication to the administrative agencies, who sometimes decide cases.

3. In emergency, Fundamental rights are suspended by the executive.

Modern Concept of Rule of Law:

The Rule of Law is a dynamic concept. It cannot be taken to mean that it is a fixed principle of law from which there cannot be any departure. The concept Rule of Law has been discussed by the International Commission of Jurists met in 1959 at New Delhi. The major findings are:

1. Rule of Law – to safeguard and advance the political and civil rights of the individual in a free society.
2. To establish social, economic, educational and cultural conditions under which the individual may realize his legitimate aspirations and dignity.
3. It should not interfere with the religious belief and should not restrict freedom of speech or freedom of person.
4. No discrimination on minority groups.
5. Adequate safe guards against abuse of power by the executives.
6. There should be an independent judiciary with security of tenure free from legislative and executive interference.
7. The rule of law necessitates an independent legal profession.

Rule of Law in India:

1. The doctrine of rule of law was not known to ancient and medieval India. The king was the fountain head of justice and the protector of all laws. He was considered to be above the law.
2. During the British rule, the principle of the Rule of Law was neglected though this principle was followed in Britain. The East India Company was interested in the expansion of its trade, revenue and territorial expansion. It gave lesser importance to rule of law and fair justice.
3. Even in 1694, East India Company dismissed the Chief Judge of the Admiralty Court of Madras, John Dolben for the judgment against the Company on the pretext of taking a bribe. It always preferred civil servants of the Company as judges. Chief Justice Parker and Chief Justice Braddyll were also dismissed for their refusal to subordinate their judgments to the wishes of the executive.

4. With the establishment of the Mayor's Courts under the Charter of 1726, Judges started to work with the spirit of judicial independence and rule of law and this resulted in conflict between the judges and the Governors-in-Council. By the charter of 1753, the Judiciary was made subservient to the executive.
5. When the Supreme Court of Calcutta was started under the Charter of 1774, Chief Justice Impey acted as per the rule of law. So he was called back to England as he conflicted with the Governor General.
6. During the Crown's rule, Indian High Courts Act was passed in 1861 and High Courts were given wide jurisdiction. The Law Commissions were appointed for the purpose of law reforms. Judicial position improved much compared to the rule of the East India Company.

After Independence:

1. The rule of law has been welcomed by the framers of our constitution. The preamble assures to provide equality of status and of opportunity and to promote among them all. It provides the most important fundamental rights to the citizens.
2. The Articles from 12 to 35 of Part III have to be protected by the Supreme Court and High Courts.
3. Article 14 of the Constitution says that, "The state shall not deny to any person equality before law within the territory of India. However, it is to be noted that there are few exceptions to the rule of equality.
4. According to Article 361, The President or the Governor of a state are not answerable to any court for exercising of powers and duties of his office or any act done by him in the exercise of those powers and duties provided that the conduct of the President may be brought under review, on a charge under Article 61, which provided for any person to bring appropriate proceedings against the Governor of a state.
5. According to Article 20 (1) of the Constitution, No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged.
6. Article 21 emphasizes that no person shall be deprived of his life or personal liberty except according to the procedure established by the law.
7. Article 14 provides that no discussion shall take place in the Parliament with respect to the conduct of any judge of the Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for removal of the Judge as hereinafter provided. The rule of law is regarded as a part of the basic structure of the constitution and therefore, it cannot be abrogated or destroyed by the Parliament. Every

organ of the state is regulated and controlled by the Rule of Law. Our constitution is the Mandate. It is the rule of law.

Definition of the Rule of Law by the Supreme Court:

1. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is.
2. It excludes arbitrariness. Its postulate is "Intelligence without passion and reason free from desire."

CHAPTER-VI

SEPARATION OF POWERS

The doctrine of separation of powers was originated by Aristotle and was developed by Locke. It was given a base and made popular by French Jurist Montesquieu. According to him, there are three organs of the government, legislature, executive and judiciary.

1. Functions of the legislature is to make laws.
2. Functions of the executive is to execute them.
3. Functions of the judiciary is to enforce and interpret them.

None of these 3 organs should control, or interfere with the exercise of the functions of the other organs.

The basis of the doctrine of separation of powers is that the merging of all the powers in one body will result in negation of individual liberty. If the executive and the legislature are the same person or body of persons, there may be a danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends. The balance of the power should be attained by checks between separate organs of the government.

Merits of the Theory of Separation of Powers:

1. It aims at individual liberty. A safeguard against despotism.
2. Its basic principle that concentration of powers leads to dictatorship is true for all times and ages.
3. It emphasizes the necessity of providing independence to judiciary though executive and legislature cannot be rigidly executed. Then only rights and freedoms are secure.
4. The separation of powers is desirable for maintaining the efficiency in the administration.
5. Every organ acts as a check upon the others.
6. Three functions requires distinct qualities in the men who conduct them.
7. It helps us to understand the value of liberty.
8. It lays down the cardinal principle that government should act according to certain well established rules or laws.
9. This theory admonishes the executive and the administrative wings of the government not to interfere with the process of law and justice, so as to ensure the liberty of the individuals in the society.

Criticisms:

1. This will result in a clash between the 3 organs of the government, as each one will take interest only in its own powers.
2. Friedmann and Benjafield explain, "There is no water tight compartment between the three branches. The truth is that each of the three functions of the Government contains elements of the other two and that any rigid attempt to define and separate the functions must either face or cause serious inefficiency in government".
3. The Modern State is not a police state but a welfare state. It has to solve several social, economic and other difficult problems. The theories of separation of power hinder and obstruct these functions.

Separation of Powers in USA

1. The doctrine of separation of powers has been incorporated in the Constitution of USA. The legislative power has been vested in the Congress, executive power has been vested in the President and judicial power has been vested in the courts with the Supreme Court as its head.
2. The Congress consists of two houses, namely the Senate and the House of Representatives. Both are directly elected by the people for a fixed period. Congress cannot appoint, control or remove the executive.
3. The President (executive head) is directly elected by the people for a fixed period. He and his cabinet colleagues cannot participate in the proceedings of the Congress nor can they initiate laws.
4. Neither the President nor the Congress are responsible for each other. Law is made independent of others. The terms, salary and service conditions of the judges are made secure.
5. The President is not empowered to remove a judge after he is appointed to the post. The senate has a got no power to choose, control or dismiss the executive (President) or the judge, the executive also cannot dissolve the legislature and dismiss the judges.
6. In USA, there are a number of checks between the legislature, executive and the judicial organs of the state. Hence, the principle of separation of power is not found in its absolute form in the USA.

The doctrine of separation of power in England.

1. In theory, British Government seems to be based on the Theory of Separation of Powers. The King and the Cabinet perform executive functions. Parliament does the law making and the judiciary belongs to the domain of law courts.
2. However, on close examination, it is clear that British Political System is based on the fusion of the executive and legislative powers. The ministers are members of the Cabinet and Parliament and in their dual capacity perform both executive and legislative functions.
3. The ministers are responsible to the Parliament. The Parliament can dismiss the Cabinet and Prime minister can dissolve the House of Commons.
4. The Parliament asks a question and forces the executives to answer them. The legislature is the master and the executive it's slave. The House of Lords (upper house) acts as the Supreme Court of Appeal in civil cases. It can impeach the highest officers of the nation.
5. The executives (the Cabinet and the Crown) performs certain legislative and judicial functions. The Cabinet initiates Bills, prepares laws, passes delegated legislations and acts as a guide, friend and philosopher of the Parliament.
6. The Crown summons and prorogues the Parliament and can dissolve House of Commons. He can veto the legislation of the Parliament. Thus Executive performs legislative functions. He appoints judges, decides certain cases and exercises the prerogative of mercy, which is a judicial function.
7. Lord Chancellor is the head of the Judiciary as well as an important member of the Cabinet (executive) and presiding officer of the House of Lords (legislature).

The Doctrine of Separation of Powers in India:

1. During British period, Separation of Power was not given due importance. The administration of justice was executive oriented. The Governor - General in council and Viceroy enjoyed abundant powers - executive, legislative and judiciary.
2. However, the primary controlling power was vested in British Parliament and the King.
3. In those days Britain had occupied $3/4^{th}$ of the globe and Parliament had no time to look into the affairs of India. King issued Charters and the Parliament passed only important Acts. The Governor General used to enact the necessary Acts, rules and regulations. In fact, there was no separation of powers in pre independent India.

After Independence:

Our constitution does not clearly mention the separation of powers.

1. In theory, there is separation of powers in independent India. There are different branches to carry out the different activities of the government.
2. The Parliament makes laws, the Executive implements them and the Judiciary interprets the law. But in practice, the principle of Separation of Powers is not followed strictly.
3. In Indian Constitution there is only fusion and not separation of powers. Indian Constitution provides for a parliamentary form of a government. Parliament is the Union legislature.
4. The Union executive consists of the President and the Council of Ministers headed by the Prime Minister which is also a part of the Parliament. The President is elected partly by the members of the Parliament.
5. He is empowered to issue ordinances which are in the nature of short term legislations. He can influence the legislature through messages and suspense veto. Lok Sabha can pass a vote of no-confidence and remove the cabinet from office. Its members, by asking question and through adjournment motions, keep the executive vigilant in functioning.
6. However, the judiciary enjoys certain amount of independence. The Union Parliament considers specific allegations made against the judges of the Supreme Court and approves a resolution requesting the President to remove them when the allegations are proved. So far no such situation has taken place.
7. The Parliament is also empowered to accept the Bills to increase the salaries and allowances of the Judges. The Union Judiciary is also entrusted with certain legislative and executive functions.
8. Whenever the Union Parliament enacts, implement any law against the basic structure or provisions of the Constitution, it declares such laws as unconstitutional and invalid.
9. The constitution does not recognize the Doctrine of Separation of Powers in its absolute rigidity, but the functions of the three organs of the Government have been sufficiently differentiated.

10. For example, Parliament has been given power to make laws however this power cannot be exercised by the Judiciary. The Judiciary has been given power to decide cases and this power cannot be exercised by the Parliament.

11. The executive has power and function to execute the laws, this power cannot be exercised by the other two organs of the Government.

Conclusion:

Actually, the complete demarcation of functions is not possible. All the branches of the government have to function in accordance to the provisions of the constitution, as the constitution is supreme over the Parliament, Executive and Judiciary while the Judiciary is the protector of the basic structure of the Constitution.

CHAPTER-VII

THE INDEPENDENCE OF JUDICIARY

INTRODUCTION:

The Judiciary is the third branch of the government along with the legislature and the executive. The term Judiciary is used to designate those officers of the government whose function is to apply the existing law to individual cases by keeping in view standards of 'fairness' and 'reasonableness' while applying the law. The judiciary is the guardian of the rights of the citizens, protecting these rights from the Government or private encroachments.

Freedom or Independence of Judiciary

An independent judiciary is the soul of the parliamentary democratic dispensation in democracy. This must be given a special sphere clearly separated from that of the legislature and the executive. It should given privileges which are not given to other branches of the government and protected against political, economic and other influences which would disturb the detachment and impartiality.

1.The judiciary must have full freedom to administer justice impartially and independently.

2.It must have authority to protect individual freedom and rights.

3.There must be power to check and control despotic tendencies of the executive.

4.To provide conditions in which the judges are able to perform their duties and deliver judgments impartially without fear or favour.

5.Either the legislature or the executive should not control or interfere with the judiciary.

An independent judiciary delivers impartial judgments and thus, people get satisfied that justice has been done to them and consequently, there would be no dissatisfaction among the people.

Before Independence:

During the rule of the East India Company, the Judiciary was subservient to the executives.

1.The company gave lesser importance to the judicial independence, fair justice and the rule of law.

2.The executive had the power to appoint and remove judges.

3.The Governors-in-Council and the collectors were to exercise all judicial and executive powers.

4.The judges were not lawyers but laymen.

The Company was interested only in the expansion of trade and territorial possessions. This made the whole judicial administration rough up to 1726.

Under the Charter of 1726, an attempt was made to make the judiciary independent. The judges of the mayor's courts were not to be appointed by the Governor. However, the Governor had the power to dismiss an Alderman on reasonable causes. The judges were only laymen. There was always a conflict between the Mayor's Courts and the Governor General.

In 1774, the British Crown issued a charter establishing a Supreme Court at Calcutta. The chief Justice and the judges were appointed by the British Crown and so, they acted independently. This resulted in conflict between the Supreme Court and the Governor General which reached a very serious stage.

Under the Indian High Courts Act of 1861, The British Crown established High Courts. The judges of the High Courts enjoyed powers of superintendence over the lower courts.

Some changes were made in the Constitution and jurisdiction of the High courts by the Govt. Of India Acts passed later.

The Government of India Act, 1935 made provisions for the establishment of a federal court, the highest court in British India. After Independence, the Federal Court was named as the Supreme Court of India, in the Constitution.

This indicates that in British India, judiciary got independence step by step and reached a certain level.

After Independence:

The framers of the Constitution tried their best to secure independence of the judiciary from the hands of the legislature and the executive. It provided several guards to protect the judiciary from the politicians. Of course, the Parliament is given legislative powers relating to the Supreme Court, but such powers do not affect the independence of the Supreme Court.

The constitution of India adopts diverse devices to ensure the independence of the judiciary in keeping up with both the doctrines of constitutional and parliamentary sovereignty.

Firstly, the judges of the Supreme Court and the High Courts have to take an oath before entering office that they will faithfully defend the Constitution of India and the laws.

Secondly, the judges of the Supreme Court and the High Courts are appointed by the President. He makes the appointments with consultation with the highest judicial officers in

the country. He also, of course takes the advice of the Cabinet. The Constitution also prescribes necessary qualifications for such appointments. The Constitution tries to make the appointments unbiased by political considerations.

Thirdly, the judges serve the nation on the basis of good behavior and not to please the President. They may be removed from office through an impeachment. Their salaries, allowances once fixed cannot be varied adversely during their tenure, except during a financial emergency under Article 360 of the Constitution.

Finally, the judges serve up to the 65th year of age, and after retirement cannot engage in legal practice.

The hierarchy of the judicial system in India plays an important role in maintaining the independence of the Judiciary. The Supreme Court is the highest Court. Then, there are High Courts, District Courts and other minor courts in every state. There are People's courts known as Lok Adalats. If no decision is reached in these Adalats, then the cases move to the Courts.

CHAPTER-VIII

THE PRIVY COUNCIL

PRIVY COUNCIL AS A COURT OF APPEAL AND ITS JURISDICTION TO HEAR APPEALS FROM INDIAN COURTS.

INTRODUCTION:

The development of the institution of the Privy Council dates back to the Normans who conquered England in 1066AD. They introduced a strong central government which handled the legislative, executive and judicial functions of the government. A small council called Curia Regis or king's court consisting of feudal lords was formed to advice the king in legal and administrative matters. The Curia Regis conducted its business through 2 kinds of meetings-

1. The meeting of the entire Curia was arranged on three great festivals in a year - Easter, Christmas and Whitsun. King himself held the court in person. This is also known as Magnum Concillium.
2. The smaller Curia held its meetings regularly and frequently to transact government business involving day to day administration - particularly revenue and finance of the government. This consisted of limited number of royal officials including king**'s ministers and his Justice** and Chancellor. As the pressure of work increased it was split into several branches for different subjects who came to be known as king's council.
3. During the 15th century the Curia Regis concerned itself with state matters. The ordinances of Council of 1526 distinguished its executive from judicial functions.
4. The Executive branch was to attend the king constantly while the Judicial branch remained at West Minister and was known as the Judicial Committee of the Privy Council.
5. As the British Empire acquired many colonies overseas, Privy Council was formed which acted as the highest appellate institution so far as appeals from the overseas British colonies were concerned.

NATURE AND EXTENT OF THE COUNCIL'S JURISDICTION

1. Though the Privy Council was the last court of appeal for colonies and dominions, the decision of the Council was always in the form of advice to his Majesty. It used to be in the form of reports tendering advice to His

Majesty regarding the action to be taken in appeal cases. The Kingin-Council always accepted the report of the Judicial Committee of the Privy Council.

2. Regarding the extent of jurisdiction to hear appeals and petitions from colonies, the greater difficulty was that different colonies had different laws. Mentioning about India, Lord Broughan pointed out that, 'These variations are greater since while one territory is swayed by the Mohammedan Law, another is ruled by Hindu Law, some superseded by the law of Buddha, the English jurisprudence being confined to a handful of British settlers and to inhabitants of 3 presidencies.'

PARLIAMENTARY ACT OF 1833

Under this Act, the Judicial Committee of the Privy Council became an effective Court of Appeal with provision for inclusion of members with experience of overseas jurisprudence. However, the judgment here was also in the form of recommendation made to the king. It was therefore always concluded with the words, ' Their Lordships humbly advise His Majesty'.

The history of Indian appeals to the Privy Council maybe explained under the following headings-

APPEALS FROM THE MAYOR'S COURT

The Charter of 1726 introduced Mayor's Court in each Presidency

Town. The mayor's courts were the courts of British Crown.

Each mayor's court was to hear and try all civil suits pertaining to the people living in the Presidency Town and working in the company's subordinate factories. The first appeal from this court lay before the governor and council if the case involves subject matter upto 1000 pagodas in value. Cases whose value is more than 1000 pagodas a further appeal from the governor and council goes to the King-in Council within a period of 14 days from the date on which the judgment appealed against was recorded.

APPEALS FROM THE SUPREME COURT OF CALCUTTA

1. The Regulating Act of 1773 and the Judicial Charter of 1774 made provisions for Supreme Courts at three presidencies. The Charter of 1774 superseded the Charter of 1753 and thus the mayor's court at Calcutta was abolished.

2. An appeal from the decision of the Supreme Court could be taken to Privy Council provided the subject matter in dispute was worth 1000 pagodas and more. Appeal to King-in Council in civil cases was to be made by way of petition which was to be moved in the Supreme Court. The Supreme Court was directed not to allow any such appeal unless the petition for that purpose was preferred before it, within 6 months from the date of pronouncing the judgment.

3. In criminal matters, the Supreme Court was to have full and absolute power and authority to allow or deny permission to make an appeal to the Privy Council. The Supreme Court was given full powers to decide the merits of the cases which justified grant of leave to appeals.

APPEALS FROM THE RECORDER'S COURT UNDER THE ACT OF 1797

1. The Mayor's Court in Madras and Bombay gave way to the Recorder's Court in 1797 in the provision analogous to those prevailing at Calcutta were made applicable, regarding appeals to the Privy Council. The appeals could be allowed in the cases involving the subject matter up to 1000 pagodas. These Recorder's Courts were subsequently replaced by the Supreme Court.

2. In 1800, the British Parliament passed an Act empowering the Crown to establish a Supreme Court in Madras in the place of the Recorder's Court.

3. In 1801, the Supreme Court was replaced by the charter.

4. In 1823, the Recorder's Court at Bombay was replaced by the Supreme Court by a Charter. An act was passed by the British Parliament to this effect.

5. The appeals from Madras Supreme Court to the Privy Council were allowed if the subject matter in dispute exceeded 1000 pagodas. Appeals from Bombay Supreme Court were allowed if the value exceeded 3000 Rs.

6. There were two kinds of appeal-

a) Appeals as a matter of right when the prescribed conditions were fulfilled.

b) Appeals by special leave of the Privy Council.

APPEALS FROM THE COMPANY'S COURT

APPEALS FROM SADAR ADALATS

1. The Sadar Diwani Adalat was empowered to hear appeals from the judgment of lower courts of the company in the province of Bengal. Before Act of Settlement (1781) the decision of this Adalat was final.

2. The Act of Settlement(1781) allowed appeals from this Adalat where the value of the subject matter in dispute was 5000 pounds or more. The Act prescribed only limitation as to the amount but there was no limitation of time.

3. In 1797, Governor General-in-Council passed Regulation XVI which limited the right of appeal to the value of 5000 pounds or more, exclusive of the cost of the suit and within 6 months of the date of the delivery of the judgment.

APPEALS FROM SADAR ADALATS FROM BOMBAY AND MADRAS

1. In 1802, a Sadar Diwani Adalat was also established in Madras. The appeals for this Adalat was to be laid before the Governor General-in Council(Sadar Diwani Adalat) in civil suits if the value is Rs. 45000/- and upwards.

2. In 1818 by an Act, Sadar Diwani Adalat at Calcutta relinquished the authority to hear appeals from Madras Sadar Adalats. Now an appeal from Madras Adalats lay directly to the King-in-Council. However, No restriction as to the appealable amount. So, appeals to the Privy Council were filed even in cases involving less than 5000 pounds.

3. In Bombay the right to appeal was allowed as early as 1812 under a Regulation. It extended to civil cases upto 5000 pounds or more. However the restriction of monetary value was later withdrawn by Regulation V of Bombay Code of 1818.

4. In 1827, Elphinstone Code came into existence. The most striking feature was the absence of any limit for moving an appeal.

JUDICIALS COMMITTEE ACT 1833

In 1833, the Judicial Committee Act was passed to regulate the system of appeal to the Privy Council. An order was issued on 10th April 1838 under this Act. This Order in Council provided that appeal from the judgment, decree; order of the Supreme Court or Sadar Diwani Adalat in India could be filed in the Privy Council within 6 months from the date of the judgment if the value is more than Rs 10000/-. Thus the Crown's Court and Company's Court were put on the same footing in the matter of valuation. The Privy Council however had the authority to admit an appeal from these courts on the terms and conditions prescribed by the Crown. The Judicial Committee dealt with the appeals from the Indian Courts pending

before the Privy Council. It passed the following orders to expedite the pending appealsa) By the 1st order of 1833, the company was directed to bring before the Privy Council all the cases of appeal from Sadar Diwani Adalat.

b) By the 2nd order, the Company was required to appoint solicitors or agents to act as Councils for different parties whose appeals were pending before the Privy Council.

c) By the 3rd order (1833), the Company was authorized to recover costs from the appellants incurred by it in bringing appeals through agents in the Privy Council.

THE JUDICATURE ACT 1845

In 1845, the British Parliament passed on Act regarding the management of appeals. The Company had to spend a sum of 1,51,537 pounds on these appeals of which only a nominal part could be recovered from the parties. Therefore the Act of 1845 took out from the hands of the company the management of appeal. Such appeals were to be managed by the parties themselves.

APPEALS FROM THE INDIAN HIGH COURTS

Consequent to the passing of the Indian High Courts Act 1861, the Supreme Courts and the Sadar Adalats at Calcutta, Bombay and Madras were abolished. In that place High Courts were established in the 3 Presidencies. An appeal could be made to the Privy Council in any case of not being a criminal one, if the value of the subject matter was not less than Rs 10000/- or the High Court declared that the case was fit one for such appeal.

In criminal cases an appeal could lie to the Privy Council from any judgment of High Court made in exercise of its original jurisdiction or in the opinion of the High Court the case was a fit one for appeal to the Privy Council.

