LLB Paper Code: 102
Subject: History – II (Legal History)
Semester: Second

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b. Settlements: Surat, Madras, Bombay and Calcutta
c. Courts: Mayor's Court of 1726 and Supreme Court of 1774
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CHARTERS OF THE EAST INDIA COMPANY: 1600, 1661, 1726 AND 1753

ELIZABETH, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith & c. To all our officers, ministers, and subjects, and to all other people, as well within this our realm of England as elsewhere, under our obedience and jurisdiction, or otherwise, unto whom these our Letters Patents shall be seen, showed, or read, greeting. Whereas our most dear and loving Cousin, George, Earl of Cumberland, and our well-beloved subjects, Sir John Hart, of London, and others (here follow 214 other names which are omitted) have of our certain knowledge been petitioners unto us, for our Royal assent and licence to be granted unto them, that they, at their own adventures, costs, and charges, as well for the honour of this our realm of England, as for the increase of our navigation, and advancement of trade of merchandize, within our said realms and the dominions of the same, might adventure and set forth one or more voyages, with convenient number of ships and pinnaces, by way of traffic and merchandize to the East Indies, in the countries and parts of Asia and Africa and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may by all likelihood be discovered, established or had; divers of which countries, and. many of the islands, cities and ports, thereof, have long since been discovered by others of our subjects, albeit not frequented in trade of merchandize. Know ye, therefore, that we, Greatly tendering the hounor of our nation, the wealth of our people, and the encouragement of them, and others of our loving subjects in their good enterprizes, for the increase of our navigation, and the advancement of our lawful traffick to the benefit of our Commonwealth, have of our special grace, certain knowledge, and mere motion, given and granted and by these presents, for us, our heirs and successors do give and grant unto our said loving subjects before in these presents expressly named, that they and every of them from henceforth be, and shall be one body corporate and politick, in deed and in name, by the name of the Governor and Company of Merchants of London, trading into the East Indies, and them by the name of the Governor and Company of Merchants of London, trading to the East Indies, one body and corporate and politick, in deed and in name, really and fully for us

our heirs and successors we do order, make, ordain, constitute, establish and declare, by these presents, and that by the same name of Governor and company of merchants of London, trading into the East Indies, they shall have succession, and that they and their successors, by the name of the Governor and Company of Merchants of London, trading into the East Indies, be and shall be, at all times hereafter, persons able and capable in law, and a body corporate and politick and

capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments of whatsoever kind, nature, and quality so ever they be, to them and their successors. And also to give, grant, demise, alien, assign and dispose lands, tenements and hereditaments, and to do and execute all and singular other things, by the same name that to them shall or may appertain to do. And that they and their successors, by the name of the Governor and Company Merchants of London, trading into the East Indies, may pleat and be impleaded, answer and be answered, defend and be defended, in whatsoever courts and places, and before whatsoever judges and justices, and other persons and officers, in all and singular actions, pleas, suits, quarrels, causes, an demands whatsoever, of whatsoever kind, nature or sort, in such a manner and form, as any other, our liege people of this realm of England, being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead and be impleaded, answer and be answered, defend and be defended, release and be released, do permit and execute. And that the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, may have a common seal, to serve for all the causes and business of them and their successors. And that it shall and may be lawful to the said Governor and Company, and their successors, the same seal, from time to time, at their will and pleasure, to break, change, and to make new or alter, as to them shall seem expedient. And further, we will, and by these presents, for us, our heirs and successors, we do ordain, that there shall be from henceforth one of the same Company to be elected and appointed, in such form, as hereafter in these presents is expressed, which shall be called the Governor of the said Company, and that there shall be from henceforth twenty-four of the said Company, to be elected and appointed in such form, as hereafter in these presents is expressed, which shall be called the committees of the said Company, who, together with the Governor of the said Company for the time being shall have the direction of the voyages, of or for the said Company, and the provision of the shipping and merchandizes thereto belonging, and also the sale of all merchandizes returned in the voyages, of or for the said Company, and the managing and handling of all other things belonging to the said Company and for the better execution of this our will and grant in this behalf we have assigned, nominated, constituted and made, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Thomas Smith, Alderman of London, to be the first and present Governor of the said Company, to continue in the said office, from the date of these presents, until another of the said Company shall in due manner be chosen and sworn unto the said office, according to the ordinances and provisions hereafter in these presents expressed and declared, if the said Thomas Smith shall so long live; and also we have assigned, nominated and appointed, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Paul Banning, Leonard Hollyday, John Moore, Edward Holmeden, Richard Staper, Thomas Cordell, William Garway, Oliver Style, James Lancaster, Richard Wiseman, Francis Cherry, Thomas Allabaster, William Romney, Roger How, William Chambers, Robert Sandye, John Eldred, Richard Wiche, John Hylord, John Middleton, John Comb, William Harrison, Nicholas Ling and Robert Bell, to be the twenty-four first and present committees of the said Company, to Continue in the said office committees of the said Company from the date of these preset for one whole year next following. And further we will grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London trading into the East Indies, and their successors, that it shall and may be

lawful to and for the said Governor and Company for the time being, or the more part of them, present at a publick assembly, commonly called the Court, holden for the said Company, the Governor of the said Company being always one from time to time, to elect, nominate and appoint one they said Company, to be deputy to the said Governor.