APPEALS FROM THE FEDERAL COURTS

A Federal Court was established in India by the Government of India Act 1935. An appeal from the decision of the federal court to the Privy Council in the exercise of its original jurisdiction without leave and in any other case; by leave of the federal courts or His Majesty's Council namely the Privy Council. It must be stated that even after the establishment of the Federal Court, the old system of appeal from the High Court to the Privy Council was continued.

It consisted of judges having legal learning and experience. So it's decisions were of high quality. It molded Indian Law and the method of administration of justice in India imparting into its jurisprudence, concepts which they had imbibed from their training in English Law.

It served as a bridge between Indian Law and English legal systems over which legal ideas travelled from England to India. Common Law of England came to be accepted as the basis of codification of law in India. At a time when there was no link between the various Sadar Adalat, Supreme Courts and the high courts as they interrupted the law differently; the Privy Council provided a unifying force. It played an important role in ascertaining laws, setting legal principles, molding and shaping them.

CHAPTER-IX

ABOLITION OF THE JURISDICTION OF THE PRIVY COUNCIL TO HEAR APPEALS FROM INDIAN DECISIONS

INTRODUCTION:

1. After The Independence Act of 1947, a new constitutional setup came into existence in India when the Indian Constituent Assembly was assigned the task to frame the Indian Constitution.

2. Under the changed set-up some restrictions were imposed on the right of appeal from the decisions of the Federal Court to the Privy Council. The 1st step in this direction was taken in 1948 when the Central Legislation enacted Federal Court (Enlargement of Jurisdiction) Act.

3. The Federal Court Act of 1948 had not completely abolished appeals to Privy Council but only put a restriction on appeal pertaining to civil matters and it did not disturb the position with regard to criminal cases.

THE ABOLITION OF PRIVY COUNCIL JURISDICTION ACT 1949

1. The New Constitution of the Republic of India was due to come into force from Jan 26 1950 and the jurisdiction of the Privy Council to hear appeals was to come to an end. Hence the Indian Constituent Assembly passed the Abolition of Privy Council Jurisdiction Act 1949 and it came into force on 10th October 1949.

2. Consequently, the jurisdiction of the Privy Council to hear appeals from India ceased to exist from that day. The jurisdiction of the Privy Council to entertain appeals and petitions from and in respect of any judgment, decree of any court or tribunals other than the Federal Court within the territory of India, including appeals and petitions in respect of criminal matters, would cease.

However, section 4 of the Act made it clear that -

1. The judgment already delivered by the Privy Council or reported to his majesty;

2. Any Indian appeal or petition on which the Privy Council has reserved judgment;

3. Any Indian appeal entered into the list of business of the Privy Council before the said date

4. Any Indian appeal lodged before the said date in the register of the Privy Council would not be affected.

All the pending appeals, excepting that which the Privy Council was expected to dispose of during the interval before the new Constitution came into force, were to stand transferred to the Federal Court.

The last Indian case to be decided by the Privy Council was that of N.S Krishnaswamy Ayyangar v. Perumal Goverdan from Madras which was decided on 15/12/1949. With this case, the two century old relationship between India and Privy Council came to an end.

As the Supreme Court of India was established under the provisions of Article 124 of the Constitution of India, it started functioning from 26th Jan 1950. It replaced the Federal Courts.

The Supreme Court is the highest court of the country. It has been made the guardian of Freedom and Liberty of the people of India. Thus the Supreme Court has inherited the jurisdiction both of the Privy Council and of the Federal Courts.

CHAPTER-X

HISTORY OF LAW REPORTING IN INDIA

INTRODUCTION:

The origin and development of law reporting is essentially an concomitant of the doctrine of binding force of Precedent which formed the backbone of the English law, to which the modern Indian legal system owes its origin.

The Judges of the Crown's Courts and the Company's Court in India were Englishmen who had their legal training in England. So they naturally followed the English tradition of relying on Precedents while administering justice in India.

Origin of Law Reporting:

This can be traced back to the establishment of the Supreme Court at Calcutta in 1774. In the initial stages Law Reporting was not well organized and only some sporadic individual efforts were made by Lawyers or Judges to prevent contradictory rulings and bring out uniformity in decisions.

Reports of Earlier Supreme Courts:

a. In 1824 Sir Francis Macnaughten, a former Judge of the Supreme Court, included certain cases in his publication entitled 'Considerations upon Hindu Law'. This work contained decided cases on Hindu Law.

b. Sir William Macnaughten published his 'Dissertation on Mohammedan Law' in 1825 which contained important cases on Mohammedan law. Besides Longueville Clarkes editions of rules and orders of the Supreme Court published in 1829 contained notes of cases. The Smoult's 'Collection of Orders' from 1774- 1813' published in 1834 also contained notes of cases.

c. Thereafter some efforts were made at law reporting and reports of cases decided by the Supreme Court at Calcutta were published. Notable among them were Morton's reports covering a long period from 1774 to 1841. Morley commended Morton's Reports as 'a work of the greatest utility and authority'.

d. Bignell's Reports 1930-1931, Fulton's Reports of cases by the Supreme Court between 1842-1844, Gaspers Commercial cases 1851-1860, George Taylor's Reports of cases 1847-1848, Taylors and Bell's Reports 1847-1853 were some publications which contributed a lot to the development of law reporting in India.

The decisions of Bombay Supreme Court were collected by Sir Pasbirs Perry. The decisions of Madras Supreme Court were published by Sir Thomas Strange in 3 volumes covering the period 1798-1816.

The above reports were not easily available as they had gone out of print. Consequently an attempt was made to reprint them. A publication of a new series known as the Indian Decisions (old series) edited by J.A. Venkataswamy Raw was started from 1911.

Law Reporting - Sadar Diwani Adalats:

a. The Sadar Adalats were company's courts and were the apex of the Mofussil Judicial system.

b. The first printed reports of cases decided in this Adalat at Calcutta were started by Sir William Macnaughten, the then Registrar of the Adalat. They were published in 7 volumes covering the period from 1791-1849.

c. Report of cases mainly summary appeals decided in the Sadar Diwani Adalat at Calcutta, were published by Sevestre, a pleader of the court.

d. The publication of the monthly report containing decisions of the Adalat was started from 1845, known as the Bengal Sadar Diwani Adalat Reports. These cases have been reprinted as Indian Decisions (old series) from 6th volume onwards.

e. The reports of the cases decided in the Sadar Diwani Adalat at Madras are limited in number. A volume entitled 'Decrees' in appeals suit decided by the Sadar Adalat was published in 1843. It contained selected decrees of the Adalat from 1805-1826. The cases on Hindu law in this volume provide a wealth of information about the doctrines of Southern Hindu School.

f. The reports on Bombay Adalat include Borradaile's reports published in two volumes (1825). The second publication appeared in 1843 which was prepared by the Deputy Registrar of the Adalat. It contains cases from 1820-1840 in a chronological order.

Reports of Sadar Nizamat Adalat:

a. Only two series of reports were printed. One series comprised of 5 volumes and contained sentences of the Sadar Nizamat at Calcutta. The second series contained criminal cases decided by Sadar Fauzdari Adalat at Bombay(1827-1846).

b. A monthly series of Sadar Nizamat Adalat at Calcutta was started from 1851. Monthly reports of Sadar Fauzdari Adalat of madras was also started.

c. In 1855 Morris published cases disposed by Sadar Fauzdari Adalat of Bombay.

Law Reports of Earlier High Courts:

High Courts were established in 1862. The high court of Madras published the Madras High Court reports in 8 volumes covering a period from 1862-1875. Similar reports were published by the High Courts of Calcutta and Bombay. Bombay High Court reports (1862-1875) ran in 12 volumes.

Besides these official reports, certain Reports were also published by private entrepreneurs. The main among them were Weekly Reporter, Indian Jurist at Calcutta, Madras Jurist, two volumes of Hyde Reports of Calcutta High Court, 3 volumes of Henderson Reports of Calcutta High Court(1878-1883) and 15 volumes of Bengal Law Report of the Calcutta High Court (1868-1876).

The Indian Law Reports Act, 1875:

Sir James Fatzjames Stephen, the law member of the Government of India in his Minutes of 1872 expressed great dissatisfaction with the system of law reporting. He pointed out that private publications had no other interest than commercial one. Many of them were mere reprints of written judgments of the Judges with no statement of facts of the case or arguments of the counsels.

As a result of his efforts, the Indian Law Reports Act,1875 was passed. Section 3 of the Act specially provided 'no court shall be bound to hear, cite or shall receive or treat as an authority binding on it the report of any case other than a report published under the authority of the Government.

The purpose of Section 3 was to diminish the quantity of law cases in the Courts. Though the Act came to be regarded as a partial restriction on private law reporting but had no express authority to regulate law reporting.

This Law Reports Act 1875 applied only to the decisions of the High Courts and not to the decisions of the Privy Council, the Federal Court or the Supreme Court.

Official High Court Reports:

Each high court has a series of Indian Law Reports (ILR) for itself.;

Bombay, Calcutta, Madras and Allahabad –1876

Patna --922

Lucknow --1926

Nagpur --1936

Punjab --1948

Cuttack and Assam --1949

Rajastan and Mysore --1951

Andra Pradesh --1954

Kerala --1957

Gujarat –1960

And Supreme Court Reports.

Non-Official Law Journals:

The Indian Law Reports Act 1875 could not suppress non-official reports, which were on a commercial basis. Notable among them - weekly reports and journals published from Allahabad, Bombay, Calcutta, Patna, Madras, Madhya Pradesh, Mysore, Rajasthan, Delhi, etc.

The most popular present day publication is the All India Reporter(AIR) started publication from Nagpur (1922) and continues up to-date.

Besides the above there are a number of reports in India of a special nature such as Company Cases Supplement, Factories Journal Reports, Income Tax Reports, Labour Law Journal, Sales Tax Cases, Criminal Law Journal, Election Law Reports etc.

Reports of the Privy Council:

The important judgments of the Privy Council were reported(1950) under the superintendence and control of Council of Law Reporting for England and Wales.

Reports of Federal Courts:

-started in 1935 and continued till 1949. Contained important judgments of the Federal Court.

Reports of the Supreme Court (After Independence):

Supreme Court replaced Federal Court (26.1.1950). So Federal Courts Reports were renamed Supreme Court Reports which is the official series reporting cases of the Supreme Court. It is issued in monthly parts.

Every Advocate seeks Law Reporting's help to prepare his case according to the precedent case law. Thus law reporting is very useful in courts for the easy and early disposal of the cases.

Suggestions of Law Commission on Law Reporting:

a. The Law commission has proposed the establishment of a Law Reporting Council for proper selection and reporting of cases.

b. Short notes of cases may be made available before the regular reports are published.

c. The cases reported should contain all essential elements such as the name of the court, parties, nature of pleadings, facts of the case and cause of action, arguments, decisions and judgments. These are now generally available on the website.

d. The Commission has particularly emphasized the need for prompt reporting of cases without loss of time so that they may be readily available to the practicing lawyers.

e. It also suggested that before reporting of a case, the judgment should be checked by the Judge who delivered it, so as to maintain accuracy and authenticity of the reporting.

Conclusion:

In actual practice, this proposal of Law Commission seems impractical. But it is true that effective control has to be exercised on private Reporters so as to prevent mushroom growth of law reports which is adversely affecting the quality of law reporting in India.

UNIT-III

CHAPTER-I

LEGISLATIVE AUTHORITY OF THE EAST INDIA COMPANY UNDER THE CHARTERS OF 1600, 1661 AND 1726

ESTABLISHMENT OF EASTINDIA COMPANY:

THE CHARTER OF QUEEN ELIZABETH 1600:

The Royal Charter granted by the Queen Elizabeth clearly laid down the Constitution of the Company. It also defined its powers and privileges.

1. The East India Company was to be a regulated company and not a joint-stock enterprise.
2. All the members of the Company constituted themselves as the General Court. This Court was to annually elect the Court of Directors.
3. The Court of Directors consisted of a Governor and 24 Directors known as Committees. They have to manage the entire business of the Company.
4. These committees were only individuals or committee men who later on became the Directors and their assembly is called the Court of Directors.

Legislative powers of the Company:

The Charter of 1600 conferred on the Company some legislative powers as under:

1. The General Court was authorized to make, ordain and constitute laws and orders for the good government of the Company and its servants and also for the better advancement of the trade and traffic.
2. The Company was authorized to punish the violation of these laws and ordinances by fine or imprisonment.
3. These laws and punishments were to be reasonable and not contrary to the laws or customs of England.

Thus, the Charter conferred on the Company the power of minor legislation with the object to enable the Company to regulate its own business and maintain discipline amongst its servants. The Charters did not intend to confer on the Company a power to legislate for and govern some territory. The punishment for infringement of laws could only be fines, forfeitures and imprisonments; no harsh punishment as capital sentences could be prescribed.

Despite its limited scope, the early grant of legislative powers to the Company is of historical importance. Ilbert states in his book, "Government of India", "The charter of 1600 is the germ out of which the Anglo-Indian Codes were ultimately developed." It is out of this modest beginning in the year 1600 that the vast powers of legislation grew in the due course of time.

Royal grants between 1600 and 1660 AD:

After incorporation, the Company very soon realized that its legislative power was not sufficient to maintain its discipline among its servants on the high seas. To meet the situation, the Company invoked the Crown's prerogative and used to secure from it a commission to the commander-in-chief of each voyage separately, empowering him to inflict punishment for capital offences, such as murder or mutiny and put into execution the law called the "Law Martial". The 1st such commission was issued by Queen Elizabeth on the 24th of January, 1601 to Captain Lancaster for the first voyage. Such practice of granting a separate royal commission for each voyage continued till 1615.

1615 AD:-

King James I, on 14.12.1615 conferred on the Company a general power to issue such commission to its Captains subject to the condition that in case of a capital offence, such as willful murder and mutiny, the verdict must be found by a jury of 12 Company's servants.

1623 AD:-

When trading establishments were founded by the company in India, a need was felt to extend the powers vested on the Company to offences committed on land. Therefore, in February 1623, James I granted to the company the power of issuing commissions to any of its presidents or chief officers in its settlements authorizing him to punish any offence committed on land by the Company's British servants. They have to inflict suitable punishments on them, including death, subject to the proviso that a capital sentence could be inflicted in case of mutiny, murder or any other felony after trial by a jury.

The Charter of 1661:

The Company was reconstituted by the Charter of 1661 by Charles II.

a) Under this Charter, the Company was established on a regular permanently joint stock basis and voting power in the meetings were restricted to the members on the basis of one vote for every 500 pounds subscribed by him in the company's revenues.

b)The Company's power and command over its fortresses was strengthened.

c)The employees were subject to English law in civil and criminal matters.

d) The legislative power was given to the Company to regulate its entire territory and settlements. There were Governor and Council for each settlement.

The subsequent Charters of 1668, 1676 and 1683 gave enormous powers to the Company and as such, it emerged as a political entity.

The Charter of 1699:

The Constitution of the Company was once again modified.

i) The administration of the Company was to be run by two organs. They were the:

- General Court
- Board of Directors

The General court consisted of all the members of the Company and the Directors were elected by him.

ii) The Qualification for elections as Director was fixed at 2000 stocks which he held in his name.

iii There were to be 24 directors to be elected annually by the General Court. Only those members who were having stock worth 500 pounds could vote, no member was to have more than one vote.

iv) The General Court was required to meet at least 4 times in a year, a special meeting could be convened by the Directors, if requested by at least 9 members.

v) The general power to control the affairs of the Company vested in the Board of Directors.

The Charter of 1726:

On the petitions of the Directors and the Court to George I, the Royal Charter was issued in 1726. It conferred the power of the legislation on the governor and Council of each residency town for the first time. Before 1726, the legislative power was with the Company. The Charter of 1726 empowered the Governor-in-Council of each Presidency town to make by-laws, rules and ordinances for the regulation of the corporation and inhabitants of the settlement concerned. These rules and ordinances were not to be contrary to the laws and statutes of England. They were not to be effective unless approved by the Court of Directors of the Company in England. The legislative powers of the Governor-in-Council were continued under the Charter of 1753 also.

The events of 1757 (Battle of Plassey) compelled the Company to undertake the task of reconstituting and reorganizing its affairs in Bengal. Lord Clive succeeded from Nawab Mir Qasim in obtaining the grant of the Diwani rights from the Mughal Emperor in 1765 of Bengal, Bihar and Orissa. There was a widespread corruption among the servants of the Company. Consequently, the financial position of the Company deteriorated to such an extent that it had to ask for a loan from the Crown of England who of course obliged the Company but assumed greater control over the affairs of the Company under the provisions of Regulating Act of 1773.

CHAPTER-II

REGULATING ACT,1773

The Regulating Act was passed in 1773.

OBJECTS:

1. To bring the management of East India Company under the control of British Parliament or British Crown.
2. To introduce reforms in the constitution of the company at England
3. To introduce reforms in the company's government at India
4. To prove remedies against illegalities and oppressions committee by the company's servants in India.

THE PROVISIONS OF REGULATING ACT:

1. CONSTITUTION OF THE COMPANY:

i. The term of Directors was increased from one year to four years and $1/4^{th}$ of the Directors were to retire every year and in their place other persons were elected.

ii. The voting rights of the proprietors were also changed. Only those proprietors who held shares of 1000pounds were given right to vote and who held shares less than 1000 were denied vote.

iii. The proprietors who held stock for 1000 pounds were given one vote and who held 3000 pounds were given 2 votes and who held 6000 pounds were given 3 votes and those who held 10000 pounds or more were given 4 votes.

iv. Besides to bring the complete control of the company the revenue affairs must be placed by the Directors of the company before the Treasury in England and affairs with regard to civil and military with the Indian authorities before the Secretary of State in England.

2. THE COMPANY'S GOVERNMENT IN INDIA:

   a. EXECUTIVE GOVERNMENT:

      i. At Calcutta presidency the status of Governor-in-council was raised to Governor-General-in-council and also council of four members was established.

      ii. They were appointed for five years, but could be removed even before their term on the recommendation of court of directors.

iii. A casual vacancy in the office of Governor-General was to be filled by the senior most member of the council and vacancy in the council is to be filled by the company with the consent of the British crown and their salary was fixed.

iv. The names of the first Governor-General and four councilors were specifically stated in the Regulating Act.

v. Warren Hastings was to be the Governor-General and Richard Barwell, General Clavering, Phillip Francis and Colonel Monson were to be the Councilors.

vi. The decisions of the council were to be made by majority of votes and in case of equal, the Governor-General had a casting vote and thus the Governor General could not override the majority of the council.

vii. The presidencies of Bombay and Madras were brought under the control and supervision of Governor-General and council of Calcutta in matters of war and peace.

viii. The presidencies of Madras and Bombay could not make any treaties of war and peace with Indian Princes without getting approval of Governor-General and council, but however there were two exceptions for it.

ix. If there is any imminent necessity as would render it dangerous to postpone war or treaty until the orders from the Governor-General may arrive and in case if any special orders were received from the court of Directors to commence war or to make treaty of peace or other treaty.

b. LEGISLATIVE AUTHORITY:

i. The Governor-General and council were empowered to make rules and regulations and issue ordinance for the good governance of Fort William and factories subordinate to it.

ii. These rules must not be against the rules or laws of England.

iii. Any person could file an appeal against such rules and regulations in the King-in-council within 60days of their registration in the Supreme court.

iv. Any person in England could also file an appeal against them in King-in-council within 60 days of publication.

v. The King-in-council could disapprove or disallow them at any time within 2 years from the date of this passage.

vi. It was necessary to send copies of such rules and regulations to the Secretary of State in England.

c. JUDICIAL AUTHORITY:

i. This Act empowered the British crown to establish a Supreme court at Calcutta by issuing a Charter.

ii. The Act made specific provisions for the appointment for the judges of the court and also for the jurisdiction of the court.

CHAPTER-III

THE PITTS INDIA ACT,1784

INTRODUCTION:

The British Parliament was largely convinced that the atrocities of the Company's government in India could be checked only through the Parliamentary Control on its working. Pitt, the youngest Prime Minister of England introduced his Bill in the House of Commons. It was passed by the House and became an Act

(Pitt's India Act) of 1784. The authors of this Act out of sheer humanitarian consideration to "enlarge and confirm the advantage derived by Britain from its connection with India and also to render that connection a blessing to the natives of India."

Main Provisions:

1.The Company's affairs were divided into two parts namely, Commercial and Political.

2.The Commercial affairs of the Company were put directly under the Control of the Court of Directors.

3.The political affairs of the Company were put under the Board of '6 Commissioners for the affairs of India' i.e. Board of Control consisting of Chancellor of Exchequer, Secretary of State and 4 members of the Privy Council. The quorum of the Board was fixed at Three. The Secretary of State was to act as the Chairman of the Board having a casting vote. The Senior Commissioner was to preside in the absence of the Secretary of State and the Chancellor of Exchequer.

4.The Secretary of State and other members of the Board were to hold office on honorary basis

5.The Board was fully empowered to superintend, direct and control all acts, operations relating to civil and military governments or revenue of the British territorial possessions in East India.

However, it was not vested with the power of appointing any of the Company's servants.

6.The court of Proprietors was given the powers to make important appointments in India to handle the Indian affairs.

7.All offences of the Crown's servants in India were to be tried by English Courts in England. A special Court for this purpose was created in England.

8.The Directors of the Company were required to supply to the Board, the copies of the minutes, orders, resolutions and proceedings of the Company and the copies of the dispatches sent or received by the Directors. The Board could approve, modify or disapprove the dispatches and receive the copies of the modified dispatches.

9.The Board of Control was empowered to send secret orders and directions regarding secret matters such as declaring of war, making of peace or negotiating with any of the native princes or states in India, to the Secret Committee of the Court of Directors. This secret Committee consisting of not more than 3 Directors was to transmit them to the Government of India without disclosing their contents to other Directors

10.Any order or resolution of the Court of Directors which had received the ratification of the Board of Control was not to be revoked by the Court of Proprietors

11.If the Board of Control issued orders which encroached upon the commercial activities of the Company, the Directors could appeal to the King-in-Council and the decision of the King-in- Council was final.

12.The number of members of the Governor-General-in-Council of India was reduced from 4 to 3 and the Commander-in-Chief of the Company's forces in India was to be one of the members. The control of Bengal Presidency over the other Presidencies was further tightened up.

13.The Governor's Council in each Presidency was to consist of 3 and not 4 members as before and the Commander-in-Chief was to be one of them. The Governor had a casting vote. The presidencies were to send the copies of their rules, regulations and papers on important matters to the Governor General and the Council at Calcutta.

14.The Parliament was empowered to pay salaries, expenses of staff of Board of Control out of the revenue of India and this charge did not exceed 16000 pounds per annum.

15.The Act directed the Company to reduce its expenditure through retrenchment and reduction of staff

16.The power to recall the principal servants of the Company was a sharp weapon in the hands of the Board and the Board made use of this power extensively.

Defects:

1. In the Board of Control, it was usually the will of the President that prevailed.

2. There was Dual Control on the company from home (England). The company was controlled by the Court of Directors on one hand and the Board of Control on the other.

3. Transmission of dispatches through the Board of Control was cumbersome and was a delaying factor.

4. The Governor-General had two masters to obey namely, the Court of Directors and the Board of Control.

Merits:

1. Power to recall the principal servants of the Company was a sharp weapon.

2. The effective machinery of the trial of English offenders in India was established.

3. The Board represented the crown while the Directors represented the Company. The power of the Court of Directors to influence political decisions in India came to an end.

CHAPTER –IV

THE CHARTER ACT OF 1793

The Charter Act of 1793 was the first in the series of Charter Acts and made no significant changes in the existing arrangements. It only consolidated the existing laws.

CIRCUMSTANCES FOR THE ENACTMENT:

The East India company was granted to monopolize the eastern trade in 1773 for 20 years, which expired on 1793. So the court of Directors applied to the Parliament for renewal. A new East India Bill was introduced in the House of Commons and passed through the influence of ministers who sided the company.

British Government was at war with revolutionary France. So petitions put up by the leading merchants of the country to abolish the monopoly of the company failed to take the attention of the government. so the bill was passed without any difficulty.

MAIN PROVISIONS:

1. The company's commercial monopoly was renewed for 20 years, with important provision that the private individuals would be allowed to trade to the extent of 3000 tones of shipping.
2. The members of the Board of Control and their staff were hence forth to be paid out of Indian revenues.
3. The Governor-General of Bengal and Governors of Bombay and Madras were to have only three members of this councils. These members were required to be persons who had resided in India for 12 years at the time of their appointment.
4. The Commander-In-Chief ceased to be a member of the Governor-General-in-council unless specially appointed as a member by the Directors.
5. Governor-General-in-council was given full power and authority to superintendent, direct and control the presidencies.
6. The Governor-Generals and Governors could exercise their veto in case affecting in any way the safety, tranquility or interest of British possessions in India.
7. Governor-General, Governors, Commander-in-chief and a few other high officials could not go out of India so long as they held the office.

8. The Admiralty jurisdiction of the Calcutta Supreme court was extended to the high seas.

9. Receiving of gifts was hence forth to be considered a misdemeanor.

10. Civil servants of the company were to be graded in ranks according to the seniority of service and promotion to a higher post was to depend upon their length of once service.

11. No post with pay of over 500 pounds a year was to be awarded to any person except covenanted servants of the company.

12. The sale of liquor was made subject to a grant of a license.

13. Power was given to the Governor-General to appoint members of the civil service as Justices of peace, to appoint scavengers for the presidency towns to levy a sanitary tax in the presidency towns.

CHAPTER-V

CHARTER OF 1813

1. This Act declared formally the sovereignty of the British crown over the company's territorial acquisitions of India, however it allowed its possession with the company.
2. The Charter of 1813 renewed the Charter of the company for further period of 20 years and this Act threw open the Indian trade to all Britishers except the tea trade which was continues under the company's monopoly.
3. The Act conferred jurisdiction on the justice of peace in cases of trespass or assault committed by the British subjects on natives of India and also in cases of small debts due to the natives from the British subjects.
4. The British Subjects residing, trading or occupying immovable property at more than ten miles from presidency towns were places under the jurisdiction of by the diwani adalats for civil cases, however an appeal was allowed by the Supreme court.
5. Special provisions were made for the exercise of jurisdiction in criminal cases over British subjects residing at a distance of more than ten miles from the presidency towns who would register themselves with the District courts, special penalties were provided for theft, forgery, perjury and coinage offences.
6. The powers of control and superintendence of the Board of Control was extended by this Act.
7. The Act made provisions for the training of civil and military servants of the company.
8. In 1807, the Governors and councils at Bombay and Madras were empowered by an Act enacted by the British Parliament to make regulations independent of the Governor-General-in-council at Calcutta.
9. The three presidencies were separately authorized to frame independent legislation for their territories.
10. The Charter Act of 1813 extended the legislative powers of the governments of all the three presidencies and it authorized them to levy taxes within their respective presidency towns.
11. With object to have strict control over the legislative power of the presidency governments, the Charter of 1813 made provision that the copies of all regulations made by them would be laid annually before the British Parliament

CHAPTER-VI

CHARTER OF 1833

INTRODUCTION:

The 20 years renewal of the charter in 1813 ran out in 1833. This was the time for the government to do a careful assessment of the functioning of the company in India. The charter was renewed for another 20 years, but the company was asked to close its commercial business. Thus, this time the charter was renewed on the condition that Company should abandon its trade entirely, alike with India and China, and permit Europeans to settle freely in India. The company lost its monopoly in China and also the trade of tea which it enjoyed with Charter Act of 1813.

INDIA AS A BRITISH COLONY:

The charter act of 1813 legalized the British colonization of India and the territorial possessions of the company were allowed to remain under its government, but were held "in trust for his majesty, his heirs and successors" for the service of Government of India. This act made the Governor General of Bengal the Governor General of British India and all financial and administrative powers were centralized in the hands of Governor General-in-Council. Thus with Charter Act of 1833, Lord William Bentinck became the "First Governor General of British India". The number of the members of the Governor General's council was again fixed to 4, which had been reduced by the Pitt's India act. However, certain limits were imposed on the functioning of the 4th member. The 4th member was NOT entitled to act as a member of the council except for legislative purposes. First fourth person to be appointed as the member of the Council was Lord Macaulay.

SPLIT IN BENGAL PRESIDENCY: The Charter Act of 1833 provided for splitting the Presidency of Bengal, into two presidencies which were to be known as Presidency of Fort William Presidency of Agra. But this provision never came into effect, and was suspended later. Enhanced Power of Governor General of India Charter act of 1833 distinctly spelt out the powers of the Governor-General-in-Council. He could repeal, amend or alter any laws or regulations including all persons (whether British or native or foreigners), all places and things in every part of British territory in India, for all servants of the company, and articles of war. However, the Court of Directors acting under the Board of control could veto any laws made by the Governor-General-in-Council.

CODIFYING THE LAWS:

The charter act of 1833 is considered to be an attempt to codify all the Indian Laws. The British parliament as a supreme body, retained the right to legislate for the British

territories in India and repeal the acts. The act of 1833 provided that all laws made in India were to be laid before the parliament and were to be known as Acts. In a step towards codifying the laws, the Governor-General-in-Council was directed under the Charter act of 1833, to set up an Indian law Commission. First Indian Law Commission So the first law commission was set up by the Charter act of 1833 and Lord Macaulay was its most important member and Chairman. The other members of this commission were English barrister Cameron, Macleod of Madras service, William Anderson of Bombay Service and Sir William McNaughton of the Calcutta Service. Sir William McNaughton did not accept the appointment. The objectives of the law commission was to inquire into the Jurisdiction, powers and rules of the courts of justice police establishments, existing forms of judicial procedure, nature and operation of all kinds of laws. It was directed that the law Commission shall submit its report to the Governor General-in-council and this report was to be placed in the British parliament.

INDIANSIN THE GOVERNMENT SERVICE:

The section 87 of the Charter Act of 1833, declared that "Normative of the British Territories in India, NOR any natural Boon subject of "His majesty" therein, shall by any reason only by his religion, place of birth, descent, color or any of them be disabled from holding any place, office or employment under the company" This policy was not seen in any other previous acts. So the Charter act of 1833 was the first act which provisioned to freely admit the natives of India to share an administration in the country.

MITIGATION OF SLAVERY: This act also directed the Governor General-in-Council to adopt measures to mitigate the state of slavery, persisting in India since sultanate Era. The Governor General-in-Council was also directed to pay attention to laws of marriage, rights and authorities of the heads of the families, while drafting any laws.

MORE BISHOPS: The number of British residents was increasing in India. The charter act of 1833 laid down regulation of establishment of Christian establishments in India and the number of Bishops was made3.

CHAPTER-VII

CHARTER OF 1853

After twenty years of the Acts of 1833, the time approached for the renewal of the Company's Charter. With the passage of time there was a growing demand that the double Governments of the company in England should be ended. It has also been declared that the Court of Directors and the Board of control only resulted in the unnecessary delay in the business transactions and led to undue expenditure. An application was sent to the presidencies of India to appoint a secretary of state with a Council. The Secretary of state would be entrusted to handle all business relating to India.

It had been ideated that the existing legislative system under the Charter Act of 1833 was completely inadequate. Moreover after the Acts of 1833 there were territorial and the political changes in India. Sind and Punjab had been annexed to the company's territory. A number of Indian States except Pegu in Burma became victim of Dalhousie's policy of annexation. Gradually there were the demands of the decentralization of power and for giving the Indian people the shares in the administration. It was under these circumstances that the British parliament decided to renew the charter of the company in the year 1853. The company in the preceding year appointed two Committees to look into the affairs of the company. On the basis of their reports the charters Act of 1853 was framed and passed.

The charter Acts of 1853 renewed the powers of the company and allowed it to retain possessions of Indian territories. However this Charter Act did not grant commercial privileges for the specific period of time. Rather it did not mention any time period. The charter Act of 1853 provided that the salaries of the members of the Boards of controls, its Secretary and other officers would be fixed by the British government but would be paid by the company. The number of the members of the court of directors was reduced from 24 to 18 out of which 6 were to be nominated by the Crown. By the Act of 1853, the Court of directors was disposes of their power of patronage and the high posts were made subjects to the competitive examination, s where no discriminations would be made on the basis of caste, creed and religion. A committee with Maccualay as its president was appointed in the year 1854 to enforce his scheme. The Court of directors was empowered to constitute a new Presidency. The court of Directors, by the Act also could alter the boundaries of the existing states and incorporate the newly acquired state. This provision was made uses to create a separate Lieutenant Governorship for Punjab in the years 1859. The Act also empowered the crown to appoint a Law commission in England to examine the reports and the drafts of the Indian law commission.

In India the separation of the executive and the legislative functions was carried a step further by the provision of the additional members for the purpose of legislation. The Law Member was made the full member of the governor General's Executive council. This council while sitting in its legislative capacity was enlarged by the addition of the six members, namely the chief Justice and others judge of Calcutta supreme Court and four representative one each from Bengal, madras, Bombay and the north western provinces. The provincial representatives were to be the civil servants of the company. The governor General was empowered to appoint two more civil servants to the Council. It had been declared by the Act that discussion sins the Council became oral instead of writing. Bills were referred to the Select Committees instead to a single s member ands legislative business was conducted in public instead of the secret.

The charter Act of 1853 was a compromise between the two conflicting views. Those who favored the retentions of the Company's territorial authority were satisfied by the provisions of the charter Act of 1853. The newly formed Legislative council threatened to alter the whole structures of the Indian government. Thus the Legislative Council denied the provisions made by the Charter Acts of 1853. The glaring defect of the Charters Act of 1853 was the continued exclusion of the people of the land with the work of legislation. However the charter act of 1853, strengthen the oppressive policy of the British Government in India.

CHAPTER-V

THE GOVERNMENT OF INDIA ACT 1858

1. The double government introduced by Pitt's India Act was found to be inconvenient and defective.
2. The mutiny of 1857 known as the first war of Indian Independence also compelled the British statesmen to ponder over the future relationship of the British crown with the company's territories in India.
3. To remove the defects of the double government introduced by the Pitt's India Act and also to provide a popular government in India the authorities in England thought to transfer the company's government of India to the British crown, the government of India Act, 1858 was passed.
4. By this Act the government of India was transferred from the company to the British crown and the direct rule of the British crown was established in India and the company's rule came to an end and all the Indian territories were vested with her majesty with all the powers.
5. All the register in relation to any territory which might be exercised by the company if this Act had not been passed would be exercised by and in the name of her majesty.
6. The Board of control and Court of Directors were abolished and their powers were transferred to the Secretary of State for India and council of 15 members was established to assist him. Seven members of the council were to be elected by the court of directors and eight members thereof were to be appointed by the British crown.
7. The vacancies among persons elected by the court of Directors were to be filled by the persons co-opted by the council and the vacancies in crown appointment were to be filled by the crown.
8. Every member of the council appointed or elected was to hold his office during the good behavior, but could be removed by the crown on representation being made by both the crown and parliament.
9. Majority of the members of the council were to be the persons who had served or resided in India for at least ten years. The council was on advisory board.
10. The secretary of India for was to preside over its meetings. The council was to give its opinion on questions referred to it by the Secretary of state for India and he could

overrule the majority opinion except in matters in which he was bound to act in concurrence of the council.

11. The Secretary of State for India was required to record in writing the reasons for overruling the council and he could send dispatches to India without consulting the council, when he deemed them urgent, however he was required to notify this fact to this council.

12. The Act also provided that dispatches concerning war and peace or treatise with state or princes could marked secret and sent by the Secretary of State for India without consulting the council.

13. The Governors of Bombay and Madras and also the Governor-General could mark their dispatches secret and on such making the dispatches could not be seen by the members of the council except on the permission of the Secretary of State of India.

14. The Secretary of State for India was also empowered to divide the council to committee.

15. The Secretary of state for India was required to submit to the British Parliament annually a statement of the moral and material progress of India and also an account of the annual produce of the revenue of India. The salary of the Secretary of state was to be charged on Indian revenues.

16. The British crown was empowered to appoint the Governor-General of India and the Governors of the presidencies for India.

17. The Lieutenant Governor could be appointed by the Governor-General subject to the approbation of her majesty.

18. All treatise, contracts, etc made by the company were declared to be binding on the British crown. The provision was made by the creation of the Indian civil service of crown and it was to be under the control of the secretary of state for India.

19. The secretary of state in council was declared to be a corporate capable of suing and being sued in India and in England.

20. The transfer of the company's government to the British crown was proclaimed by Queen Victoria on 1st November 1858.

QUEEN'S PROCLAIMATION OF 1858:

14. The assumption of the Government of India by the Crown was announced to the people of India at a Darbar held by Lord Canning in the name of Quuen Victoria at Allahabad on November 1, 1858.

15. The Royal proclamation was intended to explain to the people of India, the principles of India on which the future government of India was to be modeled.

PROCLAIMATION:

1. A new administrative policy towards the Indian rulers and princess was formulated to assure them that there will be no encroachment on their territory, personal rights and privileges and all treaties made with them by the East India company would be maintained and their rights and dignity would be honored.
2. It promised to all the people of India the conscientious fulfillment of the obligations of the duty to which the government was bound and assured them an equal and impartial protection of law.
3. Royal proclamation solemnly assured that her Majesty's government desired no expansion of the present territorial possessions. Thus the policy of expansion and annexation was denounced in un-equivocal terms.
4. Her majesty did not desire to impose her religion , faith on any of her subjects. It further assured equality in respect of services without any discrimination of the caste, creed or religion.
5. While framing law for India due regard would be paid to the ancient rights, usages and customs of India.
6. Her Majesty's government in India shall endeveaour "to stimulate peaceful industry, promote works of public utility and improvement and administer its government for the benefit of all the subjects."
7. In the end of the proclamation the Queen regrets for the mutiny of 1857 and granted amnesty to those who rebelled, except those who were directly guilty of the murder of British soldiers.
8. She concluded it by impressing upon the people that "in their prosperity will be our strength, in their content our security and in their gratitude our best reward".
9. Queen's proclaimation is often described as Magana Carta of Indian liberties.

AN APPRISAL OF THE ACT:

a. The transfer of Indian rule to the crown from the hands of a trading organization was a significant land mark in the constitutional history of India.

b. It gave a death blow to a dual government which was notorious for its cumbrous and complex character.

c. The transfer of the authority to the Crown enabled a greater and close control by the Home Government over the Indian affairs.

d. Innovation of anew office of the secretary of the state was in itself an important factor. Nothing in respect of Indian administration could be done or undone without the consent of the Secretary of the state. It was only in 1947 when the British left India that this office was abolished.

e. The creation of the India Council with Councilors having served in lived in India for considerable time were well acquainted and really interested in Indian affairs.

DEFECTS:

i. The Government of Bombay and Madras complained of undue interference in their administrative work by the Governor General in council because of the white powers given to him.

ii. Exclusion of Indians from services Inspite of assurance given to them.

iii. India came under the direct control of the British crown but the internal administration of India remains the same. Neither were its powers limited nor was it properly organized.

iv. The practice of private communication between the viceroy and the secretary of state also increased considerably.

v. Need for the inclusion of Indians in the central legislative council was not dealt properly, to satisfy the native people and get co-operation from them.

vi. The council of the Governor-General did not do any constructive work for the upliftment of masses of India.

CHAPTER-VI

INDIAN COUNCILS ACT,1861

NEED AND OBJECT:

1. The Regulating Act,1773, introduced the process of centralization and vested with Governor-General and council, the whole civil and military government of Calcutta presidency and also ordering management and government of all territorial acquisitions and revenues in kingdoms of Bengal, Bihar and Orissa.
2. The presidencies of Bombay and Madras were brought under the control of Governor-General and council in matters of war and peace, except in case of imminent necessity or in case of orders received from Court of Directors to commence war or make treaty of peace.
3. Besides, the Regulating Act empowered to make rules and regulations and issue ordinances for the good governance of Fort William and factories subordinate to it, which must not be against the laws of England and those laws must be registered with the Supreme court.
4. This process of centralization was strengthened by the Charter of 1833

   and this process presented several difficulties and to remedy the difficulties arising out of centralization the Indian Councils Act,1861 was enacted and it started the process of decentralization.
5. The object of the Act was to give power to the Governor-General-in-council of Madras and Bombay to make law and to establish new council in other provisions.
6. The Charter Act of 1833 made provision for the enactment of laws by the Governor-General-In-council for all the persons and for all courts of justice in British India, but could not make laws for local needs and local conditions.
7. Besides the revolution of 1857 opened the eyes of Britishers and they realized the importance of the co-operation of the Indians in the administration and the Indian association in the legislation was allowed by this Act.

PROVISIONS:

1. PROVINCIAL EXECUTIVE AND PROVINCIAL LEGISLATURE:

i. The Governor-in-council constituted the provincial executive and the Governors had power to make rules for the conduct of business in the councils and each

Governor was authorized to determine times and places of meetings of his legislative council.

ii. The Charter Act of 1833 had taken away the powers and empowered the Governor-General-in-council to make laws for the personal and courts in British India, but this Act restored the Governor-in-council of Bombay and Madras.

iii. The power of local legislature was confined to the legislative works only and it could not interfere with the executive functions of the government.

iv. There were several restrictions on the power of the local councils to make laws for their respective territories.

v. The bill passed by the local council could not become law unless it received the assent of the local governor and also of the Governor-General-in-council.

vi. Besides the local council without the previous sanction of the Governor-General, could not make any law affecting the public debt of India, custom duties or other taxes imposed by the authority of the government of India, currency and coinage, the religion or religious rites and usages of any class of the crown's subject in India, the penal code of India, military or naval forces and the relation of the Government with Indian states.

vii. The Governor-in-council was empowered to establish by proclamation, a legislative council for Bengal and also for north west province and Punjab.

viii. The power of every legislative council was confined to the legislative works and the legislative council could not interfere with the executive functions of the government.

2. CENTRAL EXECUTIVE AND CENTRAL LEGISLATURE:

i. The council of the Governor-General was enlarged by adding one more ordinary member who was to be a law expert or jurist.

ii. The Act provided that of five ordinary members, atleast three must belong to the civil service and the fourth must be a Barrister or advocate of five years standing.

iii. The Secretary of State-in-council was empowered to appoint the commander-in-chief as an extraordinary member of the Governor-General council.

iv. The Governor-General was empowered to make rules for the conduct of business in council. In the exercise of this power lord canning introduced the portfolio system in India.

v. The legislative council of the Governor-General was reorganized and it consisted of ordinary, extraordinary and additional members nominated by the Governor-General.

vi. Not less than one-half of the members nominated by the Governor-General were to be non-official persons and the Indians were thus were associated with the work of legislation.

vii. The Governor-General was empowered in case of emergency to make and promulgate ordinances for peace and good governance and territories in India.

viii. The ordinances were to be good valid only for 7 months and they could be disallowed by the crown even before the expiry of the period of six months.

MERITS:

1. The Act restored to the Governor-General-in-council of Bombay and Madras the power of making laws for their respective territories and authorize the Governor-General-in-council to establish a legislative council for Bengal and also for the North west province and Punjab.
2. Therefore it was possible to make laws according to the local needs and local conditions and it was a step in the direction of the complete internal autonomy to the provinces.
3. Most of the non-official members chosen for the legislative council were Indians were associated with the legislative functions and this reduced the feeling of distrust prevailing among the Indians.

CHAPTER VII

THE INDIAN COUNCILS ACT,1892

The Indian Councils Act, 1892 introduced many changes in the constitutional set up of the Government of India they are:

1. The number of the Additional members of the Governor-general-in-council would not be less than and not more than 16, in Bombay and Madras not less than 20, in Bengal it was fixed at 20 and for Oudh and North west province the maximum number of additional members was fixed at 15.
2. Two-fifths of the additional members were to be non-officials. The principle of election was adopted but to a limited extent and a member after being elected was required to be nominated by the Government. The elected members could sit in the council only if they were nominated by the government.
3. The members of the legislative councils were authorized to discuss annual financial statements, but they were not given the right to vote on it or divide the house on any matter related to it. They were also authorized to ask questions on matters of public importance at a notice of six days.

CRITICAL APPRECIATION:

1. THE ACT MUST BE PRAISED FOR ENLARGING THE POWERS OF THE LEGISLATURES:

   They were authorized to discuss the annual financial statement of the government and thus they were provided opportunity to discuss the budget proposals of the government. The members of the councils could ask questions on matters of public importance. This enabled the members to discuss and criticize the financial policy of the government and also provided opportunity to the government to defend and explain its financial policy. These discussions were helpful in promoting the sound economic administration in India. However the legislatures had no control over the budget. They could discuss on annual financial statement of the government, but could not divide the house on any matter related to it. The members of the councils could ask questions on the matter of public importance, but could not ask supplementary questions. Thus, the legislatures were certain powers with several restrictions.

2. THE ACT MUST BE PRAISED FOR CONTAINING ELECTIVE PRINCIPLE:

   However, the system of election was not satisfactory, because elected members could sit in the council only if they were nominated by the government.

The persons elected did not represent the people in the real sense. The rule of election was also defective as certain classes were over represented and others were under represented.

3. THE PROVINCIAL COUNCIL WAS VERY SMALL:

They failed to represent the people of the provinces. In short the Act failed to meet the demands of the Indian National Congress, but it continued the elective principle and it enlarged the powers of the legislature to some extent. The Act thus paved the way for the establishment of the parliamentary Government in India.