which deputy shall take a corporal oath, before the Governor and five or more of the committees of the said Company for the time being, well, faithfully and truly to execute his said office of deputy to the Governor of the said Company, and after his oath, so taken, shall and may from time to time, in the absence of the said Governor, exercise and execute the office Governor of the said Company, in such sort as the said Governor ought to do: and further we will and grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that they or the greater part of them whereof the Governor for the time being or his deputy to be one, from time to time, and at all times hereafter shall and may have authority and power yearly and every year.

CHARTER OF 1726

In the subsequent years the Charter of 1726 was passed which granted special powers to the Company as was requested by it. Under this Charter the Mayor's Court was established. This superseded all the other courts of Bombay, Madras and Calcutta. This was a court of record.

The Laws under this Charter were also applied in conformity with the laws in England on the principles of equity and justice. Appeals from this court could be filed in the court of Governor and Council and further in the court of King-in-Council in England.

Requisite independence was assured to the Mayor's Courts but this along with their strict adherence to English laws became the cause of some difficulties like hostility between the Mayor and the Governor and Council, and non clarity regarding jurisdiction of the Mayor's Court in respect of the natives.

The judiciary did not possess expert staff for administering justice and the executive did not have respect for the judiciary

This system remained suspended while the French had occupied Madras which they later surrendered in 1749. Then the Charter of 1753 was passed in order to remove the difficulties of the preceding Charter.

This charter put the Mayor under the subjection of the Governor and Council in order to avoid disputes between the two. Suits and actions between the natives were expressly excluded from the jurisdiction of the Mayor's Court unless both parties submitted them to its determination, and a Court of Requests was created to hear small civil cases. The defects of this Charter can be summarized by mentioning the

executive ridden judiciary, failure of impartial judgment, judiciary suffering from lack of legal knowledge, limitation

of the jurisdiction of the Courts to Presidency Towns, and no representation of Indian Judges as opposed to earlier provisions in some courts in Bombay.

The Company's financial break-down was the immediate cause for the enforcement of the Regulating Act of 1773. Section 13 of the Act provided for the establishment of a Supreme Court at Calcutta. The court, also a court of record with the power to punish for its contempt, had civil, equity, criminal, ecclesiastical and admiralty jurisdiction. Appeals against decisions of this Court and through the Court could be filed in all civil and criminal cases respectively before the King-in-Council. The establishment of this Court was a welcome as it was the first British Court in India consisting of lawyers, its jurisdiction was so wise that it covered all kinds of legal wrongs and that since all British subject came under its jurisdiction it ensured rule of law.

The Act of Settlement 1781 aimed at removing the ambiguities created by the former Act, but was not successful in its entirety.

With the increase in activities of the Company an urgent need of a lawyer-judge was felt to deal with new cases. The Charter in 1798 did the needful by establishing the Recorder's Court at Madras and Bombay. This Court had similar jurisdiction and was subject to the same restrictions as the Supreme Court of Calcutta. In 1801 and 1824 Supreme Courts were established in Madras and Bombay respectively. The Constitutional powers, functions, limitations and jurisdiction of these courts were the same as that of the Supreme Court at Calcutta.

A parallel system of judiciary was running in the mofussil areas. The Company attained the Diwani of Bengal, Bihar, and Orissa in 1765. As per the plan of 1772 under Warren Hastings, the Courts of Original Jurisdiction were Mofussil Faujdari Adalat, the court of criminal jurisdiction; Mofussil Diwani Adalat, the court of civil jurisdiction and Small Cause Adalat. Under the Appellate Courts we had Sadar Nizami Adalat, the criminal court of appeals; Sadar Diwani Adalat, civil court of appeals. The Collectors started monopolizing the trade in the districts putting the end to this system and giving rise to a new plan of 1774.

Under this system, diwan or amil, acted as the judge of the Mofussil Diwani Adalat. The Mofussil areas of Bengal, Bihar and Orissa were divinded into six districts with a Provincial Council in each district acting as the Appellate Court. The Council started creating difficulties and monopolizing trade within its jurisdiction. This led to an end of this plan as well and a new plan of 1780 was formulated.

This plan separated the executive from the judiciary. Provincial courts were left with the function of collecting land revenue only. For civil cases, a Diwani Adalat was established from which appeals went to the Sardar Diwani Adalat. Though this system assured the independence of the judiciary there were certain set-backs.

For the administration of criminal justice in a more efficient manner Warren Hastings drew a scheme in 1781 under which for apprehending criminals, Judges of the Mofussil Diwani Adalats were authorised to work as Magistrates and a department headed by the Remembrance of criminal Courts was opened to look after the working of the said courts.

CHARTER OF 1753

The conflict between the mayor court and governor and council created much confusion and chao in the settlements .on account of it the company requested the British crown to introduces suitable amendments in the charter of 1726.

1. changes in the organisation of mayors court
2. changes in the jurisdiction of the mayors court
3. deposits of money by the suitors to the government and not with the courts
4. courts on request

features :

1.Mayors court could not hear the cases where both the parties were submitted to its judgement with the consent of both the parties.

2. It also made clear that the mayors court could hear the suits against the mayor or alderman of the company.

3. much executive oriented

4. Non professional judges

5. Judges independent of the company and governor in council

B. SETTLEMENTS OF BOMBAY

Amid the discomfitures and distresses of the Company at home, resolute groups of Englishmen were making their presence felt in India. The sites of their settlements were at first determined by political rather than by commercial considerations. During centuries the natural meeting-marts of the Indo-European spice trade had been the ports of Malabar; but the monopoly of those marts was secured to Portugal by her fortress-capital at Goa, and the coast rajas were on too small a scale to afford protection to newcomers. If our captains of the "Separate Voyages" were to find a footing in India, it must be under the shelter of a strong native government. The march of the Moghul Empire southwards, at the end of the sixteenth century, gave them their chance. Leaving the direct route from Africa to Malabar, they struck northeast to the Gulf of Cambay, on whose coasts the Moghul Emperor Akbar had imposed his rule, between 1572 and 1592. Encamping at Rajapur on the Bombay Coast formed a chief inlet of the Arabian commerce for the yet unconquered kingdoms of the South. In vain the Company's servants at Surat protested and tried to found a rival station in the South. Captain Weddell secured by lavish gifts the support of the King of Bijapur, and began to plant factories along the coast. The sagacity of his selection is proved by the part which these factories played in the subsequent annals of the Company.

From home the Surat factory could get no succour, nor any certain sound from their distracted masters, then in their desperate struggle with the court cabal. We have seen that fifty-seven ships and eighteen pinnaces had been sent out for port to port trade alone, during the twelve years ending 1629. The Company's records, which during the same period abound in journals of voyages to and from India, preserve only eight such documents for the thirteen disastrous years from King Charles's grant to Courten's Association in 1635 to his Majesty's death in 1649.

But the factors of the Company at Surat, although left to ruin, asserted their vitality in a wholly unexpected manner. They practically kept up the trade on their own account, continued to patrol the pilgrim highway, and maintained an attitude at once so reasonable and so resolute that the Moghul government repented of having punished them for the piracy of their rivals.

As the emperor used the English to check the piracy of the Portuguese, so he employed them to bring it to an end. The Portuguese had continued to plunder Moghul ships, subject to such reprisals as the English could inflict on them. But the English president at Surat had now made a treaty on his own account with the Goa viceroy: Why should he not also include in it the Indian government? In 1639 the Surat Council found themselves raised into negotiators between the Moghul governor and the Portuguese. The degenerate successors of Albuquerque and the half-breed corsairs of Goa for a time transferred their piracies from the Mecca route to the Bay of Bengal, and the cold shadows which had fallen on the Surat factory were again warmed into prosperity under the sunshine of the Moghul court. However low the fortunes of the Company sank under king or Commonwealth in England, the Surat factory grew with a strength of its own. In 1657, on account of the prosperous condition of that factory, the Company decided that there should be but one presidency in India – and that Surat.

I have narrated at some length the rise of the Surat factory for several reasons. It formed the first headquarters of the English in India – a centre of English control in the East which had a vitality in itself apart from the Company in London, and which won by its Persian Gulf victory our first revenue grant – the Customs of Gombroon – and profoundly influenced our later settlements on the Indian continent. It also illustrates the position which the English quickly secured in the economy of the Moghul Empire: as a sure source of revenue, a sea-police for the coast, and the patrol of the ocean path to Mecca, gradually developing into negotiators on behalf of the native government. Surat forms the type of an early English settlement under the strong hand of the Moghul emperors.

SETTLEMENTS OF SURAT

Surat, the emporium of this ocean inlet and the capital of Gujarat, lies on a bend of the Tapti where the stream sweeps abruptly westward toward the sea. The name Surat is the modern representative of the ancient province of Surashtra, which at one time included not only Gujarat but part of Kathiawar.

In ancient times the city was the chief maritime centre of India, and Ptolemy, about 150 B.C., speaks of the trade of Pulipula, which has been identified with Phulpada, the old sacred part of Surat town. In

course of time, however, the silt-bearing currents of its river and sand-laden ocean tides blocked its approach to medieval shipping, although they formed a roadstead. protected by mud-banks at Suwali, near the river mouth. Gujarat was cut off from the Moghul base in Northern India by mountains and deserts, and its annexation to the Moghul Empire cost twenty years of war, from 1572 to 1592. The work of conquest was rudely interrupted by revolts, which flared up afresh in the early years of the seventeenth century; but the long arm of the empire at length prevailed, and just as the anarchy ended the English came upon the scene.