UNIT-IV

CHAPTER-I

THE INDIAN COUNCILS ACT,1909

(MINTO-MORLEY REFORMS)

OBJECTS:

The Indian Councils Act,1892, failed to satisfy the Indian leaders. The political situation developing in India led the British authorities to think of introducing constitutional reforms with a view to secure the support of the moderate section in the Indian National congress. Mr.Gopal Krishna Gokhale, the chief leader of the moderate section in the congress went to England, met the Secretary of state for India, Lord John Morley and placed his views before him. Mr.Gokhale tried to convince Lord Morley, the Secretary of state for India, of the urgency of the constitutional reforms. Lord Minto , the Viceroy of India was also in favour of introducing new reforms and appointed a committee to enquire in to the matter. The committee submitted its report to the viceroy in October 1906 and it was forwarded to Lord Morley. A bill was prepared based on the report and several negotiations was made between Lord Minto and Morley. In 1909 the British Parliament passed it to become an Act called as Indian Councils Act,1909 and since this was by the efforts of Minto and Morley this Act was popularly known as Minto-Morley reforms. The main objects of this Act were

i. To increase the size of the legislative councils

ii. To enlarge the functions of the legislative councils

iii. To increase the proportion of elected members

iv. To secure the support of the moderate section in the Indian National congress

PROVISIONS:

1. SIZE OF THE LEGISLATIVE COUNCILS:

The size of the members of the legislative councils of the Governor-General was raised from 16 to 60 and in Bengal, Bombay and Madras it was raised from twenty to fifty and for U.P. the strength of members were raised from 15 to 50. The legislative councils consisted of:

i. Ex-officio members: The Governor-General and his councils were the ex-officio members of the central legislative council and the Governor and his councilors or Lieutenant Governor and his councilors were ex officio members of the provincial legislative council.

ii. Nominated official members

iii. Nominated non official members

iv. Elected members.

The majority of the nominated official members was maintained in the central legislative councils, but in the provincial legislative councils, the majority of the non-official members was created.

2. FUNCTIONS OF THE LEGISLATIVE COUNCILS:

i. The members of the legislative councils were authorized to discuss the annual financial statement of the government and could vote on it or divide the house on them.

ii. However certain heads as for eg. Customs, military works, interest on public debt, defense, etc were not open to discussion.

iii. These resolutions however had only the effect of recommendations and they were not binding on the executive authority and they were not authorized to move resolutions on any matter affecting the native sss States.

iv. This Act also authorized the members to ask supplementary questions.

3. SYSTEM OF ELECTION:

The Act of 1909, provided for the system of election for the appointment of non-official members of the legislative councils. The non-official members of legislative councils were of two types:

i. Nominated non-official members

ii. Elected non-official members

The classes of electorates were

i. General electorates

ii. Class electorates

iii. Special electorates.

The Muslims were given separate representation. The provision was made for the separate communal electorates for the Muslims. Besides the provisions was made for the special representation of the land holders and professional classes. The qualification for the candidates and also for the votes was prescribed by the regulations. Females, minors and persons of unsound mind were not qualified to

vote at any of the elections. Separate qualifications were prescribed for the Muslim electorates and also for the constituencies of the landholders.

4. Vice-presidents:

The Indian Councils Act, 1909 empowered the Governor-General, the Governors of presidencies and Lieutenant Governors having executive councils to appoint vice-presidents to act for them and also to preside over the meeting of the executive councils in their absence.

5. EXECUTIVE COUNCIL:

The number of the members of the executive councils of Bombay and Madras was raised from two to four. Indians were also made eligible for the appointment to the executive councils and Mr.S.P.Sinha, a lawyer was appointed to the councils of the Governor-General. This Act also empowered the Governor-General-in-council to establish executive councils for Lieutenant Governor's provinces and also for Bengal by proclamation after the approval of the secretary of the state-in-council. Except in case of Bengal it could be disallowed by either house of Parliament.

DEMERITS:

1. Creation of separate communal electorates for Muslims was the greatest defect of the Indian Councils Act,1909. It was nothing but to put one religion against the other. It was also against the democratic spirit. The Indian National Congress was very critical of the creation of separate electorates for the Muslims and also of the special representations of the landholders.

2. There was no non-official majority in the central legislative council. The non-official majority in the provincial legislative council was nominal and not real. The non-official members usually stood with the official members. The elected non-official members were in minority as against the official and nominated non-official members combined.

3. The franchise provided was restricted in nature. Except in few cases the representatives were elected by the system of indirect election. Besides the principle of nomination was also retained.

4. The Act failed to establish a responsible executive. The real power remained with the executive and legislature could criticize the executive government, but could not control it.

MERITS:

1. The size of the legislative councils was increased. The functions of the central and provincial councils were also increased. This Act empowered the members of the councils to discuss the annual budget, to propose resolutions on it and to divide the house on them and the members could also supplementary questions
2. The Indian Councils Act, 1892 contained the elective principle and the Indian Councils Act, 1909 extended the elective principle to some extent.
3. The non-official majority was provided in the provincial legislative councils.
4. Indians were made eligible for the appointment to the executive councils. Lord Minto and Lord Morley both were of the view that there must be an Indian in the central Executive and Mr.S.P.Sinha was appointed to the Governor General Council.

CHAPTER-II

GOVERNMENT OF INDIA ACT,1919

(MONTAGUE-CHELMSFORD REFORMS)

INTRODUCTION:

The Indian Councils Act,1909 failed to satisfy the Indian leaders. Limited nature of franchise, indirect election, separate electorates for the Muslims, inequalities in the franchise majority of the officials members in the central legislative council, majority of official members in the central legislative council and lack of power of the legislatives to control the executive were main defects of the Indian Councils Act, 1909. The main object of the 1909 Act was to secure the support of the moderate section in the Indian National Congress but the Act disappointed even the moderates. The Indian leaders realized that they would not get self-government as a gift and thus the Act of 1909 aggravated the demand for self government and in 1916 the Indian National congress demanded the declaration of British Government's future policy regarding self-government in India. Several Acts like Indian Press Act, 1910 and Defense of India Act, 1915 were enacted to suppress the Indian demands for self-government but they failed to suppress it. On account of the first world war the British government was in great need of the Indians co-operation and the Britishers realized that without allowing the provincial autonomy, India's co-operation could not be obtained. Lord Montague visited India and he along with the Viceroy Chelmsford toured all over India in order to study the Indian problems and they prepared a report which was popularly known as Montague-Chelmsford report. Based on this report the Government of India bill was drafted and the bill was passed by British parliament in 1919 and became an Act known as Government of India Act, 1919.

OBJECTS:

1. The object of the Act was to provide for the increasing association of Indians in every branch of Indian administration.
2. The aim was to establish a responsible government in India, but not at once. The progress was sought to be achieved by successive stages, but the aim was to make at once a beginning in this direction. It was made clear that the time and manner of each advance towards the establishment of responsible government in India would be decided by the British parliament and it would decide based on the co-operation given by Indians. It was also made clear that the responsible government would ultimately be established in India, but the British India would remain an integral part of British empire.

3. The Act was also to develop gradually self-governing institutions in India. Before allowing the Indians the complete control over all matters concerning India, it was thought necessary to train representatives and electoral and consequently it was thought the first the local affairs should be put under the control of Indians and then the provincial matters should be put under their control and when they would obtain sufficient experience and skill, they should be allowed complete control over all the matters concerning India.

4. The object of the Act was to provide to the provinces the largest measures of independence in provincial matters. The provincial governments were responsible to the representatives of the people in the administration of certain matters. The aim was to decentralize the authority without loosening the control of the central government.

PROVISIONS-SALIENT FEATURES:

1. HOME GOVERNMENT:

   i. In 1858, the British crown assumed direct responsibility for the administration of India and a new office known as Secretary of state for India was created in England and all the powers and functions so far exercised by the court of Directors and Board of control were transferred to him.

   ii. A council known as the Indian council was established to assist the secretary of state for India. The secretary of state-in-council was called the Home government of India and Indian affairs were controlled by the British parliament through this body.

   iii. The provision was made for payment of salary of the Secretary of state out of the British revenues, which before passing of this Act was paid out of the Indian revenues.

   iv. It also provided that the salaries of the under secretary or the secretary of state for India and other expenses of his department might be paid out of the British revenues.

   v. The Act introduced diarchy system in provinces and the provincial subjects were divided in to two groups namely reserved subjects and transferred subjects.

   vi. Reserved subjects were to be administered by the governor with the assistance of his executive councilors, while the transferred subjects were

administered by the governor with the assistance of the ministers, who were responsible to provincial legislature.

vii. This Act made provision for appointment of a High Commissioner and also introduced certain changes in the constitution of the Indian council i.e it was to consist of 12 members and Indians were 3 in number.

viii. The tenure of the members was reduced from 7years to 5 years and the salary of the members of the Indian council was increased from1000 pounds to 1200 pounds a year.

ix. An allowance of 600 pounds was given to those members who were domiciled in India at the time of their appointment.

x. Some of the functions of the secretary of state were transferred to the High commissions. He acted as an agent of the Governor-General-in-council.

2. GOVERNMENT OF INDIA

CENTRAL EXECUTIVE (GOVERNOR-GENERAL-IN-COUNCIL)

i. The executive powers were vested in the Governor-General-in-council and he was appointed by his Majesty and his council of members were also appointed.

ii. At least three members of the council were to be the persons who had been for at least 10 years in the service of the crown in India and one of them was to be a Barrister of England or Ireland or a member of the faculty of Advocates of Scotland or a pleader of a High court of not less than 10years standing.

iii. It was made clear that if any member of the council other than the commander-in-chief for the time of his appointment, he was not to hold any military service at the time of his appointment, he was not to hold any military command or he was not to be employed in actual military command.

iv. The number of Indian members was increased to three and the civil and military government of India was vested in the Governor-in-council.

POWER OF GOVERNOR-GENERAL:

i. The Governor-General was to carry out his functions with the advice and concurrence of the council, but he could overrule the decision of the council if he was satisfied that the decision was harmful or wrong and also to preserve peace and tranquility of the country.

ii. He had direct contact with the secretary of state and was considered the representative of the king.

iii. He was the chairman of the council who had to distribute work to the members of the council and to summon the meetings of the council and also to make rules for the transaction of the business in the council.

iv. Besides he was empowered to summon or dissolve or extend the terms of the central legislature and could stop the proceedings of any chamber on any bill if he thought that the discussion on it would affect the peace and tranquility of British India.

v. The Governor-General ceased to be the president of the Legislative Assembly, but he was empowered to nominate the first president for 4 years and thereafter the legislative assembly was authorized to elect one of its members as president, subject to the approval of the Governor-General.

vi. He was empowered to issue ordinances for the country and no bill could become an Act without his assent and he had power to assent to withhold is assent from any bill passed by the legislature.

vii. Any measure affecting the following could not be introduced in the legislature without the previous sanction of the Governor-General

   a. The public debt or public revenues of India

   b. The religion or religious usages of British subjects in India

   c. His majesty's military, naval or air force

   d. Foreign relations

   e. Provincial subjects

   f. Amending or repealing an Act of a provincial legislature

   g. Amending or repealing an ordinance issued by the Governor-General.

viii. He was empowered to put on the statute book the bill rejected by the legislature if in his opinion it was in the interest of British India.

ix. He head several powers relating to provincial administration and was not responsible to the provincial legislature but to the Governor-General.

x. Prior sanction of the Governor-General was necessary for introducing any bill imposing new taxes, affecting public debt or customs duties or any other

duties, affecting his majority's naval, military or air force, relating to any central subject, etc.

xi. The bill passed by the provincial legislature and assented to by the Governor required the assent of the Governor-General

CENTRAL LEGISLATURE (SETTING UP OF BICAMERAL SYSTEM OF LEGISLATURE AT THE CENTRE)

a. The Government of India Act, 1919 made the central legislature a bicameral legislature, before this Act the central legislature consisted of only one house, but under this Act the central legislature consists of two houses namely the council of state or the upper house and the legislative assembly or the lower house.

b. The upper house consists of 60 nominated or elected persons and maximum number of the official members was fixed at 20.

c. The lower house consists of 140 members but it was provided that by making rules the number of its members could be increased, actually the lower house consists of 145 members.

d. Thus the central legislature consists of 205 members, while under the Act of 1909 it had only 68 members. The majority of the elected members was established in both the houses.

e. Under this Act the central legislature consists of the Governor-General, the council of states and legislative assembly.

f. The tenure of the lower house was 4 years and the upper house was 5 years, but the Governor-General could dissolve either house earlier or he could extend the tenure of either house.

g. Provision was made for the special representation of the landholders etc, communal representation was retained, eg. Muslims and Sikhs were allowed separate representation.

h. The right to vote was based on the fulfillment of certain property qualification and those who paid certain amount of land revenue, Income Tax and Municipal taxes were entitled to vote.

i. Under this Act the subjects of administration were divided in to central subjects and provincial subjects.

j. The important subjects included in the list of central subjects were post and telegraph, communication, defense, foreign relations, public debts, civil criminal law and

procedure, commerce and shipping, tariffs and customs, patents and copyrights and currency and coinage.

k. The subjects included in the provincial subjects were local self-government, education, water supply and irrigation, agriculture, co-operative societies, public works, police and jails, administration of justice, public health, medical administration and industries.

l. The Governor-General-in-council could declare a central subject as a provincial interest and on such declaration the provincial legislature could make laws in respect of those subjects.

m. Similarly the Governor-General-in-council could authorize the central legislature to make laws in respect of the subjects included in the list of the provincial subjects.

n. All matters not included in the list of the provincial subject were treated as the central subjects.

o. The central legislature was empowered to make laws in respect of the subjects included in the list of central subjects and with the previous sanction of the Governor-General it could legislate on the provincial subjects.

p. Measures affecting the following could not be introduced in the central legislature without the previous sanction of the Governor-General:

    1. Public debts and public revenues of India
    2. Religion and religious usages of the British subjects in India
    3. His majesty's military, naval or air force
    4. Foreign relations
    5. Provincial subjects
    6. Amending or repealing an Act of a provincial legislative power
    7. Amending or repealing an ordinance issued by the Governor-General.

q. The Act of 1909, the members who asked the original questions from the members of the executive could put supplementary questions also, but under the Government of India Act, 1919 the right to put supplementary questions was extended to other members also and thus under the Act, 1919 this right was not limited to the members who asked the questions originally.

r. The budget was to be prepared by the Governor-General-in-council and thereafter it was to be presented in both the houses and the budget could be votable or non-votable.

s. The central executive was not responsible to the central legislature, but to the Secretary of state for India and Secretary of state for India was responsible to the British Parliament for the administration of Indian affairs.

CHAPTER-III

DYARCHY

(PROVINCIAL GOVERNMENT)

PROVINCIAL EXECUTIVE:

1. The dyarchy was introduced in the provinces and "di" means two and "orchia" means rule. Thus the word "dyarchy" signifies double government.
2. The subjects of administration were divided in to central subjects and provincial subjects. The central subjects were to be administered by the central government while the provincial subjects were to be administered by the provincial governments.
3. The matters of all India importance were included in the list of the central subjects and matters of local importance and interest were included in the list of the provincial subjects.
4. The provincial subjects were further divided in to transferred subjects and reserved subjects. The transferred subjects were to be administered by the Governor with the help of ministers who was responsible to the provincial legislature. The Governor was not responsible to the provincial legislature but to the Governor-General.
5. The reserved subjects were to be administered by the Governor with the help of his executive councilors, who were not responsible to the provincial legislature, but to the Governor-General and through him to the Secretary of state for India and through the Secretary of state for India to the British Parliament.
6. The transferred subjects were local self-government, education, public health, sanitation, public works, agriculture, co-operative societies, religious and charitable endowment, museums, registration of birth and death etc.
7. The reserved subjects were irrigation and canals, administration of justice, development of industries, development of mineral resources, police, water supplies, land revenue and land acquisition, famine relief, control of newspapers etc.
8. The controversy as to whether a subject was transferred or reserved was to be settled by Governor and his decision was final.

ADMINISTRATION OF TRANSFERRED SUBJECTS:

a. This subjects were to be administered by the Governor with the help of his ministers and the ministers were to be appointed by the Governor and they were to be in the office during the governor's pleasure.

b. He could not remain as minister for more than 6 months, unless he became a member of the provincial legislature.

c. The ministers were responsible to provincial legislature and he could compel a minister to resign on the ground of want of confidence in him and it could also reduce the salary of the ministers.

d. The ministers were thus to please two masters, the provincial legislature and the Governor of the province, because the Governor could dismiss them even without any reason.

e. The Governor was expected to accept the advise of his ministers in the administration of the transferred subjects, unless there was sufficient reason to refuse advise given to him by his ministers.

f. The ministers were not united and there was no team spirit among them.

g. The intention of the framers of the Act was that the ministers should follow the principle of joint or collective responsibility, but they did not have any opportunity to act on this principle.

ADMINISTRATION OF RESERVED SUBJECTS:

a. It was administered by the Governor with the help of executive councilors and they were appointed by the British crown on the recommendation of the Secretary of state for India for 5 years.

b. Their salaries were fixed and they were not subject to the vote of the provincial legislature.

c. The members of the executive council were ex-officio members of the provincial legislature and it is to be noted that they were not responsible to the provincial legislature, but to the governor General and through him to the Secretary of state for India and through Secretary of state for India to the British parliament.

d. The Governor was not bound even by the majority decision of the council and he could override the majority decision if in his opinion the majority decision was wrong.

DEFECTS:

A committee under the chairmanship of Sir Alexander Muddiman was appointed to examine the working of the dyarchy in the provinces.

1. The decision of the provincial subjects in to transferred and reserved subjects was not clear and reasonable. The subjects like agriculture was placed in the list of transferred subjects while irrigation was placed in the list of reserved subjects. The important subjects like police, administration of justice, development of industries were included in the reserved subjects and put under the control of the Governor and his councilors who were responsible to the legislature.

2. The ministers were not masters of the departments, because they had no control over the public servants of the departments under their control. The transfer and promotion of the public servants was under the control of the Governor.

3. The Governor was over empowered. He was not merely a constitutional head but he had real power to administer to provincial subjects. He was to administer the reserved subjects with the help of the executive councilors and transferred subjects with the help of ministers. He had complete control over the ministers and also had power to remove or appoint any minister.

4. The members of the Indian civil service did not co-operate with the ministers in the administration of the transferred subjects. The ministers had no voice in their appointment, transfers and promotions etc and consequently they failed to control them.

5. The finance department was in the control of a member of the executive councilors. It neglected the demands of the ministers for money and refused to sanction money for the schemes prepared by the ministers. Consequently the ministers failed to implement their plans or schemes on account of paucity of funds.

6. The Indian National Congress was against the system of dyarchy. On account of its non-co-operation, the ministers were chosen from other groups. They did not have support and they were appointed by the governor on individual basis.

7. There was a tussle between the executive councilors and the ministers because the government was divided and both were under the control of Governor. In the conflict between the executive councilors and ministers, the Governor often sided with the executive councilors and this conflicts barred the administrative efficiency and resulted ultimately in the failure of the system of dyarchy.

CHAPTER-IV

THE GOVERNMENT OF INDIA ACT,1935

FEDERAL GOVERNMENT

FEDERAL EXECUTIVE(DYARCHY AT CENTRE):

1. The Government of India Act, 1919 introduced dyarchy in provinces. The Government of India Act, 1935 proposed the establishment of dyarchy at centre and it abolished dyarchy in provinces.
2. The federal subjects were divided in to reserved subjects and transferred subjects. The reserved subjects included external affairs, ecclesiastical affairs, defense and tribal affairs and it were to be administered by the Governor-General with the help of executive councilors.
3. The executive councilors who were the ex-officio members of the federal legislature were appointed by Governor-General.
4. The Governor-General were appointed by the British crown and he was responsible to the Secretary of the state for India and through him to the British parliament.
5. The salaries of the executive councilors were determined by the king-in-council and the federal legislature had no control over the Governor-General and King-in-council.
6. The governor-general in the administration of the reserved subjects could take advice of the executive councilors, but their advice was not binding on the governor-general.
7. The transferred subjects were administered by the governor-general with the aid and advice of the council of ministers, who was appointed and could be dismissed by the governor-general.
8. There was no direct provisions for the office of prime minister, but the persons who had stable majority in the house of assembly and on whose advice the ministers were to be appointed was to act as the prime minister.
9. A minister was to cease to hold the office if for a consecutive period of 6 months he was not a member of any house of the central legislature. The ministers were to be responsible to the central legislature and they could be removed by the central legislature.

POWERS OF GOVERNOR-GENERAL:

The Governor-general was a very powerful authority under this Act who could exercise his powers even without consulting his ministers. But there was certain powers which were to be exercised by him by consulting his ministers.

A. POWERS- WHEN HE COULD EXERCISE HIS INDIVIDUAL JUDGEMENT:

The Governor-general was to exercise his individual judgment in the matters categorized by the Act as his special responsibilities. In the exercise of these powers, he was required to consult his ministers, but he was not bound be their advice. This category of powers of the Governor-general included the powers

a. To prevent any grave menace to the peace and tranquility of India or any part
b. To protect the rights of any Indian state and rights and dignity of the rules
c. To prevent discriminatory taxation against goods of British origin
d. To protect the legitimate rights of the public servants and also of their dependents.

B. POWERS-WHEN HE COULD ACT AT HIS DISCRETION :

There were certain powers which were to be exercised by the Governor-General in his discretion even without consulting his ministers. It is to be remembered that in the exercise of these powers he was not required even to consult his ministers. The difference between the powers, when he could exercise his individual judgment and the powers, when he could act at his discretion was that in the exercise of the former he was required to consult his ministers although he was not bound to act according to the advice, but in the exercise of the latter he was not required even to consult his ministers.

EXECUTIVE:

1. The governor-general, who was the executive and administer reserved subjects had power to appoint the ministers and also dismiss the ministers.
2. He was empowered to preside over the meetings of the council of ministers and was also empowered to appoint the councilors, financial advisors, the chief commissioners for Delhi, Ajmer, Marwar, Baluchistan and Coorg, chairman and members of federal public service commission, president and members of the railway tribunal and directors and deputy directors of the Indian Railway company.

3. He was also empowered to frame regulations for the peace and good governance of British, Baluchisten, Andaman and Nicobar Island.

LEGISLATIVE:

The Governor-General had wide legislative powers. He could summon and dissolve the lower house and joint sessions of the two houses of the federal legislature. He was also given power to sanction for introduction of certain bills in the legislature or could refuse for it. He was also empowered to issue ordinances and could issue directions to the governors in case they had acted at their own discretion or exercised individual judgment.

FINANCIAL:

The Governor-General was empowered to exercise control on non-votable heads of expenditure contributing over 80% of the whole of the budget. He could restore any demand for grant rejected or reduced by the central legislature. He was also empowered to recommend proposals for taxation and expenditure.

In exercise of all these powers, the Governor-General was to use his discretion and was not required even to consult his ministers.

FEDERAL LEGISLATURE-ITS COMPOSITION, POWERS AND FUNCTIONS OF THE FEDERAL ASSEMBLY AND COUNCIL OF STATES:

The federal legislature consisted of the king, represented by the Governor-General, the council of states and federal assembly. The council of states was to be the upper house of the federal legislature. It was a permanent body and one third of its members were to retire every 3 years. It represented the units of the federation. It consist of 156 representatives of British India and up to 104 representatives of the Indian states and they were to be nominated by the ruler.

FEDERAL ASSEMBLY:

It was to be the lower chamber of the federal legislature. It was to consist of 250 representatives of British India and up to 125 representatives of the Indian states. It was to have maximum duration of 5 years, however it could be dissolved earlier by the Governor-General. The representatives of Indian states were to be nominated by their rulers and representatives of British India were to be elected through indirect elections.

POWERS OF FEDERAL LEGISLATURE:

1. It could make laws for the federation states on the subjects specified in the instrument of the accession. As regards British India, the federal legislature could make laws on the subjects specified in the federal list and concurrent list.
2. If a law made by a provincial legislature on a subject stated in the concurrent list was found against the law made on the subject by the federal legislature, the law made by it was to prevail and the provincial law was to be void to the extent of repugnancy.
3. In case of proclamation of emergency by the governor-general, the federal legislature could make laws on the subject specified in the provincial list. However the bill for the purpose could be introduced only with the previous sanction of the Governor-General .
4. A bill passed by both the chambers was to be presented to the Governor-General for his assent and could not become an Act without his assent.
5. He could also return the bill to the chambers for reconsideration, when a bill reserved by the Governor-General for his majesty's pleasure, it could not become law unless within 12 months from the date of its presentation to the governor-general.
6. Besides the federal legislature could not alter, amend or repeal the Government of India Act,1935. It was empowered to make law on certain matters.
7. The bills other than finance bills might originate in any chamber, the finance bill could originate only in federal assembly.
8. The bill was to be presented to the governor-general for his assent only when it was passed by both the chambers in exactly the same form.
9. If a bill passed by one chamber was rejected by the other chamber or bill passed by one chamber was passed by other chamber with amendments which were not acceptable to the former, the governor-general could summon the joint sitting of both the chambers to remove the difference between them. The decision was to be taken by a majority of votes of the members of both the chambers present and voting.
10. The governor-general was to prepare "annual financial statement" and to place it before both the chambers of the federal legislature.
11. This statement was show the sums required to meet expenditure charged upon the revenues of the federation and the sums required to meet other expenditures.
12. The sums stated in the statement as necessary to meet the expenditure charged upon the revenue of the federation were not subject to the federal legislature.

FEDERAL COURT:

1. The Federal court was established having a chief justice and such puisne judges as the British crown would deem necessary. The number of puisne judges was not to be more than six and the judges were to be appointed by the British crown.
2. They were to hold office up to the age of sixty-five years and a judge could be removed from the office on the grounds of misbehavior or of mental or bodily infirmity.
3. The qualification to be a judge was he must be a judge of a high court in British India or in a federal state for at least 5 years or a barrister of England or northern Ireland of at least 10 years standing or a member of the faculty of advocates in Scotland of at least ten years standing or a pleader of a high court of ten years standing.
4. The chief justice required to be a barrister or advocate or pleader of at least 15 years standing and he was required to be a barrister, advocate or pleader when he was appointed to the office of the jurisdiction of the federal court. And this court had original, appellate and advisory jurisdiction.

ORIGINAL JURISDICTION:

1. The federal court was given exclusive original jurisdiction in the case of dispute between any two or more of the federation, any of the federated states if the dispute involved any question of law or fact on which the existence or extent of a legal right depended.
2. Its original jurisdiction was not extended to dispute to which a state was a party, unless the dispute concerned the interpretation of the Government of India Act,1935.
3. This jurisdiction was not to extend to a dispute arising under any agreement expressly providing that this jurisdiction would not extend to such a dispute. In the exercise of this jurisdiction the federal court was to pronounce only a declaratory judgment.

APPELLATE JURISDICTION:

1. The federal court was empowered to hear appeals from any judgment, decree or final order of a high court in British India if a high court certified that the case involved substantial question of law as to interpretation of this Act or any order-in-council made there under.

2. However with the previous sanction of the governor-general, the federal legislature could make provision for appeals in civil cases from the high court in British India to the federal court even without the aforesaid certificate if it involved a case valued at not less than Rs.50,000.

3. The appeals from high court in the federated states were also allowed to the federal court. The Act provided that the appeals from the high court in a federated states would lie to the federal court on the ground that a question of law had been wrongly decided being a question which concerned the interpretation of this Act or of an order-in-council made there under.

ADVISORY JURISDICTION:

The Governor-general was empowered to refer any point of law to the federal court for its opinion. The federal court was to pronounce its opinion on such reference in open court.

APPEAL FROM THE FEDERAL COURT TO THE PRIVY COUNCIL:

The federal court was not the final court. The appeal from the judgment of the federal court could lie to the privy council without leave from it, if the judgment was given by the federal court in the exercise of its original jurisdiction in any dispute which involved an interpretation of this Act or of an order-in-council made there under or which concerned extent of the legislative or executive authority vested in the federation by the virtue of instrument of accession of a state or which arose from any agreement made between the federation and any federating state in relation to the administration in the state of a law made by the federal legislature. In other cases the appeals from the judgment of the federal court could be brought to the privy council by leave of the federal court or his majesty-in-council.

CHAPTER-V

PROVINCIAL AUTONOMY

RESPONSIBLE GOVERNMENT INPROVINCES:

16. The provinces under the Government of India Act,1935, were provided more autonomy. It provided abolition of dyarchy in the provinces and therefore there was no important department of the Government which was beyond the control of the ministers.

17. However the Governor had certain powers in the exercise of which he was not required even to consult his ministers.

18. Besides the Governor had special responsibilities and in discharge of his special responsibilities he was to act in his individual judgment and was required to consult his ministers, but he was not bound to follow his advice.

19. The Governor was to appoint the ministers and he was also empowered to dismiss them and a member of any house could be appointed as minister. If at the time of appointment he was not a member of the legislature, he was required to become a member thereof within 6 months.

20. However the responsible government could not be established in the provinces on account of the vast powers of the governors and Governor-General and the Governor had several powers falling in the category of his discretionary powers in the exercise of which he was not required even to consult his ministers.

21. Such powers of the Governor included power to take steps to prevent any attempt to overthrow the government, to safeguard the interest of the minorities and to secure the protection of rights of the Indian princes.

22. Besides there were certain special responsibilities in the discharge of which he was to act in his individual judgment, but he was required to consult his ministers, but he was not bound to follow their advice.

23. Such special responsibilities of the Governor included his responsibility for prevention of any grave menace to the peace and tranquility of his province or any parts.

24. The Governor was given various powers but he was not responsible to the provincial legislature but to the Governor General and the governor was appointed by the British crown and the Governor-General was able to intervene in the affairs of the province.

25. The Act provided the distribution of powers among three lists namely federal lists, provincial list and concurrent list.

26. There were several other restrictions on the legislative power of the provincial legislature and it could not make any law affecting the sovereign or suzerainty of the British crown. But it could not make any law amending the Government of India Act,1935.

27. Besides prior sanction of the governor-general was necessary for the introduction in the provincial legislature of the bills which repealed, amended or was repugnant to any Act of the Parliament extending to the British India and prior sanction of the Governor was necessary for the introduction of the bills.

28. Besides the Governor could summon the provincial legislature and dissolve the lower house and he could not enact legislation known as Governor's Act and he could promulgate ordinances also.

29. Besides the expenses which were charged on the provincial revenue could not be voted by the provincial legislature. It was for the Governor to decide whether or not a proposed expenditure was a charge on the provincial revenue.

30. The votable expenditure was to be submitted to the provincial legislature in the form of demands of grant and the Governor was empowered to restore any demand for grant rejected or reduced by the provincial legislature.

31. Thus the Act failed to introduce full responsible government in the provinces and similarly the provincial autonomy provided under this Act was also not complete.

UNIT-V

LEGAL PROFESSION IN INDIA BEFORE 1726

1. Charter of 1661, granted by Charles II made the first provision for the exercise of judicial powers by the company. It was authorized be govern its employees in a legal and reasonable manner.
2. General Judicial authority was given to the Governor and council of each factory to judge all persons belonging to them according to the laws of the kingdom.
3. The authority of the company came to be exercised at Madras(1639), Bombay(1668) and Calcutta).
4. The Charter of 1683 introduced lawyer, judges of the Admiralty court. The Admiralty court was established at Bombay in 1684 and Madras in 1686.
5. The company was not interested in organizing the legal profession the legal profession and was reluctant in sending lawyers from England to India.
6. The whole judicial system was executive oriented. Before 1726, the courts were court of east India Company and derived their authority not from the British crown but from the company. Each settlement had its own judicial system and distinct from others.

CHARTER OF 1726:

1. It was granted by George-I, established Mayor's court in all the presidency towns. Mayor's court was not a company's court but a crown's court. They were to follow well defined procedure based on English laws.
2. No provision was made laying down any particular qualifications for the persons who would be entitled to act or plead as legal practitioners in these courts.
3. Even the charter of 1753 made no effective change in the legal profession and no organized legal profession in the presidency towns during the period of Mayor's court. Those who practiced law were denied of legal training or knowledge of law.

LEGAL PROFESSION UNDER THE SUPREME COURT:

1. The Regulating Act, 1773 empowered the British crown to establish a supreme court at Calcutta and this court framed rules of procedure for administration of justice and due execution of its powers.
2. Charter of 1774 empowered the supreme court to approve, admit and enroll such and so many advocates and attorneys at law as to court shall meet.
3. The Supreme court was to have power to remove any advocate or attorney.

4. Clause II of the Charter of 1774 made it clear that no other persons but advocates or attorneys could appear and plead or act in the supreme court on behalf of such suitors or any of them.
5. The term 'advocate' at that time extended only to English and Irish Barristers and members of faculty of Advocates in Scotland. The expression 'Attorney' means only the BRITISH Attorneys.
6. The indigenous Indian legal practitioners such as vakils, mukhtams had no entry to this court. There were no Indians possessing the degree of 'Barrister' at that time.
7. The British advocates took advantage of this provision and began to exploit Indians. They used to change more than 5 to 7 times excess than in England.

LEGAL PROFESSION IN INDIA:

ACT OF SETTLEMENT:

After the establishment of Supreme court at Calcutta, a serious conflict arose between the judges of that court and the Governor-General and council. To avoid this conflict, Act of Settlement was passed in 1781. It did not introduce any change in the legal profession so far as the Supreme court was concerned. However it empowered the Governor-General and council to frame regulations to be sent to the court of directors and secretary of state within 6 months. The king-in-council could disallow or amend any such regulation within 2 years.

DEVELOPMENT OF LEGAL EDUCATION

Legal education id necessary for the spread of legal knowledge.

OBJECTS:

1. To produce professional lawyers
2. To develop proper mental habits by learning to think like a lawyer, to become familiar with some of the basic concepts and principles in law and to learn the basic skills i.e the main tools of good lawyer
3. To prepare academicians, researchers, scholars and critics in the legal field
4. To bring a new social change by playing a dynamic role in democratic process.

LEGAL EDUCATION IS DIVIDED IN TO 3 DIVISIONS:

i. Academic

ii. Legal literacy

iii. Continuous legal education to advocates

i. ACADEMIC LEGAL EDUCATION BEFORE INDEPENDENCE:

1. The imparting of legal education in India had begun during the British period much before our independence.
2. The courts required legal persons both in bar and bench and legal education in Britain produced Barristers.
3. On similar lines law courses were started in the Hindu college, Calcutta, Elphinstone college, Bombay and at Madras in 1855.
4. Initially only males were allowed to study law course and in the beginning of 20^{th} century only, ladies begun to study this course.
5. Before independence the study of law was not taken as a very serious exercise and a law school had to be a self financing institution and a money making concern so that it could feed the teaching of other disciplines in the university.
6. The Degree of bar at law was more prestigious drawing social status and highest qualifications than mere LLB from Indian Universities. Those who could afford to go England studied Bar-at-law.

7. During initial stages, law was not a full time course. There were no adequate law libraries and proper law books and most of the law teaching was conducted by professional lawyers on a part time basis.
8. The law Degrees to persons who had completed graduation were given two years law course and in some universities there was a 3 years course.

AFTER INDEPENDENCE:

UNIVERSITY EDUCATION COMMISSION 1948:

1. As two years was not sufficient to cover important branches of law, three years LLB Degree course was introduced
2. The Commission also recommended the practical training for students
3. Legal history of India, Jurisprudence, constitutional law, International law should be given more attention
4. Two more years of Master Degree of law after LLB course was also recommended by the commission.

ALL INDIA BAR COMMITTEE REPORT, 1951:

1. It states minimum qualification for admission to the roll of advocates should be a law Degree obtained after 2 years study in law in the University after having graduation in Arts, science or commerce and a apprentice course of study for one year in practical subject and after attending certain % of lectures for imparting instruction during apprentice course.
2. It also recommended that a legal education committee of persons for All India Bar Council which shall recommend for the improvement of legal education.
3. This committee should consist of two judges, five persons elected by All India Bar Council, five persons from universities co-opted by these 7 members.

FIRST LAW COMMISSION OF INDIA 1958:

ITS RECOMMENDATIONS:

1. The entrance qualifications for LLB should be graduated from a University but not intermediate examination.
2. Duration should be two years.
3. After a Bachelor of law, a law graduate could make a choice whether to adopt an academic or professional career

4. To enter legal profession, practical course is necessary
5. Teaching to be full time
6. The government had to provide financial assistance to law teaching institutions
7. Methods of teaching to include seminars, group discussions, tutorials
8. Those in employment or doing other studies in eligible for full time law courses
9. The object of achieving a uniform standard of legal education for admission to the bar to be left to the Bar council of India.

UNIVERSITIES COMMITTEES ON LEGAL EDUCATION:

1. The committee appointed by the Bombay universities, 1949 recommended to retain the intermediate examination for admission to the law degree course. But the law commission suggested graduation for this.
2. The committee by the Banaras Hindu University (1962) recommended:

a. Increasing the duration of LLB course from 2 to 3 years after graduation

b. Introducing certain new courses in the LLB curriculum

c. Introducing semester system

d. Eliminating certain traditional courses not relevant to the emerging and contemporary Indian society.

The committee appointed by the university of Delhi in 1963 recommended:

i. Graduation as the qualification for admission to the LLB course

ii. Duration of the LLB course should be 3 years on the basis of six semesters

iii. Part time colleges should be allowed to function and duration- 4 years and not three

iv. Use of lecture cum case method had to be followed for the purpose of teaching law

v. Law to be taught in English and in due course in Hindi

vi. The library to have all necessary legal literature

vii. Practical training must for students to take legal profession

viii. A council of legal education to be established.

ROLE OF UNIVERSITY GRANTS COMMISSION: (UGC)

i. This commission was established by an Act of Parliament in 1956

ii. UGC may recommend to any university the measures to improve university education

iii. UGC is also the authority dealing with the grant of application to the law colleges and releasing grants

iv. UGC in order to promote excellence in teaching law at under graduate and post graduate levels started curriculum development programme.

v. The committee proposed 32 papers for LLB and 26 papers for LLB (Hons)

vi. UGC extended full co-operation to the Bar Council of India for a move towards 5 year course after 10+2 through All India Examination

vii. UGC organized 4 regional workshops on legal education at Madras, Chndigarh, Pune and Patna

viii. UGC has also helped the law faculties through creation of posts of Professors and readers, grants for libraries and fellowship for research etc

ix. National Eligibility test (NET) to get eligibility for teaching in law colleges and for research work in law

ROLE OF UNIVERSITIES:

i. The universities are responsible for granting affiliation to law colleges as per the guidelines of statutes.

ii. They have to restructure the syllabus from time to time as the need of the hour demands.

iii. The universities play a leading role in developing new programmes, courses curriculum, training of teachers and for monitoring the programmes.

ROLE OF BAR COUNCIL IN INDIA:

Bar Council as per the Advocates Act 1961 is to provide legal education and to lay down rules for such education in consultation with the universities and state Bar councils:

1. There shall be a 5 year course of law comprising of two parts. Part I will be 2 years core programme of pre-law study and part II a three year programme for professional training in law

2. For admission to law course, a pass in +2 must
3. The law Degree must be obtained through regular course in daily reorganized law colleges for 5 years
4. The course of study in law include requisite number of lectures, tutorials, moot courts and practiced training given by the college affiliated to a university reorganized by the Bar council of India
5. The present 3 years law course after graduation may continue for certain period but will be shifted to 5 years course
6. The law education – only through full time
7. Lateral entry will be permitted to part II of the 5 year law course at the discretion of the universities to the candidate who has a post graduation degree or 3 years degree course with atleast 50% of marks in the Bachelor degree examination.
8. Pre-law courses include 7 compulsory papers of General English, political science, sociology, economics, history, legal language including legal writing and history of courts, legislatures and legal profession.
9. From 1998-99 new syllabus for part II LLB of 5 year course and 3 year degree course include 21 compulsory legal papers with 4 compulsory practical training papers and 3 optional papers
10. Medium of instruction-English
11. Every university shall Endeavour to supplement the lecture method with the case method, tutorials and other modern techniques of imparting legal education.

LEGAL LITERACY:

Legal services authorities Act, 1987, provides that the District Legal Services Authorities and State Legal Services Authorities to take appropriate measures for spreading legal literacy and awareness amongst people and in particular to educate weaker sections of the society about the rights, benefits and privileges guaranteed by the social welfare legislations. The legal services authorities should involve NGO s and LLB students in their legal literacy camps and enlighten the public about the laws on women and child welfare, laws relating to SC, STs and Backward classes and environmental protection etc.

PROVISIONS FOR ENROLMENT OF ADVOCATES UNDER THE COURTS ACT, 1861

1. Before the enactment of High Court Act,1861, there were in existence three bodies of practitioners in the Supreme court and Sardar Adalats namely Advocates, Attorneys and Vakils.
2. Advocates were mainly the Barristers of England or Ireland or the members of the faculty of advocates of Scotland.
3. The vakils were the Indian practitioners and Attorneys were the British Attorneys or solicitors.
4. Clause 9 of the letter patent of 1865 of the High court of Calcutta empowered the court to approve, admit and enroll such and so many advocates, vakils and attorneys as to the said High court's need.
5. These persons were authorized to appear and to plead and act for the suitors of the high court and this was as per the rules and directions determined by the High court.
6. The clause 10 of the letters patent, 1865 states "the said High court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be advocates, vakils and attorneys-at-law of the said high court and shall be empowered to remove or to suspend them from practice on reasonable cause.
7. Similar provisions were made in the charters of Bombay and Madras. At first vakils were not allowed by the High court of Calcutta in its ordinary original jurisdiction but allowed on the appellate side. But the madras High court allowed vakils in both the jurisdiction from the beginning.
8. The Bombay High court at the beginning followed the High court of Calcutta. In 1916, the high court of Madras, in Namberumal Chetty V.Narasimhachari, held that allowing the vakils was within the powers conferred on the court of letters Patent of 1865.
9. In case of time, the High courts of Calcutta and Bombay also liberalized their rules and allowed vakils to practice on their original side. This put an end to the monopoly which the Barristers had enjoyed in the Supreme courts preceding the High courts.

THE ADVOCATES ACT,1961

As a result of the report of "All India Bar Committee", the Government of India enacted the Advocates Act,1961. The president signed on it on 19.05.1961.

The preamble of the Act says that it is an Act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and All India Bar.

The Act has undergone several amendments since its enactment to bring changes with the changing times and to solve the practical problems.

The Advocates Act contains 60 sections in all 7 chapters:

CHAPTER I: Preliminary issues such as short titles, extent and commencement and definitions

CHAPTER II: Deals with Bar Councils (section 3 to 15)

CHAPTER III: With admission and enrolment of advocates and contain (section 16 to 28)

CHAPTER IV : Deals with the right to practice (sections 29 to 34)

CHAPTER V : Conduct of advocates (sections 35 to 44)

CHAPTER VI: Contains miscellaneous issues (section 45 to 52)

CHAPTER VII: Temporary and transitional provisions (section 53 to 60)

ADMISSIONS AND ENROLMENT OF ADVOCATES:

A person shall be qualified to be an advocate on a state roll, if he fulfills the following conditions:

a. Citizen of India, however a national of any other country may be admitted as an advocate if citizen of India, duly qualified
b. He has completed 21 years of age
c. He has obtained a degree in law, foreign law degree can also be recognized by the Bar Council of India
d. He fulfils other conditions as specified in the rules made by the state Bar Council
e. He has paid, in respect of enrolment, stamp duty if any chargeable under India Stamp Act, 1899 and enrolment fee payable to the State Bar Council (Rs.600/- and to the Bar Council of India Rs.150/- by a bank draft.

DISQUALIFICATION:

According to section 24-A no person shall be admitted

a. If he is convicted of an offence involving moral turpitude

b. If convicted of an offence under the provisions of untouchbility offences Act,1955

c. If dismissed from employment or office under the state or any charge involving moral turpitude

SENIOR AND OTHER ADVOCATES:

Prior to the Advocates Act, there were six different classes of legal practitioners namely Barristers, Attorneys, advocates, vakils, mukhtars and revenue agents. But this Act abolished them and made only one class of legal practitioners known as advocates. There is a uniform qualification for the appointment of advocates.

According to section 16, there shall be two classes of advocates – senior and other advocates.

SENIOR ADVOCATE:

Designating an advocate as a senior advocate means recognition of his professional skill, long standing in the bar, experience and services rendered to the society. An advocate can be called as senior advocate on the basis of his ability, his long standing at the bar, his special knowledge in law and confirmation by the Supreme court or High court.

SOME RESTRICTIONS ON SENIOR ADVOCATES IMPOSED BY THE BAR COUNCIL OF INDIA RULES 1975:

1. A senior advocate shall not file a vakalat name or act in any court or tribunal or before any person or authority.
2. He shall not appear without an advocate on record in the supreme court or without an advocate of the state roll in any court or tribunal
3. He shall not accept instructions to draft pleading or affidavits
4. He is free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate.
5. He shall not accept directly from a client any brief or instruction to appear in any court or tribunal
6. He may in recognition of the serious rendered an advocate of the state roll appearing in any matter pay him a fee which he considers reasonable.

The Act recognizes only one class of practitioners namely advocates. Every Advocate whose name is entered in State roll shall be entitled to practice throughout the territories to which the Act extends in all courts including Supreme court, before any tribunal or any other authority, before whom such advocate is by any law for the time being in force entitled to practice.

BAR COUNCIL OF INDIA:

The Act established an All India Bar Council consisting of the Attorney General of India and Solicitor- General of India as the ex-officio members of the Bar Councils of India. Besides it has one member elected by each state Bar council from among its members. The councils elect its own chairman and vice chairman.