In 1607, Captain William Hawkins, of the third "Separate Voyage," landed at Surat with a letter from James I to the Moghul Emperor Jahangir, and proceeded to the court at Agra. But the magnificent monarch of India did not take seriously the proffers of an unknown island-king brought by a ship's captain. Such European influence as then existed at the Moghul capital was entirely Portuguese; and, after four years, Hawkins returned to Surat with a native wife, but without any grant for trade. Meanwhile the local governor of Surat had allowed some of Hawkins's followers to remain there, apparently as a set-off to the Portuguese, who formed an unruly element at the roadstead. In 1609 a shipwrecked crew of our fourth "Separate Voyage" also claimed shelter. This Moghul governor, whether "bribed by the Portugals" or merely afraid lest he should have too many of the European infidels on his hands, discreetly refused. The poor sailors had to make their way home, part of them by way of Lisbon, by the clemency of the Portuguese, who were only too glad to get rid of them.

The accounts which thus reached England from Surat, of its settled government under the cegis of the Great Moghul, and of its opportunities for trade, determined the Company to effect a settlement at its port. In 1611 Sir Henry Middleton, of the sixth "Separate Voyage," landed at Suwali in spite of the Portuguese, although they had compelled him to do business by exchanging cargoes in the roadstead. The Moghul governor, while still refusing us a factory, allowed some trade. Next year, 1612, Captain Best with the old *Red Dragon*, and the little *Hosiander* routed the Portuguese squadron that commanded the approaches to Surat, while the Moghul governor looked on from the shore. A month's hard fighting destroyed forever the Indian legend of the Portuguese supremacy over other Europeans. The gallant Captain Best would have been satisfied with his victory, but he had with him a man who was resolved that England should reap its full results. Thomas Aldworth, factor and merchant, improved the momentary congratulations of the Moghul governor into a grant for our first settlement in India.

"Through the whole Indies," Aldworth wrote to the Company in 1613, "there cannot be any place more beneficial for our country than this, being the only key to open all the rich and best trade of the Indies." With a handful of English merchants in an unfortified house he struggled through the reaction against us which followed the departure of Best's ships, until Downton's sea-fight two years later established for ever our superiority at Surat over the Portuguese.

Downton's feat of arms proved, unexpectedly, to be a great strategic victory. He had cut in half the Portuguese line of communication along the Indian coast. That line was held by Goa as its southern, and

by Diu as its northern, base; and between the two by a squadron, which assured to Portugal the traffic of Surat and its presidency.

SETTLEMENTS OF MADRAS

The **Madras Presidency**, officially the **Presidency of Fort St. George** and also known as **Madras Province**, was an administrative subdivision of British India. At its greatest extent, the presidency included much of southern India, including the present-day Indian State of Tamil Nadu, the Malabar region of North Kerala, Lakshadweep Islands, the Coastal Andhra and Rayalaseema regions of Andhra Pradesh, Ganjam, Malkangiri, Koraput, Rayagada, Nabarangapur and Gajapati districts of southern Odisha and the Bellary, Dakshina Kannada, and Udupi districts of Karnataka. The presidency had its winter capital at Madras and summer capital at Ootacamund.

In 1639, the English East India Company purchased the village of Madraspatnam and one year later it established the Agency of Fort St George, precursor of the Madras Presidency, although there had been Company factories at Machilipatnam and Armagon since the very early 1600s. The agency was upgraded to a Presidency in 1652 before once more reverting to its previous status in 1655. In 1684, it was re-elevated to a Presidency and Elihu Yale was appointed as president. In 1785, under the provisions of Pitt's India Act, Madras became one of three provinces established by the East India Company. Thereafter, the head of the area was styled "Governor" rather than "President" and became subordinate to the Governor-General in Calcutta, a title that would persist until 1947. Judicial, legislative and executive powers rested with the Governor who was assisted by a Council whose constitution was modified by reforms enacted in 1861, 1909, 1919 and 1935. Regular elections were conducted in Madras up to the outbreak of the Second World War in 1939. By 1908, the province comprised twenty-two districts, each under a District Collector, and it was further sub-divided into *taluks* and *firqas* with villages making up the smallest unit of administration.

Following the Montague-Chelmsford reforms of 1919, Madras was the first province of British India to implement a system of dyarchy, and thereafter its Governor ruled alongside a prime minister. In the

early decades of the 20th century, many significant contributors to the Indian independence movement came from Madras. With the advent of Indian independence on 15 August 1947, the Presidency was dissolved. Madras was later admitted as a state of the Indian Union at the inauguration of the Republic of India on 26 January 1950, and was reorganized in 1956.

SETTLEMENTS OF CALCUTTA

The **Bengal Presidency** originally comprising east and west Bengal, was a colonial region of the British Empire in South-Asia and beyond it. It comprised areas which are now within Bangladesh, and the present day Indian States of West Bengal, Assam, Bihar, Meghalaya, Odisha and Tripura. Penang and Singapore were also considered to be administratively a part of the Presidency until they were incorporated into the Crown Colony of the Straits Settlements in 1867.

Calcutta was declared a Presidency Town of the East India Company in 1699, but the beginnings of the Bengal Presidency proper can be dated from the treaties of 1765 between the East India Company and the Mughal Emperor and Nawab of Oudh which placed Bengal, Meghalaya, Bihar and Odisha under the administration of the Company.

At its height, gradually added, were the annexed princely states of Uttar Pradesh, Uttarakhand, Punjab, Haryana, and Himachal Pradesh and portions of Chhatisgarh, Madhya Pradesh, and Maharashtra in present day India, as well as the provinces of North West Frontier and Punjab, both now in Pakistan, and most of Burma (present day Myanmar).

In 1874 Assam, including Sylhet, was severed from Bengal to form a Chief-Commissionership, and the Lushai Hills were added to that in 1898.

The Presidency of Bengal, unlike those of Madras and Bombay, eventually included all of the British possessions north of the Central Provinces (Madhya Pradesh), from the mouths of the Ganges and Brahmaputra to the Himalayas as well as the Punjab. In 1831, the North-Western Provinces were created, which were subsequently included with Oudh in the United Provinces (Uttar Pradesh). Just before the First World War the whole of Northern India was divided into the four lieutenant-governorships of the Punjab, the United Provinces, Bengal, Eastern Bengal and Assam, and the North-West Frontier Province under a Commissioner.

MAYOR COURT

Sub-series: CSB Mayors' courts were established by royal charter to strengthen the administration of British justice in the Company's various settlements in India, the court at Calcutta having been established by the charter of 1726 (revised in 1753). It appointed a mayor and nine aldermen to act as judges in civil cases and was also empowered to grant probate and exercise testamentary jurisdiction. It was superseded by the Supreme Court established by Act of Parliament in 1774.

Supreme Court

Supreme Court THE REGULATING ACT 1773 AUTHORISED THE BRITISH CROWN to establish a supreme court at Calcutta by issuing a chater of1774. Thus establishing the Supreme Court at fort William Calcutta.

Composition:

Chief justice ,3 judges ,barristers of England ,with 5 years of experience .appointed by crown sir Inpey chief justice of supreme court.

Jurisdiction of Supreme Court

Civil –territorial in Calcutta and personal in Bengal ,biharand orrissa

Equity –administer justice in a summer manner

Criminal only to british servants

Ecclesiastical –grant will

Admirality-akkmaritime cases

Writ – writ of certiori, mandamus …….. merits

Civil and criminal jurisdiction

Derives its authority from crown

Rules now require approval from king in council

Court fee was regulated

Empower to appoint advocates

Enabled judiciary to control executive

Writ power

Defects

Relationship between governor general and council and Supreme Court not defined. governor general and council rejected the authority of court. Thus it became source of annoyance

Relationship between mofussil adalats and Supreme Court not defined .whether they were subordinate to Supreme Court foe no

Jurisdiction beyond the Calcutta was not defined .court could issue the summons even for people outside the Calcutta. Even people were detained in jail till decision.

Courts applied English law in India

Criminal law applied in India was harsh.

THE REGULATING ACT OF 1773

The Regulating Act of 1773 was an Act of the Parliament of Great Britain intended to overhaul the management of the East India Company's rule in India.[1] The Act did not prove to be a long-term solution to concerns over the Company's affairs; Pitt's India Act was therefore subsequently enacted in 1784 as a more radical reform.

By 1773, the East India Company was in dire financial straits. The Company was important to Britain because it was a monopoly trading company in India and in the east and many influential people were shareholders. The Company paid GB£400,000 (present-day (2013) equivalent is £39.6 million) annually to the government to maintain the monopoly but had been unable to meet its commitments since 1768 because of the loss of tea sales to America. About 85% of all the tea in America was smuggled Dutch tea. The East India Company owed money to both the Bank of England and the government: it had 15 million lbs (6.8 million kg) of tea rotting in British warehouses and more en route from India.

Lord North decided to overhaul the management of the East India Company with the Regulating Act. This was the first step to the eventual government control of India. The Act set up a system whereby it supervised (regulated) the work of the East India Company.

The Company had taken over large areas of India for trading purposes and had an army to protect its interests. Company men were not trained to govern so North's government began moves towards government control since India was of national importance. Shareholders in the Company opposed the Act. The East India Company was still a powerful lobbying group in Parliament in spite of its financial problem.