FUNCTIONS OF THE BAR COUNCIL AS PER THE ACT:

1. To lay down standards of professional conduct and etiquettes for advocates.
2. To lay down procedures to be followed by its disciplinary committee and the disciplinary committee of each state bar council.
3. To safeguard the rights, privileges and interests of advocates.
4. To deal with and dispose of any matter arising under this Act, which may be referred to it by a state bar council.
5. To supervise and control state bar councils.
6. To promote legal education and lay down standards of such education in consultation with universities imparting such education and the state bar councils.
7. To inspect universities to recognize them whose degree in law shall be a qualification for enrolment as an advocate.
8. To organize legal aid to the poor
9. To conduct seminars and organize talks by eminent jurists and publish journals and papers of legal interest
10. To recognize on a reciprocal basis foreign qualifications in law, for the purpose of admission as an advocate under the Act.
11. To manage and invest the funds of the Bar council
12. To perform all other functions conferred on it by the Act of 1961.

STATE BAR COUNCILS:

As per the Advocates Act, 1961 each state has a bar council which is an autonomous body. The Advocate-General of the state is its ex-officio member and there are 15 to 25 elected advocates. They are elected for a period of 5 years in accordance with the system of proportional representation by means of single transferable vote from amongst advocates.

FUNCTIONS:

1. To admit persons as advocates on its roll
2. To entertain and determine cases of misconduct against advocates on its roll
3. To promote the growth of Bar Association for effective implementation of the welfare schemes
4. To promote and support law reforms
5. To conduct seminars and publish journals and papers
6. To organize legal aid to the poor in the prescribed manner
7. To manage and invest the funds of the bar council
8. To visit and inspect universities.

A state bar council has an enrolment committee consisting of 3 members elected by the council from amongst its members. The enrolment committee has to dispose of applications for admission as an advocate. If the enrolment committee proposes to refuse any such application, it has to refer the same for opinion to the bar council of India.

The finances of the bar councils are essentially met out of the enrolment fees of the advocates. 21% of the fees realized are paid by each state bar council to the bar council of India. Besides the bar council may receive donations and grants.

DISCIPLINARY POWERS OVER ADVOCATES:

An important function of the bar council is the task maintaining discipline among advocates.

Some examples of misconduct are:

a. Discourteous behavior towards the bench.
b. Use of hot words or disrespectful, derogatory or threatening language in court
c. Involvement in moral turpitude

d. Defrauding or cheating the party

e. Failing to file a case after accepting fee and expenses

f. Engage in a business of profit making

The bar council shall constitute one or more disciplinary committees each of which shall consist of 3 persons of whom two shall be persons elected by the council from members and others shall be a person from among advocates who posses qualifications specified and who are not members of the council and senior most advocate among the members of a disciplinary committee shall be the chairman thereof.

A complainant of professional misconduct is referred by the state bar council to its disciplinary committee. The committee then fixes a date for hearing and shall cause a notice thereof to be given to the advocate concerned and to the Advocate General of the state.

After giving them an opportunity to appeal, the committee may make any of the following orders:-

1. Reprimand the advocate
2. Suspend the advocate from practice
3. Remove the name of the advocate from the state roll of advocates

Within 60 days of the order, an appeal can be referred to the bar council of India. The disciplinary committee of the bar council of India would hear the appeal and pass such orders as it deems fit. Against this order, the appeal lies to the supreme court within 60 days.

Section 36 B of the Advocates Act 1961, provides that the disciplinary committee of a state Bar council shall dispose of the complaint received by it expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or date of initiation of the proceedings at the instance of the state bar council as the case may be, failing which such proceedings shall stand transferred to the bar council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry.

Notwithstanding the absence of the chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks, will continue the proceedings on the date fixed. No such proceedings and no order made by that committee shall be invalid merely by the reason of the absence of the chairman or member thereof on such date.

INDIAN BAR COMMITTEE, 1923

INTRODUCTION:

Since the days of the supreme court, the Barristers of England had come to occupy a predominant position in the legal profession and vakils were treated inferior. The legal profession had so far no organization of its own to regulate admission to the profession and vakils demanded that all distinctions between them and the barristers be removed. There was a demand for an All India Bar in the country.

In response to the pressure from all sections , the Government of India (1923) appointed the Indian Bar committee under the chairmanship of Sir Edward Chamier, a retired Chief Justice of the Patna High court.

THE COMMITTEE SUGGESTED THE FOLLOWING PROPOSALS:

1. In all high courts, a single grade of practitioners should be established and they should be called 'Advocates'. On the fulfillment of certain conditions vakils should be allowed to plead on the original side of the three high courts.
2. a. In future 1/3rd of the High court judges need not necessarily be barristers

   b. Advocates on high court should entitled to practice in another high court subject to the conditions imposed by the Bar council of the latter court.
3. The committee did not consider it practicable to have bar on All India basis

   or to constitute an All India Bar Council.
3. The committee recommended the constitution of Bar council for each High court.
4. The committee proposed that Bar council should have power to make rules subject to the approval of the High court regarding
   i. The qualification, admission and certificates of proper persons to be advocates of the high court
   ii. Legal education
   iii. Matters regarding discipline and conduct of advocates and to enquire in to matters calling for disciplinary action against a lawyer, but that the existing disciplinary jurisdiction of the high court should be maintained
5. The high court before taking disciplinary action against an advocate have to refer the case to the Bar council for inquiry and report. On receipt of the report from the council, the court could either accept the report or hold a fresh inquiry itself or require the council to make further inquiry.

THE INDIAN BAR COUNCILS ACT,1926

1. According to the Act, a Bar council was established for every high court.
2. No person was to be entitles to practice in the high court, unless his name was entered in the role of the advocates of the high court.
3. The high court had to prepare and maintain a roll of advocates and communicate to the bar council a copy of the roll
4. Vakils should be allowed to plead on the original side of the high courts on the fulfillment of certain conditions.
5. Every bar council was to consist of 15 members. Four of such members nominated by the high court and 10 of them were to be elected by the advocates of the high court from amongst themselves and Advocate General.
6. Even after this Act, the high court had power of enrolment of advocates and the function of the bar council was advisory in nature. The rules made by the bar council were to be effective only on the approval of the high court.
7. The bar council was authorized with the previous sanction of the high court, to make rules to regulate the admission of persons as advocates of the high court. Section 10 of the Act empowered the high court to reprimand, suspend or remove from practice any advocate whom it found guilty of misconduct. The high court on compliant from any court or by the bar council or any other person that an advocate is guilty of misconduct refer the case for enquiry to the bar council or after consultation with the bar council to the court of district judge, unless it summarily rejected the complaint.
8. The high court on its own motion refer any case on which it had otherwise reason to believe that the advocate had been guilty of misconduct.
9. One advocate of high court was not generally allowed to practice in another high court.
10. Bar council only an advisory board, all powers were vested with the high court.

ALL INDIA BAR COMMITTEE,1951

The Indian Bar councils Act, 1926 could not satisfy the bar. The bar councils were not given any significant power. They were only advisory bodies. The pleaders and mukhtars practicing in the moffusil courts were not within its scope. In 1951, a committee known as the All India Bar Committee was appointed under the chairmanship of justice S.R.Das of supreme court.

Its recommendations were:

1. All grades of legal practitioners be abolished. There should be a common roll of advocates who would be entitled to practice in all courts in the country. The power of enrolment, suspension or removal of advocates should be given to the bar councils.
2. An All India Bar council and state bar council were to be created. State Bar councils were to compile a register of the existing advocates and pleaders and send a copy of it to the All India Bar Council which was then to compile a common roll of advocates.
3. The uniform minimum qualification for admission to the roll of advocates should be a law degree from a university obtained after at least a two year study of law after graduation.
4. There should be no further recruitment of non-graduate pleaders or mukhtars and there should be only one class of legal practitioners viz advocates.
5. There should be no separate bar council for the Supreme Court. Every advocate on the common roll to be maintained by the All India Bar council would be entitled to practice in the Supreme Court.
6. The dual system of advocates and attorneys need not be abolished as it involved a division of labour and had a number of advantages.

THE ALL INDIA BAR COUNCIL AND STATE PROVISIONS RELATING TO ENROLMENT, MAINTAINENCE OF DISCIPLINE

ORGANIZATION:

Section 36 of the Advocates Act empowers the Bar council of India to refer in certain circumstances, the case for disposal to its disciplinary committee. Section 9 provides that a bar council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the council from amongst its members and other shall be a person elected by the council from amongst advocates who possess the qualification specified in the proviso to the sub-section (2) of section 3 and who are not members of the council and the senior most advocate amongst the members of a disciplinary committee shall be chairman thereof.

INITIATION AND PROCEDURE:

Sub Section (1) of section 36 provides that where on receipt of a complaint or otherwise the Bar council of India has reason to believe that any advocate whose name is not entered on any state roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The rules framed by the Bar council of India on this issue are notable. Rule 18 provides that where a state bar council makes a report referred to in section 36(2) of the Act, the Secretary of the state Bar council shall send to the Secretary of state Bar council shall send to the secretary of the bar council of India all the records of the proceedings referred to in section 36(2) of the Advocates Act shall be signed by him and it shall set out necessary facts supported by an affidavit and accompanied by the fee prescribed. It may require parties to file such statements as it considers necessary and call for records of the proceedings. It may examine the witness. In the proceeding before the disciplinary committee of the Bar council of Indian under section 36, unless otherwise directed, the parties may appear in person or by advocate who shall file a vakalatnama. On a consideration of the report of a state bar council or otherwise the disciplinary committee of the bar council of India shall pass such orders as it considers proper. However where on the commencement of the Advocates Act,1973 any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of the state bar council shall dispose of the same within a period of six months from the date of the receipt of the complaint or as the case may be the date of initiation of the proceedings at the instance of state bar council, which ever is later, failing which such proceedings shall stand transferred to the bar council of India for disposal.

POWERS:

Section 42 deals with the powers of the disciplinary committee of a bar council. Section 42-A makes it clear that the provisions of section 42 shall so far as may be apply in

relation to the disciplinary committee of the bar council of India. From section 43 it become clear that the disciplinary committee of the Bar council of India may make such order as to the costs of any proceedings before it as it may drew fit and any such order shall be executable as if it were an order the supreme court. Section 44 provides that the disciplinary committee of a bar council may of its own motion or otherwise review any order within 60 days of the date of that order passed by it.

PROVISION FOR ENROLMENT OF ADVOCATES UNDER THE LEGAL PRACTIONERS ACT,1853

1.Before the British came to provinces in India the administration of justice was in the hands of the Mughal emperor.

2.Also the Zamindars exercised both civil and criminal powers. There were personnel called vakils who were more like agents than lawyers.

3.The company during this periods did not give much importance to judicial independence and rule of law, the judges were laymen and did not have knowledge of law.

4.The Bengal Regulation VII of 1793 created for the first time a regular legal profession for the company courts and this regulation authorized Sardar Diwani Adalats to enroll pleaders for the courts of the company and only Hindus and Muslims could be enrolled as pleaders.

5.The Bengal Regulation XII of 1833 permitted any qualified person of any nationality or religion to be enrolled as a pleader of Sardar Diwani Adalat.

6.By the legal practitioners Act of 1846 the pleaders were allowed to enter in to agreement with their clients for their fees for professional services.

7.The office of the pleaders was open for anyone who was duly certified. The Letters Patent Act,1853 authorized the Barristers and attorneys of the Supreme Court to plead in any of the company's court subordinate to the Sardar Diwani Adalat.

8.It should be noted here that the barristers and attorneys were permitted to practice in the courts of the East India Company, but the indigenous Indian legal practitioners were kept out of the Supreme court.

MODEL QUESTIONPAPER

TIME:2 1/2 hrs **Maximum: 70 marks**

PART-A (2x12=24)

ANSWER ANY TWO OF THE FOLLOWING IN ABOUT 500 WORDS EACH

1. Trace out the development of courts and judicial institutions in the presidency towns of Madras and Bombay up to 1726.
2. Explain the concept of separation of powers.
3. Salient features of 1909 Act.

PART B (2x7=14 marks)

ANSWER ANY TWO OF THE FOLLOWING IN ABOUT 300 WORDS EACH

4. Write about the provisions of Settlement Act,1781.
5. Critically analyze the legal profession in India till 1726.
6. Working of federal government under the provisions of 1935 Act.

PART C (5x4=20 marks)

7. Writer short notes on any five of the following:

a. Trial of Nand Kumar

b. Dual system of administration of justice

c. Admiralty court

d. First law commission

e. Distinguish Bicameral legislature and Unicameral legislature

f. Provisions of Charter Act, 1813

g. Warren Hastings plan of 1774

PART D (6x2=12 marks)

ANSWER ANY SIX OF THE FOLLOWING VERY BRIEFLY.

a. Sir Elijah Impey

b. Pagoda case

c. Daroga-e-Adalat

d. Mandamus

e. Bar Committee, 1923

f. Lex Loci report

g. Equity jurisdiction

h. Cornwallis code

KEY ANSWERS:

PART A

II. 1. ADMINISTRATION OF JUSTICE IN PRESIDENCY TOWNS OF MADRAS, BOMBAY, CALCUTTA FROM 1600 TO 1726 AND THE DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS

2. ADMINISTRATION OF JUSTICE IN THE PRESIDENCY TOWN AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS UNDER THE EAST INDIA COMPANY(1600-1773)

INTRODUCTION:

6. The legal history of British India opens with the establishment of the East India Company.
7. It was incorporated in England by the Crown's Charter of 1600 or Charter Act of 1600 and the company was exclusively given trading rights in Asia(including India), Africa and America.
8. All the members of the company constituted themselves as General court and it was to elect the Court of Directors every year.
9. The court of Directors consisted of a Governor and 24 Directors who was to manage the entire business of the company.
10. The Court of Directors could be removed from their office even before the expiry of their term of office by the General court.

OBJECT OF THE COMPANY:

8. Initially the company had intention to carry on trade and commerce in Asia, Africa and America and it was conferred with only those powers which were necessary to regulate its business and maintain discipline amongst its servants and not for governing any territory.
9. But when the company entered India and found that the Indian kings were disunited and unaware of modern politics, the company gradually acquired territory of India.
10. Portuguese occupation of Indian territories also inspired the company to acquire territory in India and this acquisition was also beneficial from the commercial point of view also, because the company could capture market for its goods.
11. In short, at the time of incorporation the object of the company was only commercial but later it turned in to political.

12. The Charter of 1600 conferred powers only to regulate its business and maintain discipline amongst its servant, but when its object turned in to political, it needed the powers necessary for the maintenance of the territory and the British crown cooperated with it and conferred on it more powers for this purpose.

13. In early days the administration of justice in the settlements of East India Company was not of a high order and there was no separation of powers between executive and judiciary.

14. The judges were not law experts and the company gave lesser importance to judicial independence, fair justice and rule of law.

ADMINISTRATION OF JUSTICE AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS IN MADRAS BEFORE 1726:

5. In 1639, Francis Day acquired a piece of land from a Hindu Ruler for the East India Company and constructed a fortified factory.

6. Besides the Raja granted a village to the company known as 'Madraspatnam' and empowered the company to govern and dispose of the government of the village.

7. The people residing inside the factory were Englishmen and other Europeans and therefore the area of the factory came to be known as 'White Town' and the people residing in the village Madrasapatnam were mostly Indians and therefore it came to be known as 'Black town'.

8. The whole settlement consisting of white town and black tow came to be known as 'Madras'.

The judicial administration and development of courts and judicial institutions in Madras before 1726 may be studied in following stages:

FIRST STAGE: 1639-1665

WHITE TOWN:

4. Before 1665, Madras was not a presidency town and it was subordinate to Surat.

5. The administrative head was called as 'Agent' and he was to administer the settlement with the help of a council. The agent and the members of his council were to administer civil and criminal justice to the inhabitants of white town.

6. The serious criminal cases were often referred to them to the company's authorities in England for advice.

DEFECTS:

4. The judicial power of the agent and council was vague and indefinite. The serious criminal cases were referred by them to the company's authorities in England for advice which involved much delay.

5. The agent and the members of his council , who were to administer justice, were merchants and not lawyers. They were supposed to decide cases according to English laws, but actually they did not even have elementary knowledge of the English laws. Consequently, they used to decide cases according to their wisdom and common sense.

6. There was no separation between the executive and judiciary. The agent and council constituted both the executive and judicial authority for the white town.

BLACK TOWN:

5. The old judicial system was allowed to function and there was a village headman known as Adigar(Adhikari) who was responsible for the maintenance of law and order.

6. The Choultry court with Adigar as the judge was to decide civil and criminal cases of the natives according to long established usages and thus it was a court of petty cases and not to hear the cases of grave offences committed by the natives.

7. The appeals from the Choultry court was to be heard by the Agent-in-council.

8. An Indian native, Kannappa was appointed as Adigar but he misused his power and consequently he was dismissed from the office and the English servants of the company were appointed to sit at Choultry court.

DEFECTS:

6. There was no fixed procedure for the trial of serious criminal cases and the procedure varied from case to case.

7. The judge of the Choultry court was a layman and not a lawyer.

8. The Choultry court could decide only small civil and criminal cases. It was empowered to decide the serious criminal cases like murder etc.

9. There was no separation between the executive and the judiciary. The agent and council constituted both the executive and judicial authority and they were to hear appeals from the Choultry court.

CHARTER OF 1661:

5. In 1661, a charter was granted by the British Crown which conferred broad powers on the East India Company.
6. It authorized the Governor and council of each factory to hear the cases of all persons whether Indians or Englishmen or Europeans, while under the charter of 1600 only the cases of the company's servants could be heard.
7. The Charter of 1661 authorized the Governor and council to hear and decide all types of civil and criminal cases including the cases of capital offences and could award even death sentence, while under the Charter of 1600 capital offences could not be awarded and death sentence could not be awarded.
8. It is to be noted that the above said powers conferred on the company could only be exercised by the Governor and council appointed by the company and where there was no 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.

DEFECTS:

5. The charter of 1661 could not separate the judiciary from the executive. The Governor and council constituted both the executive as well as judiciary.
6. The Governor and the members of his council who were to administer justice were merchants and not lawyers and therefore even under this charter the administration of justice remained in the hands of laymen.
7. Under this charter even the cases of Indians were to be decided according to the English laws and consequently the Indian laws, customs and usages could not be protected.
8. The Governor and his council of members were not law experts and so they were deciding cases according to their common sense and sense of justice.

SECOND STAGE: 1665-1683

6. In 1665, One Mrs.Ascentia Dawes was charged with the commission of murder of her slave girl and the Agent –in-council referred the case to the company's authority in England for advice.
7. The company raised the status of agency of Madras to that of the presidency and status of Agent to that of Governor, because the powers conferred on the company by the Charter of 1661 could only be exercised by the Governor and council and not by the agent-in-council.

8. Under the Charter of 1661, the Governor and council were authorized to hear all types of civil and criminal cases including capital offences like murder.

9. After the status has been raised from Agent to Governor, the case of Mrs.Dawes was tried by the Governor with the help of jury as per the company's direction and an unexpected verdict of not guilty was given and consequently Mrs.Dawes was acquitted.

10. In 1678, the whole judicial administration was reorganized and the judiciary in both White Town and Black Town was improved to some extent.

WHITE TOWN:

4. The court of Governor and council was declared as High court of Judicature and it was empowered to hear all civil and criminal cases of the inhabitants of White town with the help of a jury.

5. Besides it was to hear serious criminal cases of Indian inhabitants in Black town and also appeals from Choultry court with the help of a jury.

6. The court was to meet twice a week and decide cases according to English laws.

BLACK TOWN:

4. The Choultry court was also reorganized and the number of judges were increased to three.

5. All the judges were Englishmen and atleast two of them were to sit in the court for two days in each week.

6. This court was empowered to hear petty criminal cases and civil cases up to 50 pagodas (pagoda was gold coin and one pagoda was equal to 3 rupees) and the cases of a higher value with the consent of the parties and appeals were referred to High court of Judicature.

MERITS:

4. During this period, arrangements were made for regular meetings of the courts. The High court of Judicature and the Choultry court both were to meet twice a week and this reduced the delay in the disposal of the cases.

5. The jurisdiction of the High court of Judicature and Choultry court was well defined.

6. There was a great need of a regular superior court. The High court of Judicature consisting of the Governor and council was established to meet the need.

DEMERITS:

6. The judges of the High court of Judicature and Choultry court were not lawyers but laymen. They did not even have elementary knowledge of English law and consequently they used to decide cases according to their wisdom and common sense.

7. The Governor and council like their predecessors, the Agent and council used to refer the serious criminal cases to the company's authorities in England for advice which involved considerable delay. In a case dated January 31, 1678 an Englishman who was charged with the commission of murder was confined to the prison for 31 months without trial as the case had been referred to the company's authorities in England for advice.

8. Inspite of having power to hear all types of civil and criminal cases including capital offences, the reason for such reference is only because of lack of legal knowledge and not lack of judicial power. The Governor and council were well aware of their lacking knowledge and so they was not dare enough to decide serious criminal cases.

9. The separation between the executive and judiciary was not maintained. The Governor and council constituted both the executive as well as High court of Judicature.

10. The Choultry court was empowered to take cognizance of small matters only. Thus it was conferred on any significant judicial power.

THIRD STAGE: 1683-1726

COUTS OF ADMIRALTY:

14. During this period two important courts were established, i.e, Court of Admiralty under the Charter of 1683 and 1686 issued by the British crown and Mayor's court under Charter of 1687 issued by East India Company and not by British crown.

15. The need for establishing the Admiralty court was under the Charter of 1600 only the East India company was conferred power to carry on with trading activities in Asia, Africa and America and not the other British subjects and they wanted to do trading in India they are supposed to get a license from the East India company. But the rights of the company was being infringed by other British traders and on account of it a court having jurisdiction to punish such traders was felt.

16. The crime of piracy on the high seas was on increase. To deal with it the need of a court having jurisdiction to hear and decide the cases of piracy was felt.

17. In short the above said crimes attracted the company to establish courts having jurisdiction to hear and decide all maritime and mercantile cases.

18. Under the Charter of 1683, the court of Admiralty was to consist of a learned person in civil laws as a judge and two merchants to assist the judge was appointed.

19. It was empowered to hear and decide all types of maritime and mercantile cases and also cases of forfeiture of ships, trespass, injuries and wrongs.

20. I was to decide cases according to law of equity and good conscience and also laws and customs of merchants, but however it was bound to follow the British crown's direction in relation to its procedure.

21. The provisions of the Charter of 1683 were repeated by the British crown in another Charter granted in April 1686 with some new modifications.

22. It empowered the company to raise naval forces and appoint naval officers.

23. Under the Charters of 1683 and 1686 the court of Admiralty was established at Madras on 10th July 1686 and John Grey was appointed as judge of this court and two Englishmen were appointed as his assistants.

24. On 22nd July 1687, Sir John Biggs, who was a professional lawyer was appointed as Judge Advocate(Chief Justice) of the court.

25. Thereafter the jurisdiction of the Governor and council relinquished the judicial function and the jurisdiction of Admiralty court was extended to hear civil and criminal cases also.

26. In certain cases the appeals from Mayor's court was also heard by the Admiralty court.

MERITS:

3. The separation of the judiciary and executive was maintained. The Governor and council had executive power only and the judicial power was exercised by the court of Admiralty.

4. The administration of justice came to the hands of a professional lawyer and thus the Admiralty court was able administer justice according to English law, whereas before the establish of this court the judges were only laymen and they were deciding cases according to their common sense.

But the above good features in Madras did not continue for a long time because Sir John Biggs died in 1689. His death checked the progress of Admiralty court and it ceased to operate. There was no court having jurisdiction to hear appeals from Mayor's court. In this critical situation again the Governor and council temporarily established a court of Judicature having Governor as Judge and he was assisted by two Englishmen in regard to native language. This condition prevailed till 1692 when a new Judge Advocate, John Dolben was

sent by company from England. John Dolben was well versed in law and used to decide cases impartially and he was even dare enough to give judgment against the company. The company was not satisfied and ultimately he was dismissed in the year 1694 on charge of taking bribes. Later he was again offered an appointment but he refused to accept. In the place of Dolben Sir William Frazer was appointed as Judge Advocate of the Admiralty court and from 1696, the company directed the members of the council to serve in succession as the Judge Advocate. This court was functioning regularly till 1704, but thereafter it ceased to sit on a regular basis and gradually disappeared and its jurisdiction was transferred to the Governor and council. Ultimately the separation of executive and judiciary came to an end. The company was neither in favour of appointing professional lawyers as judges of the courts in India nor in maintaining judicial independence, because it was afraid that the lawyers would be too independent and would decide cases strictly according to the principles of law which would not allow the company to use the judiciary tool to achieve its political object i.e to acquire Indian territories. Thus the company gave lesser importance to judicial independence, fair justice and rule of law.

MAYOR'S COURT:

19. In 1688, a Corporation and Mayor's court was established under the Charter of 1687 issued by the company and not by the British crown.

20. The reason for establishment of this court was when the Madras Government levied house tax, it was strongly opposed by the Hindus of the Black town. They involved in resorting strike methods such as abandoning their duties, shutting up of shops etc.

21. The company thought of setting up of such corporation of the natives mixed with some Englishmen because in the view of the company such corporation could make taxation of that kind more acceptable to the native population and the appointment of caste leaders as Aldermen and burgesses, they would ready to tax themselves and inhabitants generally for various municipal purposes.

22. Such a Corporation was established in 1688 consisting of one Mayor, 12 Aldermen and 60 or more Burgesses.

23. The Mayor and 3 senior Aldermen were always British servants of the company and the remaining 9 Aldermen could be of any nationality.

24. 30 of the 60 Burgesses were to be the heads of several castes. Mayor, Aldermen and 29 Burgesses were nominated by the company. Mayor and 3 Aldermen belongs to the Governor and council.

25. Mayor was to continue in office for 1 year and Aldermen could continue till their lifetime or residence in Madras. However the out going Mayor could be re-elected by the electorate.

26. Vacancy amongst Aldermen was to be filled by the Mayor from amongst the Burgesses.

27. The Mayor could be removed by the Aldermen and Burgesses and an Aldermen could be removed by Mayor, Aldermen and Burgesses.

28. The Governor and council was given power to remove any Mayor, Aldermen and Burgesses to appoint anyone in place of vacancy.

29. Along with this Corporation the Charter of 1687 established Mayor's court also. The Mayor's court was a part of Corporation.

30. The Mayor and Aldermen constitute a Court of Record which was known as Mayor's court and Mayor and Aldermen were to be justices. But the judges were not law experts and therefore a provision was added to Charter of 1687 for the appointment of expert in law and a recorder to assist the judges of the Mayor's court in deciding cases.

31. Sir John Biggs the Judge Advocate of the Admiralty court was appointed as the 1st Recorder of the Mayor's court.

32. The Mayor's court was empowered to hear and decide civil and criminal cases. It was also authorized to punish offences by corporal punishments, imprisonment and fine.

33. It should decide cases according to justice and good conscience and laws enacted by the company.

34. Civil cases more than 3 pagodas and criminal cases where offender deserves death sentence or lose of limb, the appeals should be referred to Admiralty court.

35. But after 1704, since Admiralty court could not sit regularly, the appeals were referred Governor and council.

36. After 1712, it was made clear that the court could award death sentence in case of natives but it could not award death sentence in cases of Englishmen.

DEFECTS:

4. There was no separation between executive and judiciary. The Mayor, Aldermen were the members of Governor's council who was the executive government of Madras. The Governor and council could remove any Mayor, Aldermen or Burgesses and appoint anyone in the place of vacancy.

5. The judges of Mayor Court were laymen and not law experts and they had no knowledge of English laws and they used to decide cases according to their common sense. No uniform and consistency in their decisions. Although an expert was appointed as recorder to assist the judges, the condition could not be improved. Less importance was given by the judge to the advice and opinion of recorder.
6. The judges of the Mayor's court were not honest and impartial and they could be easily tempted.

CHOULTRY COURT:

During this period, the jurisdiction of the Choultry court was diminished. It could hear the cases of petty offences and civil cases up to 2 pagodas only. Two Aldermen were to sit twice a week at the Choultry to exercise its jurisdiction. In 1753 its civil jurisdiction was taken by the Court of Request, but it continued to exercise its criminal jurisdiction till 18th century. By 1800 the Choultry court was totally diminished.

JUDICIAL ADMINISTRATION AND DEVELOPMENT OF COURTS AND JUDICIAL INSTITUTIONS IN BOMBAY BEFORE 1726

INTRODUCTION:

6. The Island of Bombay was acquired by the Portuguese from the King of Gujarat in 1534 and in 1661 this Island was transferred by Portuguese king to British crown as a dowry on account of his sister's marriage.

7. In 1668 this Island was transferred by the British crown to the East India company for an annual rent of 10 pounds as per Charter of 1668.

8. The charter empowered the company to make laws and ordinances for the good governance of the Island of Bombay and also to impose punishments (including death sentence), penalties etc and these laws and punishments should not be contrary to the laws of England.

9. The power to enact these laws was vested in the company's General court or their court of committees and the Charter empowered the company to establish courts to judge all suits.

10. Under the Charter of 1668 the company enacted the laws for Bombay and the laws so framed were brought to Bombay in 1670.

The administration of justice and development of courts and judicial institutions in Bombay before 1726 could be seen in 3 stages:

FIRST STAGE: 1670-1683

4. At an early stage, Bombay was under the control of Surat Presidency and the Governor of Surat was Ex officio Governor of Bombay.

5. Deputy Governor and council were appointed to administer Bombay under the control of Governor of Surat.

6. Mr.Gerald Aungier, the Governor of Surat and Ex officio Governor of Bombay was much interested in introducing sound judicial system in Bombay and due to his efforts, the judicial plans of 1670 and 1672 was made to improve the judicial system of Bombay.

JUDICIAL PLAN OF 1670:

8. According to this plan the whole Island of Bombay was divided in to two divisions, one division consisted of Bombay, Mazagaon and Girgaon, while the other division consisted of Mahim, Parel, Sion and Worly.

9. A separate court was established for each division and each court had 5 judges and 3 judges were to constitute a quorum.

10. The custom officer of each division who was Englishman was authorized to preside over the respective court.

11. Some Indian were also appointed as judges and they were not paid any emoluments.

12. The court was empowered to hear cases of small thefts and civil action up to 200 xeraphins and appeals from this court was referred to court of Deputy Governor and council and thus the court of Deputy Governor and council constituted a superior court.

13. Besides the cases beyond the jurisdiction of divisional court i.e civil cases over 200 xeraphins and all serious criminal cases like felony, murder, mutiny etc was to be decided by Deputy Governor and council.

14. An appeal from the court of deputy Governor and council was allowed to the Governor and council at Surat only in cases of absolute necessity.

DEFECTS:

3. The administration of justice was in hands of traders who did not even have even elementary knowledge of English law and consequently they used to decide cases according to their sense of justice.

4. There were no separation of powers between executive and judiciary and both the powers were vested in the same hands.

Mr.Aungier was aware of these defects and so he requested the company to send a law expert from England. But the company directed him to select an expert from the servants of the company in India. Mr.Aungier selected Mr.George Wilcox and with his advice, he prepared the judicial plan of 1672 for improving the existing judicial system of Bombay.

JUDICIAL PLAN OF 1672:

12. By a government proclamation on August 1, 1672, the Portuguese laws were totally abolished and replaced by English laws at Bombay and as per this plan the whole judicial system was totally reorganized.

13. A new court known as Court of Judicature was established and George Wilcox was appointed as its Judge.

14. This court was empowered to hear and decide all civil, criminal, probate and testamentary cases and it was to sit once a week to try civil cases with the help of a jury.

15. An appeal from court of Judicature was to be heard by the Deputy Governor and council of Bombay.

16. The court was to charge a fee of 5 % of the valuation of the suit from the litigants, however the provision was made to enable the plaintiff worth less than 60 xeraphins to sue as a pauper.

17. Besides court of Conscience was also established to hear petty civil cases up to 20 xeraphins without the help of jury.

18. This court was to sit once a week and no court of fee was to be charged from the poor persons.

19. Under this plan for the purpose of administration of criminal justice Bombay was divided in to four divisions – Bombay, Mahim, Mazagaon and Sion.

20. In each division Justice of peace was appointed who were to act not as a court but as a committing Magistrate to arrest the accused and examine the witnesses and also to send the record of his examination to court of Judicature.

21. All the justice of peace were to sit in the court of Judicature as assessors to help the judges in trying the criminal cases and appeals from the court of judicature were to be heard by the Deputy Governor and council of Bombay.

22. In 1673-74, several panchayats were also established which were authorized to decide cases amongst persons of their own castes, only if they were willing to submit their disputes before panchayats else their cases will be referred before Court of Judicature.

MERITS:

7. Under this plan regular courts with well defined jurisdiction was established and were to sit regularly which enabled the court in disposing the cases within a reasonable time.

8. The civil cases were to be decided with the help of jury by which impartial and fair justice was rendered.

9. The administration of justice was inexpensive and the court fee was very moderate.

10. The laws and procedures to be followed by the courts were settled. It was made clear that these courts would follow the English substantive and procedural laws as far as possible.

11. The establishment of court of Conscience and Panchayats to decide petty civil cases reduced the burden of court of Judicature as well as the hardships of litigants.

12. The judge of the court of Judicature was not allowed to carry on private trade or business, but he was granted a salary of Rs.2000 per year. This provision was made to encourage him to take interest in the judicial administration and also to put him above the temptation of bribery.

The above plan was implemented by Aungier with great pomp and ceremony. It was rightly stated by Fawcett (the first century of British rule in India) that Aungier showed a fearless determination to do his best to put the judges in a position of independence and above the temptation of bribery. However even during this period the separation of power between the executive and judiciary could not be maintained. Till the lifetime of Aungier judiciary was given much respect. George Wilcox who was the first judge of the court of Judicature died in the year 1674. After his death James Adams was appointed as the judge of the court of Judicature. He continued his office only for few months. In 1675 Niccolls was appointed as a judge who raised a laudable voice for judicial independence in India, but his behavior did not satisfy the Bombay council and subsequently dismissed him. The court of judicature attached the lands of Roberts Fisher for which the Bombay council directed him to remove the attachment. But he refused to follow the direction on the ground that he was only bounded by oath taken by him. Later Niccolls criticized the verdict of the jury in a case and the Bombay council found an opportunity to suspend him. He was suspended for his quarrel with Bombay council and quarrel was the result of his bold step to make the judiciary independent of the executive control. After his dismissal Grey was appointed as judge in his place and he continues his office till 1683 when Keignwin's rebellion held the Island of Bombay and thus the judicial plan of 1672 came to an end. As long as the Bombay Island was under the control of Keignwin's rebellion, the company's court stopped functioning.

SECOND STAGE: 1684-1690

15. The Keignwin's rebellion surrendered the Island of Bombay in 1684 and thereafter the company took every possible efforts to set up a regular judicial system in Bombay.

16. In 1684 a court of Admiralty was established under the Charter of 1683 with the same guidelines as in Madras.

17. It was empowered to decide maritime and mercantile cases initially, but later it got authority even to hear civil and criminal cases.

18. This court should consist of a judge who is well versed in civil laws and he must be assisted by two English men.

19. Dr.St.John, who was an expert in civil laws was appointed as Judge-Advocate of the Admiralty court.

20. But the authority of Admiralty court was not sufficient to cover all the civil cases and so a court of Judicature was established and Dr.John was appointed as its Chief Justice.

21. Dr.St.John was much spirited in having independent judiciary which caused much annoyance to the Bombay council and Governor Mr.Child who did not have any respect for the judiciary.

22. Dr.John took some evidence against Mr.Child and the Governor Mr.Child directed him not to take such type of evidences, but John refused to follow his direction on the ground that he was bounded by the oath not to conceal any information which was brought to his notice against any person.

23. The Governor had no faith on equality before law and therefore he was annoyed and an open conflict arose between John and Child and consequently the power of Dr.John to act as Chief Justice of the court of Judicature was withdrawn and the civil and criminal jurisdiction of the Admiralty court was also forfeited.

24. A new court was established having Vaux as judge to decide civil and criminal cases.

25. Dr.john criticized the appointment of Vaux as a Judge on the ground that he was not a member of Bombay council and also not a law expert.

26. Again a conflict between John and Bombay council arose over the issue whether Bombay council was empowered to hear appeals from the Admiralty court, because there was no such provision given to Bombay council as per the Charter of 1683.

27. Ultimately he was dismissed from his office on 1687 and Vaux remained as judge from 1685 to 1690.

28. In 1691, Siddi Yakub, an Admiral of Moghul Emperor attacked Bombay and the Judicial system in Bombay came to an end. From 1690 to 1718 there was no court in Bombay and the Governor-in-council was deciding civil and criminal cases roughly.

THIRD STAGE: 1718 – 1726

8. On 25th March 1718, the court of Judicature was restarted having an English Chief Justice, five English Judges and five Indian judges.
9. The five Indian Judges represented the five important communities of India namely Hindu, Muslims, Christians, Portuguese and Parsis.
10. The Chief Justice and English judges belongs to Governor and council and three English judges constituted a Quorum and this court was to sit once a week.
11. This court was empowered to hear all civil, criminal, probate and testamentary cases and the cases were to be decided according to law of equity, good conscience and company's rules and ordinances and to some extent Indian customs and usages were given consideration.
12. Notably jury trial was not allowed and appeals from this court was heard by the Governor and council in cases where the amount involved was hundred rupees or more.
13. However a notice to file an appeal was required to be given to the Chief Justice within 48 hours of the Judgment.
14. The power to pass capital sentence was reserved to the court of Governor and council and the court fee was moderate.

MERITS:

4. During 1690 to 1718, there was no court in Bombay and therefore the establishment of a court in 1718 was itself an important event. The functioning of this court till 1728 gave a clear way for establishment of Mayor's court after 1728.
5. The appointment of Indian Judges was also a good feature of the judicial system. They could enlighten the English judges with regard to the customs and usages of Indian traditions.
6. The court fee was moderate and the administration of justice was made cheap.

DEMERITS:

5. The whole judicial system was under the control of Executive. The Chief Justice Parker was dismissed in 1720 and Chief Justice Braddyll was dismissed in 1721 on account of quarrel with the Bombay council and the quarrel was the result of their refusal to subordinate their judgments to the wishes of the executive.

6. The laws and procedures to be followed by the court were not settled which resulted in grave injustice and lack of uniformity in punishing criminals.
7. No provision was made for a jury trial.
8. The status of Indian Judges was not equal to that of the English judges. Their role was that of assessors or assistants to the English judges.

The aforesaid judicial system continued till 1728, when it was replaced by the Mayor's court established at Bombay under the Charter of 1726.

2.Separation of powers:

The doctrine of separation of powers was originated by Aristotle and was developed by Locke. It was given a base and made popular by French Jurist Montesquieu. According to him, there are three organs of the government, legislature, executive and judiciary.

4. Functions of the legislature is to make laws.
5. Functions of the executive is to execute them.
6. Functions of the judiciary is to enforce and interpret them.

None of these 3 organs should control, or interfere with the exercise of the functions of the other organs.

The basis of the doctrine of separation of powers is that the merging of all the powers in one body will result in negation of individual liberty. If the executive and the legislature are the same person or body of persons, there may be a danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends. The balance of the power should be attained by checks between separate organs of the government.

Merits of the Theory of Separation of Powers:

10. It aims at individual liberty. A safeguard against despotism.
11. Its basic principle that concentration of powers leads to dictatorship is true for all times and ages.
12. It emphasizes the necessity of providing independence to judiciary though executive and legislature cannot be rigidly executed. Then only rights and freedoms are secure.
13. The separation of powers is desirable for maintaining the efficiency in the administration.
14. Every organ acts as a check upon the others.
15. Three functions requires distinct qualities in the men who conduct them.

16. It helps us to understand the value of liberty.

17. It lays down the cardinal principle that government should act according to certain well established rules or laws.

18. This theory admonishes the executive and the administrative wings of the government not to interfere with the process of law and justice, so as to ensure the liberty of the individuals in the society.

Criticisms:

4. This will result in a clash between the 3 organs of the government, as each one will take interest only in its own powers.

5. Friedmann and Benjafield explain, "There is no water tight compartment between the three branches. The truth is that each of the three functions of the Government contains elements of the other two and that any rigid attempt to define and separate the functions must either face or cause serious inefficiency in government".

6. The Modern State is not a police state but a welfare state. It has to solve several social, economic and other difficult problems. The theories of separation of power hinder and obstruct these functions.

Separation of Powers in USA

7. The doctrine of separation of powers has been incorporated in the Constitution of USA. The legislative power has been vested in the Congress, executive power has been vested in the President and judicial power has been vested in the courts with the Supreme Court as its head.

8. The Congress consists of two houses, namely the Senate and the House of Representatives. Both are directly elected by the people for a fixed period. Congress cannot appoint, control or remove the executive.

9. The President (executive head) is directly elected by the people for a fixed period. He and his cabinet colleagues cannot participate in the proceedings of the Congress nor can they initiate laws.

10. Neither the President nor the Congress are responsible for each other. Law is made independent of others. The terms, salary and service conditions of the judges are made secure.

11. The President is not empowered to remove a judge after he is appointed to the post. The senate has a got no power to choose, control or dismiss the executive (President) or the judge, the executive also cannot dissolve the legislature and dismiss the judges.

12. In USA, there are a number of checks between the legislature, executive and the judicial organs of the state. Hence, the principle of separation of power is not found in its absolute form in the USA.

The doctrine of separation of power in England.

8. In theory, British Government seems to be based on the Theory of Separation of Powers. The King and the Cabinet perform executive functions. Parliament does the law making and the judiciary belongs to the domain of law courts.

9. However, on close examination, it is clear that British Political System is based on the fusion of the executive and legislative powers. The ministers are members of the Cabinet and Parliament and in their dual capacity perform both executive and legislative functions.

10. The ministers are responsible to the Parliament. The Parliament can dismiss the Cabinet and Prime minister can dissolve the House of Commons.

11. The Parliament asks a question and forces the executives to answer them. The legislature is the master and the executive it's slave. The House of Lords (upper house) acts as the Supreme Court of Appeal in civil cases. It can impeach the highest officers of the nation.

12. The executives (the Cabinet and the Crown) performs certain legislative and judicial functions. The Cabinet initiates Bills, prepares laws, passes delegated legislations and acts as a guide, friend and philosopher of the Parliament.

13. The Crown summons and prorogues the Parliament and can dissolve House of Commons. He can veto the legislation of the Parliament. Thus Executive performs legislative functions. He appoints judges, decides certain cases and exercises the prerogative of mercy, which is a judicial function.

14. Lord Chancellor is the head of the Judiciary as well as an important member of the Cabinet (executive) and presiding officer of the House of Lords (legislature).

The Doctrine of Separation of Powers in India:

4. During British period, Separation of Power was not given due importance. The administration of justice was executive oriented. The Governor - General in council and Viceroy enjoyed abundant powers - executive, legislative and judiciary.
5. However, the primary controlling power was vested in British Parliament and the King.
6. In those days Britain had occupied $3/4^{th}$ of the globe and Parliament had no time to look into the affairs of India. King issued Charters and the Parliament passed only important Acts. The Governor General used to enact the necessary Acts, rules and regulations. In fact, there was no separation of powers in pre independent India.

After Independence:

Our constitution does not clearly mention the separation of powers.

12. In theory, there is separation of powers in independent India. There are different branches to carry out the different activities of the government.
13. The Parliament makes laws, the Executive implements them and the Judiciary interprets the law. But in practice, the principle of Separation of Powers is not followed strictly.
14. In Indian Constitution there is only fusion and not separation of powers. Indian Constitution provides for a parliamentary form of a government. Parliament is the Union legislature.
15. The Union executive consists of the President and the Council of Ministers headed by the Prime Minister which is also a part of the Parliament. The President is elected partly by the members of the Parliament.
16. He is empowered to issue ordinances which are in the nature of short term legislations. He can influence the legislature through messages and suspense veto. Lok Sabha can pass a vote of no-confidence and remove the cabinet from office. Its members, by asking question and through adjournment motions, keep the executive vigilant in functioning.
17. However, the judiciary enjoys certain amount of independence. The Union Parliament considers specific allegations made against the judges of the Supreme Court and approves a resolution requesting the President to remove them when the allegations are proved. So far no such situation has taken place.

18. The Parliament is also empowered to accept the Bills to increase the salaries and allowances of the Judges. The Union Judiciary is also entrusted with certain legislative and executive functions.

19. Whenever the Union Parliament enacts, implement any law against the basic structure or provisions of the Constitution, it declares such laws as unconstitutional and invalid.

20. The constitution does not recognize the Doctrine of Separation of Powers in its absolute rigidity, but the functions of the three organs of the Government have been sufficiently differentiated.

21. For example, Parliament has been given power to make laws however this power cannot be exercised by the Judiciary. The Judiciary has been given power to decide cases and this power cannot be exercised by the Parliament.

22. The executive has power and function to execute the laws, this power cannot be exercised by the other two organs of the Government.

Conclusion:

Actually, the complete demarcation of functions is not possible. All the branches of the government have to function in accordance to the provisions of the constitution, as the constitution is supreme over the Parliament, Executive and Judiciary while the Judiciary is the protector of the basic structure of the Constitution.