Provisions of the Regulating Act

1. The Act limited Company dividends to 6% until it repaid a GB£1.5M loan (passed by an accompanying act, 13 Geo. 3 c. 64) and restricted the Court of Directors to four-year terms.[4]

1. It prohibited the servants of company from engaging in any private trade or accepting presents or bribes from the natives.

1. The Act elevated Governor of Bengal Warren Hastings to Governor-General and subsumed the presidencies of Madras and Bombay under Bengal's control.[4]

1. The Act named four additional men to serve with the Governor-General on the Calcutta Council: Lt-Gen John Clavering, George Monson, Richard Barwell, and Philip Francis. Barwell was the only one with previous experience in India. These councillors were commonly known as the "Council of Four".[4]

1. A supreme court was established at Fort William at Calcutta. British judges were to be sent to India to administer the British legal system that was used there.

PITT'S INDIA ACT

The East India Company Act 1784, also known as **Pitt's India Act**, was an Act of the Parliament of Great Britain intended to address the shortcomings of the Regulating Act of 1773 by bringing the East India Company's rule in India under the control of the British Government. Pitt's India Act provided for the appointment of a Board of Control, and provided for a joint government of British India by both the Company and the Crown with the government holding the ultimate authority.

By 1773 the East India Company was in dire financial straits and asked for assistance from the British Government. Faced with corruption and nepotism amongst the company officials in India, the British Government enacted the Regulating Act in 1773 to control the activities of the Company. The Act set up a system whereby it supervised (regulated) the work of the Company but did not take power for itself. The Act had proven to be a failure within a few years and the British government decided to take a more active role in the affairs of the Company.

Provisions of the 1784 Act

A governing board was constituted with six members, two of whom were members of the British Cabinet and the remaining from the Privy Council. The Board also had a president, who soon effectively became the minister for the affairs of the East India Company. The Act stated that the Board would henceforth "superintend, direct and control" the government of the Company's possessions in effect controlling the acts and operations relating to the civil, military and revenues of the Company.

The governing council of the Company was reduced to three members, and the governor-general, a crown appointee, was authorized to veto the majority decisions. The governors of Bombay and Madras were also deprived of their independence. The governor-general was given greater powers in matters of war, revenue and diplomacy.

By a supplementary act passed in 1786 Lord Cornwallis was appointed as the second governor-general, and he then became the effective ruler of British India under the authority of the Board of Control and the Court of Directors. The constitution set up by Pitt's India Act did not undergo any major changes until the end of the company's rule in India in 1858

THE ACT OF SETTLEMENT 1781

The Act of Settlement 1781 aimed at removing the ambiguities created by the former Act, but was not successful in its entirety. With the increase in activities of the Company an urgent need of a lawyer-judge was felt to deal with new cases. The Charter in 1798 did the needful by establishing the Recorder's Court at Madras and Bombay. This Court had similar jurisdiction and was subject to the same restrictions as the Supreme Court of Calcutta. In 1801 and 1824 Supreme Courts were established in Madras and Bombay respectively. The Constitutional powers, functions, limitations and jurisdiction of these courts were the same as that of the Supreme Court at Calcutta.

A parallel system of judiciary was running in the mofussil areas. The Company attained the Diwani of Bengal, Bihar, and Orissa in 1765. As per the plan of 1772 under Warren Hastings, the Courts of Original Jurisdiction were Mofussil Faujdari Adalat, the court of criminal jurisdiction; Mofussil Diwani Adalat, the court of civil jurisdiction and Small Cause Adalat. Under the Appellate Courts we had Sadar Nizami Adalat, the criminal court of appeals; Sadar Diwani Adalat, civil court of appeals. The Collectors started monopolizing the trade in the districts putting the end to this system and giving rise to a new plan of 1774.

Under this system, diwan or amil, acted as the judge of the Mofussil Diwani Adalat. The Mofussil areas of Bengal, Bihar and Orissa were divinded into six districts with a Provincial Council in each district acting as the Appellate Court. The Council started creating difficulties and monopolizing trade within its jurisdiction. This led to an end of this plan as well and a new plan of 1780 was formulated.

This plan separated the executive from the judiciary. Provincial courts were left with the function of collecting land revenue only. For civil cases, a Diwani Adalat was established from which appeals went to the Sardar Diwani Adalat. Though this system assured the independence of the judiciary there were certain set-backs.