3.THE INDIAN COUNCILS ACT,1909

(MINTO-MORLEY REFORMS)

OBJECTS:

The Indian Councils Act,1892, failed to satisfy the Indian leaders. The political situation developing in India led the British authorities to think of introducing constitutional reforms with a view to secure the support of the moderate section in the Indian National congress. Mr.Gopal Krishna Gokhale, the chief leader of the moderate section in the congress went to England, met the Secretary of state for India, Lord John Morley and placed his views before him. Mr.Gokhale tried to convince Lord Morley, the Secretary of state for India, of the urgency of the constitutional reforms. Lord Minto , the Viceroy of India was also in favour of introducing new reforms and appointed a committee to enquire in to the matter. The committee submitted its report to the viceroy in October 1906 and it was forwarded to Lord Morley. A bill was prepared based on the report and several negotiations was made between Lord Minto and Morley. In 1909 the British Parliament passed it to become an Act called as Indian Councils Act,1909 and since this was by the efforts of Minto and Morley this Act was popularly known as Minto-Morley reforms. The main objects of this Act were

v. To increase the size of the legislative councils

vi. To enlarge the functions of the legislative councils

vii. To increase the proportion of elected members

viii. To secure the support of the moderate section in the Indian National congress

PROVISIONS:

6. SIZE OF THE LEGISLATIVE COUNCILS:

The size of the members of the legislative councils of the Governor-General was raised from 16 to 60 and in Bengal, Bombay and Madras it was raised from twenty to fifty and for U.P. the strength of members were raised from 15 to 50. The legislative councils consisted of:

v. Ex-officio members: The Governor-General and his councils were the ex-officio members of the central legislative council and the Governor and his councilors or Lieutenant Governor and his councilors were ex officio members of the provincial legislative council.

vi. Nominated official members

vii. Nominated non official members

viii. Elected members.

The majority of the nominated official members was maintained in the central legislative councils, but in the provincial legislative councils, the majority of the non-official members was created.

7. FUNCTIONS OF THE LEGISLATIVE COUNCILS:

v. The members of the legislative councils were authorized to discuss the annual financial statement of the government and could vote on it or divide the house on them.

vi. However certain heads as for eg. Customs, military works, interest on public debt, defense, etc were not open to discussion.

vii. These resolutions however had only the effect of recommendations and they were not binding on the executive authority and they were not authorized to move resolutions on any matter affecting the native

States.

viii. This Act also authorized the members to ask supplementary questions.

8. SYSTEM OF ELECTION:

The Act of 1909, provided for the system of election for the appointment of non-official members of the legislative councils. The non-official members of legislative councils were of two types:

iii. Nominated non-official members

iv. Elected non-official members

The classes of electorates were

iv. General electorates

v. Class electorates

vi. Special electorates.

The Muslims were given separate representation. The provision was made for the separate communal electorates for the Muslims. Besides the provisions was made for the special representation of the land holders and professional classes. The qualification for the candidates and also for the votes was prescribed by the regulations. Females, minors and persons of unsound mind were not qualified to

vote at any of the elections. Separate qualifications were prescribed for the Muslim electorates and also for the constituencies of the landholders.

9. Vice-presidents:

The Indian Councils Act, 1909 empowered the Governor-General, the Governors of presidencies and Lieutenant Governors having executive councils to appoint vice-presidents to act for them and also to preside over the meeting of the executive councils in their absence.

10. EXECUTIVE COUNCIL:

The number of the members of the executive councils of Bombay and Madras was raised from two to four. Indians were also made eligible for the appointment to the executive councils and Mr.S.P.Sinha, a lawyer was appointed to the councils of the Governor-General. This Act also empowered the Governor-General-in-council to establish executive councils for Lieutenant Governor's provinces and also for Bengal by proclamation after the approval of the secretary of the state-in-council. Except in case of Bengal it could be disallowed by either house of Parliament.

DEMERITS:

5. Creation of separate communal electorates for Muslims was the greatest defect of the Indian Councils Act,1909. It was nothing but to put one religion against the other. It was also against the democratic spirit. The Indian National Congress was very critical of the creation of separate electorates for the Muslims and also of the special representations of the landholders.

6. There was no non-official majority in the central legislative council. The non-official majority in the provincial legislative council was nominal and not real. The non-official members usually stood with the official members. The elected non-official members were in minority as against the official and nominated non-official members combined.

7. The franchise provided was restricted in nature. Except in few cases the representatives were elected by the system of indirect election. Besides the principle of nomination was also retained.

8. The Act failed to establish a responsible executive. The real power remained with the executive and legislature could criticize the executive government, but could not control it.

MERITS:

5. The size of the legislative councils was increased. The functions of the central and provincial councils were also increased. This Act empowered the members of the councils to discuss the annual budget, to propose resolutions on it and to divide the house on them and the members could also supplementary questions
6. The Indian Councils Act, 1892 contained the elective principle and the Indian Councils Act, 1909 extended the elective principle to some extent.
7. The non-official majority was provided in the provincial legislative councils.
8. Indians were made eligible for the appointment to the executive councils. Lord Minto and Lord Morley both were of the view that there must be an Indian in the central Executive and Mr.S.P.Sinha was appointed to the Governor General Council.

PART-B

1. ACT OF SETTLEMENT,1781

NEEDS AND OBJECTS:

10. This Act was enacted to remove the defects of the Regulating Act.
11. The conflict between the Supreme court and Supreme council was very serious and a petition against the Supreme court's activities in Bengal was submitted to the British Parliament by the Supreme Council.
12. Besides a petition signed by Zamindars, the company's servants and other British servants inhabiting in Bengal was also sent to the British Parliament against the Supreme court.
13. The British Parliament appointed a Parliamentary Committee to make inquiries in to the matter and prepare a report.
14. The Committee presented a report on the conflict between the Supreme council and the supreme court in 1781 and based on that report the British Parliament passed as Act in 1781 known as Act of Settlement,1781.
15. The main defect of the Regulating Act,1773 was that its provisions were very vague and that was the cause of the conflict between Supreme Court and Supreme council.
16. It failed to define with certainty of the jurisdiction of the Supreme court and its relation with the Supreme council and the company's court and on account of it they both interpreted the provisions of the Act to their own favour.

17. Therefore the Act of Settlement,1781 was passed to settle the disputes as to the jurisdiction of the Supreme court and its relation with the Supreme council and company's court.

18. The preamble of this Act makes it clear that the Act was passed to amend the Regulating Act, 1773 and to provide relief to certain persons imprisoned at Calcutta in Bengal under the judgment of the Supreme court in Patna case and also to indemnify the Governor-General-in-council of Bengal and other officers who had acted under their orders or authority.

PROVISION OF THIS ACT:

V. RESTRICTIONS ON THE JURISDICTION OF THE SUPREME COURT:

5. This Act provided that the Supreme court had no jurisdiction in any matter concerning the revenue or acts ordered or done in its collection according to the usage or practice of the country or the regulations of the Governor-General in council.

6. Thus this Act did not allow the Supreme court to interfere with the matters of revenue or in any act done in collection.

7. This Act further provided that no person could be taken within the jurisdiction of the Supreme court merely because he happened to be a land owner, land holder, farmer of land revenue or zamindar collecting revenue for the company etc.

8. The Act provided that the Governor-general and council would not be subject to the jurisdiction of the Supreme court for any Act done by them in their public capacity and acting as Governor- general and council.

VI. THE ACT OF SETTLEMENT VIRTUALLY RESTRICTED THE JURISDICTION OF THE SUPREME COURT ONLY TO TOWN OF CALCUTTA:

This Act provided that the Supreme court would decide all actions and suits against the inhabitants of Calcutta provided that their inheritance and successions of lands, rents and goods and all matters of contract and dealing between party and party would be determined in the case of Mohammedans by the laws and usages of Muslims and in case of Hindus by the laws and usages of Hindus and where only one of the parties would be a Muslim or Hindu by the laws and usages of the defendants.

VII. RECOGNITION OF THE COURTS OF THE COMPANY:

5. This Act gave recognition to the company's provincial courts. The Sardar Diwani Adalat was accorded recognition as a court to hear appeals from the decisions of the Mofussil courts in civil cases.

6. Thus the appellate jurisdiction of Sardar Diwani Adalat was confirmed by this Act.

7. The judgment of Sardar Diwani Adalat was to be final and conclusive except upon appeal to the king in council in civil suit of the value of 5000 pounds.

8. The status of the Sardar Diwani Adalat was thus made equal to that of Supreme court and he was empowered to act to hear and determine cases of all offences, abuses and extortions committed in the collection of revenue and to punish the same according to its discretion.

VIII. POWER TO FRAME REGULATIONS FOR THE PROVINCES:

4. The Governor-General-in-council were also empowered to frame rules and regulations for the provincial courts and provincial councils.

5. The copies of such regulations were to be sent to the court of Directors and the Secretary of State within 6 months of their passage.

6. The king-in-council could disallow or amend any such regulation within 2 years.

2. LEGAL PROFESSION IN INDIA BEFORE 1726

7. Charter of 1661, granted by Charles II made the first provision for the exercise of judicial powers by the company. It was authorized be govern its employees in a legal and reasonable manner.

8. General Judicial authority was given to the Governor and council of each factory to judge all persons belonging to them according to the laws of the kingdom.

9. The authority of the company came to be exercised at Madras(1639), Bombay(1668) and Calcutta).

10. The Charter of 1683 introduced lawyer, judges of the Admiralty court. The Admiralty court was established at Bombay in 1684 and Madras in 1686.

11. The company was not interested in organizing the legal profession the legal profession and was reluctant in sending lawyers from England to India.

12. The whole judicial system was executive oriented. Before 1726, the courts were court of east India Company and derived their authority not from the British crown but from the company. Each settlement had its own judicial system and distinct from others.

CHARTER OF 1726:

4. It was granted by George-I, established Mayor's court in all the presidency towns. Mayor's court was not a company's court but a crown's court. They were to follow well defined procedure based on English laws.

5. No provision was made laying down any particular qualifications for the persons who would be entitled to act or plead as legal practitioners in these courts.

6. Even the charter of 1753 made no effective change in the legal profession and no organized legal profession in the presidency towns during the period of Mayor's court. Those who practiced law were denied of legal training or knowledge of law.

LEGAL PROFESSION UNDER THE SUPREME COURT:

8. The Regulating Act, 1773 empowered the British crown to establish a supreme court at Calcutta and this court framed rules of procedure for administration of justice and due execution of its powers.

9. Charter of 1774 empowered the supreme court to approve, admit and enroll such and so many advocates and attorneys at law as to court shall meet.

10. The Supreme court was to have power to remove any advocate or attorney.

11. Clause II of the Charter of 1774 made it clear that no other persons but advocates or attorneys could appear and plead or act in the supreme court on behalf of such suitors or any of them.

12. The term 'advocate' at that time extended only to English and Irish Barristers and members of faculty of Advocates in Scotland. The expression 'Attorney' means only the BRITISH Attorneys.

13. The indigenous Indian legal practitioners such as vakils, mukhtams had no entry to this court. There were no Indians possessing the degree of 'Barrister' at that time.

14. The British advocates took advantage of this provision and began to exploit Indians. They used to change more than 5 to 7 times excess than in England.

LEGAL PROFESSION IN INDIA:

ACT OF SETTLEMENT:

After the establishment of Supreme court at Calcutta, a serious conflict arose between the judges of that court and the Governor-General and council. To avoid this conflict, Act of Settlement was passed in 1781. It did not introduce any change in the legal profession so far as the Supreme court was concerned. However it empowered

the Governor-General and council to frame regulations to be sent to the court of directors and secretary of state within 6 months. The king-in-council could disallow or amend any such regulation within 2 years.

3. FEDERAL GOVERNMENT

FEDERAL EXECUTIVE(DYARCHY AT CENTRE):

10. The Government of India Act, 1919 introduced dyarchy in provinces. The Government of India Act, 1935 proposed the establishment of dyarchy at centre and it abolished dyarchy in provinces.

11. The federal subjects were divided in to reserved subjects and transferred subjects. The reserved subjects included external affairs, ecclesiastical affairs, defense and tribal affairs and it were to be administered by the Governor-General with the help of executive councilors.

12. The executive councilors who were the ex-officio members of the federal legislature were appointed by Governor-General.

13. The Governor-General were appointed by the British crown and he was responsible to the Secretary of the state for India and through him to the British parliament.

14. The salaries of the executive councilors were determined by the king-in-council and the federal legislature had no control over the Governor-General and King-in-council.

15. The governor-general in the administration of the reserved subjects could take advice of the executive councilors, but their advice was not binding on the governor-general.

16. The transferred subjects were administered by the governor-general with the aid and advice of the council of ministers, who was appointed and could be dismissed by the governor-general.

17. There was no direct provisions for the office of prime minister, but the persons who had stable majority in the house of assembly and on whose advice the ministers were to be appointed was to act as the prime minister.

18. A minister was to cease to hold the office if for a consecutive period of 6 months he was not a member of any house of the central legislature. The ministers were to be responsible to the central legislature and they could be removed by the central legislature.

POWERS OF GOVERNOR-GENERAL:

The Governor-general was a very powerful authority under this Act who could exercise his powers even without consulting his ministers. But there was certain powers which were to be exercised by him by consulting his ministers.

C. POWERS- WHEN HE COULD EXERCISE HIS INDIVIDUAL JUDGEMENT:

The Governor-general was to exercise his individual judgment in the matters categorized by the Act as his special responsibilities. In the exercise of these powers, he was required to consult his ministers, but he was not bound be their advice. This category of powers of the Governor-general included the powers

e. To prevent any grave menace to the peace and tranquility of India or any part

f. To protect the rights of any Indian state and rights and dignity of the rules

g. To prevent discriminatory taxation against goods of British origin

h. To protect the legitimate rights of the public servants and also of their dependents.

D. POWERS-WHEN HE COULD ACT AT HIS DISCRETION :

There were certain powers which were to be exercised by the Governor-General in his discretion even without consulting his ministers. It is to be remembered that in the exercise of these powers he was not required even to consult his ministers. The difference between the powers, when he could exercise his individual judgment and the powers, when he could act at his discretion was that in the exercise of the former he was required to consult his ministers although he was not bound to act according to the advice, but in the exercise of the latter he was not required even to consult his ministers.

EXECUTIVE:

4. The governor-general, who was the executive and administer reserved subjects had power to appoint the ministers and also dismiss the ministers.

5. He was empowered to preside over the meetings of the council of ministers and was also empowered to appoint the councilors, financial advisors, the chief commissioners for Delhi, Ajmer, Marwar, Baluchistan and Coorg, chairman and members of federal public service commission, president and members of the railway tribunal and directors and deputy directors of the Indian Railway company.

6. He was also empowered to frame regulations for the peace and good governance of British, Baluchisten, Andaman and Nicobar Island.

LEGISLATIVE:

The Governor-General had wide legislative powers. He could summon and dissolve the lower house and joint sessions of the two houses of the federal legislature. He was also given power to sanction for introduction of certain bills in the legislature or could refuse for it. He was also empowered to issue ordinances and could issue directions to the governors in case they had acted at their own discretion or exercised individual judgment.

FINANCIAL:

The Governor-General was empowered to exercise control on non-votable heads of expenditure contributing over 80% of the whole of the budget. He could restore any demand for grant rejected or reduced by the central legislature. He was also empowered to recommend proposals for taxation and expenditure.

In exercise of all these powers, the Governor-General was to use his discretion and was not required even to consult his ministers.

FEDERAL LEGISLATURE-ITS COMPOSITION, POWERS AND FUNCTIONS OF THE FEDERAL ASSEMBLY AND COUNCIL OF STATES:

The federal legislature consisted of the king, represented by the Governor-General, the council of states and federal assembly. The council of states was to be the upper house of the federal legislature. It was a permanent body and one third of its members were to retire every 3 years. It represented the units of the federation. It consist of 156 representatives of British India and up to 104 representatives of the Indian states and they were to be nominated by the ruler.

FEDERAL ASSEMBLY:

4.1It was to be the lower chamber of the federal legislature. It was to consist of 250 representatives of British India and up to 125 representatives of the Indian states. It was to have maximum duration of 5 years, however it could be dissolved earlier by the Governor-General. The representatives of Indian states were to be nominated by their rulers and representatives of British India were to be elected through indirect elections.

POWERS OF FEDERAL LEGISLATURE:

13. It could make laws for the federation states on the subjects specified in the instrument of the accession. As regards British India, the federal legislature could make laws on the subjects specified in the federal list and concurrent list.

14. If a law made by a provincial legislature on a subject stated in the concurrent list was found against the law made on the subject by the federal legislature, the law made by it was to prevail and the provincial law was to be void to the extent of repugnancy.

15. In case of proclamation of emergency by the governor-general, the federal legislature could make laws on the subject specified in the provincial list. However the bill for the purpose could be introduced only with the previous sanction of the Governor-General .

16. A bill passed by both the chambers was to be presented to the Governor-General for his assent and could not become an Act without his assent.

17. He could also return the bill to the chambers for reconsideration, when a bill reserved by the Governor-General for his majesty's pleasure, it could not become law unless within 12 months from the date of its presentation to the governor-general.

18. Besides the federal legislature could not alter, amend or repeal the Government of India Act,1935. It was empowered to make law on certain matters.

19. The bills other than finance bills might originate in any chamber, the finance bill could originate only in federal assembly.

20. The bill was to be presented to the governor-general for his assent only when it was passed by both the chambers in exactly the same form.

21. If a bill passed by one chamber was rejected by the other chamber or bill passed by one chamber was passed by other chamber with amendments which were not acceptable to the former, the governor-general could summon the joint sitting of both the chambers to remove the difference between them. The decision was to be taken by a majority of votes of the members of both the chambers present and voting.

22. The governor-general was to prepare "annual financial statement" and to place it before both the chambers of the federal legislature.

23. This statement was show the sums required to meet expenditure charged upon the revenues of the federation and the sums required to meet other expenditures.

24. The sums stated in the statement as necessary to meet the expenditure charged upon the revenue of the federation were not subject to the federal legislature.

PART-C

a. Raja Nanda Kumar was a Collector of taxes more so a Diwan for various areas in what is now West Bengal. He was nick named Black Colonel and influential person in the company. He brought acquisitions against the Governor-General Warren Hastings as taking bribe from him, as instigated by Francis and other members of the Supreme council. However Warren Hastings could over rule the council's charges and became a bitter enemy of Raja. He brought charges of conspiracy and forgery against Nanada Kumar. Raja was tried by Elijah Impey, Chief Justice of the Supreme court and a friend of Warren Hastings. He was found guilty and hanged in cooly bazzar at Fort William on August 5 , 1775.

b. Prior to the passing of Inidan High courts Act, 1861 there existed dual system of course in India. Supreme courts of Calcutta, Bombay and Madras were the Crown's courts. Adalats in the moffusil areas were the courts of East India company.

1. While the Supreme court had professional lawyers company's adalats had mostly laymen.
2. There was no hierarchy of courts in Crown's courts, but regular hierarchy of courts in company's jurisdiction
3. Supreme court had both appellate and original jurisdiction. Sardar Diwani and Sardar Nizamat Adalats had only appellate jurisdiction.
4. While Supreme court followed English laws the company's courts followed the customary law of evidence and applied Anglo Mohammedan law.

c. Admiralty court:

It exercised jurisdiction over crimes of piracy and all cases of mercantile and maritime in nature. It would hear cases regarding trespass, injuries and wrongs committed on high seas. It heard cases of forfeitures and seizures of ships and goods. It s judge was known as Judge Advocate. It was to decide cases according to the rules of justice, equity and good conscience. It had wider jurisdiction even in civil and criminal cases. Criminal cases were decided with a help of a jury.

d. First law commission: (1834-43)

It was appointed in India according to the Charter Act of 1833.

1. It was headed by T.B.Macaulay and consisted of four members.
2. It was to function under the direction and control of Governor General-in-council.

3. The commission was assigned the work of

i. codification of penal law

ii. the law applicable to non-Hindus, non-Muslims with regard to their various rights

iii. codification of civil and criminal procedural law.

e. Bicameral legislature and uni cameral legislatures differ in terms of their functioning and characteristics.

i.bicameral legislature has an upper house to revise, improve and amend the laws normally with less party pressure, on the other hand unicameral legislature does not have an upper house.

ii. another way of defining them is that bicameral has two houses , where as unicameral has only one house.

iii.their names are derived from two words "bi" and "uni" meaning two and one respectively.

iv. A unicameral legislature has a single body of law makers. Bicameral legislature has two bodies eg. England- House of Lords and House of Commons

f. PROVISIONS OF Charter Act, 1813

a. Monopoly of East India company was restricted to tea trade only.

b. Trespass, assault of British Subjects on Indian natives were dealt severely.

c. British subjects who were staying, trading or owning property ten miles away from the presidency towns could take their civil suits to the local courts (Diwani Adalats)

In criminal cases to the district courts itself.

d. Special penalties for offences like theft, forgery and coinage

e. Act provided for religious training and education of the people of India, a sum of Rs.1 lakh was allotted for it.

f. Training of civil and military servants of the company (college at Heileybury and military school at Adiscombe)

g. Local courts to impose taxes and punish the defaulters.

h. WARREN HASTINGS PLAN OF 1774:

i. Revenue was administered by a committee of covenanted servants of the company.

ii. the province of Calcutta was divided in to six divisions, in each division there was a provincial council consisting of four or five covenanted servants of the company. This council was responsible for revenue and administration of justice within their jurisdiction.

iii.Each division was divided in to several districts under Naibs, for collecting revenue and administration of justice. Appeals went to the provincial councils up to the value of thousand rupees if it exceeded Rs.1000, it was appeal to Sardar Diwani Adalt at Calcutta.

PART-D.

8.a. Sir Elijah Impey was a British judge, the first Chief Justice of the Supreme court of judicature at fort William at Bengal, Chief Justice of the Sardar Diwani Adalat. He was a close friend of Warren Hastings and he was impeached for the trial of Nand Kumar.

b. Pagoda case: In Madras Hindus gave evidence in the court on Bhagavt Gita, but Mayor's court insisted two Hindu merchants to give evidence on pagoda oath which was contrary to their religion, so they refused and were arrested. Governor intervened and asked the court to release them and pay due respect to the religious feelings of their natives.

c. DAROGA-E-ADALAT: He was an Indian Judge of Sardar Nizamat Adalat at the time of Warren Hastings. He was assisted by Chief Kazi, Mufti and 3 Maulvies. All were appointed by the Nawab on the advice of the GOVERNOR. In case of death sentence warrant to be signed by the Nawab, the head of the Nizamat.

d. MANDAMUS: It is a writ of judicial remedy in the form of an order from a superior court to any subordinate court, corporation or public authority to do or forbidden from doing some specific act which that body is obliged under law to do or restrained from doing.

e. There was a demand for creating an All India Bar in the country. So the Government of India in 1923 constituted the Indian Bar committee under the chairmanship of Sir Edward Chemier, as it was not practical to organize a bar on all India basis the committee recommended the establishment of Bar councils for the High court.

f. Lex Loci means law of the land. There was no Lex Loci for non-Hindus and non-Muslims. So English law was a Lex Loci for them. The 1st law commission of 1835 submitted a report called Lex Loci report.

g. Equity jurisdiction is a system of justice designed to supplement common law by taking action in a reasonable and fair manner which results in just out come to achieve natural justice. They will not give importance to technicalities of law.

h. A set of regulations which were prepared by lord Cornwallis was known as Corn Wallis code. They dealt with the commercial, with civil and criminal justice, with the police and land revenue.