For the administration of criminal justice in a more efficient manner Warren Hastings drew a scheme in 1781 under which for apprehending criminals, Judges of the Mofussil Diwani Adalats were authorised to work as Magistrates and a department headed by the Remembrance of criminal Courts was opened to look after the working of the said courts. Act of settlement to Was passed to remove confusions in charterGoverner general and council aewe excluded from jurisdiction of the supreme courtRevenue matters were taken out of supreme court jurisdictionNo person employed by company was subject to sup reme courtIn case of natives personal law was applicable Adalats were not liable to supreme court

CONFLICT

Raja Nand Kumar

Raja Nand Kumar, a Hindu Brahmin was a big Zamindar and a very influential person of Bengal. He was loyal to the English company ever since the days of Clive and was popularly known as "black colonel" by the company. Three out of four members of the council were opponents of Hastings, the Governor-General and thus the council consisted of two distinct rival groups, the majority group being opposed to Hastings. The majority group comprising **Francis**, **Clavering** and **Monson** instigated Nand Kumar to bring certain charges of bribery and corruption against warren Hastings before the council whereupon Nand Kumar in march, 1775 gave a latter to Francis, one of the members of the council complaining that in 1772, Hastings accepted from him bribery of more than one Lakh for appointing his son Gurudas, as Diwan. The letter also contained an allegation against Hastings that he accepted rupees two and a half lakh from Munni begum as bribe for appointing her as the guardian of the minor Nawab Mubarak-ud-Daulah. Francis placed his letter before the council in his meeting and other supporter, monsoon moved a motion that Nand Kumar should be summoned to appear before the Council. Warren Hastings who was presiding the meeting in the capacity of Governor-General, opposed Monson's motion on the ground that he shall not sit in the meeting to hear accusation s against himself nor shall he acknowledge the members of his council to be his judges. Mr. Barwell ,the alone supporter member of Hastings ,put forth a suggestion that Nand Kumar should file his complaint in the supreme court because it was the court and not the council ,which was competent to hear the case. But Monson's motion was supported by the majority hence Hastings dissolved the meeting. Thereupon majority of the members objected to this action of Hastings and elected Clavering to preside over the meeting in place of Hastings .Nand Kumar was called before the council to prove his charges against Hastings. The majority members of the council examined Nand Kumar briefly and declared that the charges leveled against Hastings were proved and directed Hastings to deposit an amount of Rs.3, 54,105 in treasury of the company, which he had accepted as a bribe from Nand Kumar and Munni Begum. Hastings genuinely believed that the council had no authority to inquire into Nand Kumar's charges against him. This event made Hastings a bitter enemy of Nand Kumar and he looked for an opportunity to show him down.

Facts of the case:-

Soon after, Nand Kumar was along with Fawkes and Radha Charan were charged and arrested for conspiracy at the instance of Hastings and barwell.

In order to bring further disgrace to Raja Nand Kumar, Hastings manipulated another case of forgery against him at the instance of one Mohan Prasad in the conspiracy case. The Supreme Court in its decision of July 1775 fined Fawkes but reserved its judgment against Nand Kumar on the grounds of pending fraud case. The charge against Nand Kumar in the forgery case was that he had forged a bond in 1770. The council protested against Nand Kumar's charge in the Supreme Court but the Supreme Court proceeded with the case unheeded. Finally, Nand Kumar was tried by the jury of twelve Englishmen who returned a verdict of 'guilty' and consequently, the supreme court sentenced him to death under an act of the British parliament called the Forgery Act which was passed as early as 1728.

Serious efforts were made to save the life of Nand Kumar and an application for granting leave to appeal to the king-in-council was moved in the Supreme Court but the same was rejected. Another petition for recommending the case for mercy to the British council was also turned down by the Supreme Court. The sentence passed by the Supreme Court was duly executed by hanging Nand Kumar to death on August 5, 1775.In this way, Hastings succeeded in getting rid of Nand Kumar.

CRITICAL APPRAISAL:-

Chief Justice Impey in this case acted unjustly in refusing to respite to Nand Kumar. No rational man can doubt that he took this course in order to gratify the Governor-General. The trial of Nand Kumar disclosed that the institution of Supreme Court hardly commanded any respect from the natives as it wholly unsuited to their social conditions and customs. The trial has been characterized as **"judicial murder"** of Raja Nand Kumar which rudely shocked the conscience of mankind. Raja Nand Kumar's trial was certainly a case of miscarriage of justice.

PATNA CASE

Shahbazbeg , a solider in company army had no soldier .so he expressed his desire to adopt his nephew bahadur beg and hand him his property . bt before that he died . his widow begum claimed the property as gift from his husband after death .bahadur filed casr against begum.

Law officers sealed the property and insulted widow acco ording to muslim law three fourth property was given to widow and one fourth t o bahadur Widow approsched the supreme court , which ordered to hand over all property to widow and compensation of rs 3 lakh .

Issue with ptana case

Case questions relationship of supreme court and adalats . Court procedure of arrest of bahadur and law officers was criticized Hoionlding of the supreme court that it had jurisdict over revenue farmers provoked revolt in mufussil area.

Court procedure of awarding rs 3 lakh compensation was criticized .Brought into light internal defects of judicial system(adalat and council)

COSSIJURAH CASE

Cossinaut baboo filed case of debt against a zamindar, the rajah of cossijurah . The zamindar was in debtness to cossinaut in the affidavit .babu stated the rajah was in service of company as a revenue collector thus in the jurisdiction of Supreme Court

Meanwhile the matter was referred was referred to governor and council at Calcutta where it was stated that matter was not in jurisdiction of Supreme Court .council asked to ignore the process of court.

Court sent to arrest zaminder sent more force to prevent Dead lock was created Brought into defects of the charter Charter did not demarcate the jurisdict ion of court and governer general in council Confusion as supreme court issue the writ of capias against the council,which council disobey Dignity of supreme court lowered.

Thus the Supreme Court established under the 1774 charter became an institution which was disliked and dreamed equally by the officers of the government and especially Indians.

WARREN HASTINGS

Warren Hastings was born at Churchill, Oxford shire in 1732 to a poor father and a mother who died soon after he was born. He attended Westminster School where he was a contemporary of the future Prime Ministers Lord Shelburne and the Duke of Portland. He joined the British East India Company in 1750 as a clerk and sailed out to India reaching Calcutta in August 1750. Hastings built up a reputation for hard work and diligence, and spent his free time learning about India and mastering Urdu and Farsi.[4] He was rewarded for his work in 1752 when he was promoted and sent to Kasimbazar, an important British trading post in Bengal where he worked for William Watts. While there he received further lessons about the nature of East Indian politics.

At the time British traders still operated by the whim of local rulers and Hastings and his colleagues were unsettled by the political turmoil of Bengal with the elderly moderate Nawab Alivardi Khan likely to be succeeded by his grandson Siraj ud-Daulah and several other rival claimants also eyeing the throne. This made the British trading posts throughout Bengal increasingly insecure as Siraj ud-Daulah was known to harbour anti-European views and was likely to launch an attack once he took power. When Alivardi Khan died in April 1756 the British traders and small garrison at Kasimbazar were left vulnerable. On 3 June, after being surrounded by a much larger force, the British were persuaded to surrender to prevent a massacre taking place. Hastings was imprisoned with others in the Bengali capital Murshidabad while the Nawab's forces marched on Calcutta and captured it. The garrison and civilians were then locked up in the Black Hole of Calcutta.

For a while Hastings remained in Murshidabad and was even used by the Nawab as an intermediary, but fearing for his life he escaped to the island of Fulta where a number of refugees from Calcutta had taken shelter. While there he met and married Mary Buchanan, the widow of one of the victims of the Black Hole. Shortly afterwards a British expedition from Madras under Robert Clive arrived to rescue them. Hastings served as a volunteer in Clive's forces as they retook Calcutta in January 1757. After this swift defeat the Nawab urgently sought peace and the war came to an end. Clive was impressed with Hastings when he met him, and arranged for his return to Kasimbazar to resume his pre-war activities. Later in

1757 fighting began again, leading to the Battle of Plassey, where Clive won a decisive victory over the Nawab. Following the British victory Siraj ud-Daulah was overthrown and replaced by his uncle Mir Jafar who initiated pro-British policies.

RISING STATUS

In 1758 Hastings was made the British Resident in the Bengali capital of Murshidabad, a major step forwards in his career, at the instigation of Clive. His role in the city was ostensibly that of an ambassador but as Bengal was increasingly under the dominance of the East India Company he was often given the task of issuing orders to the new Nawab on behalf of Clive and the Calcutta authorities.[6] Hastings personally sympathized with Mir Jafar and believed many of the demands placed on him by the Company were excessive. Hastings had already developed a philosophy that was grounded in trying to establish a more understanding relationship with India's inhabitants and their rulers and he often tried to mediate between the two sides.

During Mir Jafar's reign the East India Company exerted an increasingly large role in the running of the region, and effectively took over the defence of Bengal against external invaders when Bengal's troops proved insufficient for the task. As he grew older Mir Jafar was gradually less able to rule the state, and in 1760 British troops ousted him from power and replaced him with Mir Qasim. Hastings expressed his doubts to Calcutta over the move, believing they were honors bound to support Mir Jafar, but his opinions were overruled. Hastings once more established a good relationship with the new Nawab and again had misgivings about the demands he relayed from his superiors. In 1761 he was recalled and appointed to the Calcutta council.

CONQUEST OF BENGAL

Further information: Battle of Buxar

Hastings was personally angered when he conducted an investigation into trading abuses in Bengal. He alleged some European and British-allied Indian merchants were taking advantage of the situation to personally enrich themselves. Widespread fraud was practiced and illegal trading took place by figures that travelled under the unauthorized protection of the British flag, knowing that local customs officials would therefore be cowed into not interfering with them. Hastings felt this was bringing shame on Britain's reputation, and he urged the ruling authorities in Calcutta to put an end to it. The Council considered his report but ultimately rejected Hastings' proposals and he was fiercely criticized by other members, many of whom had themselves profited from the trade.

Ultimately, little was done to stem the abuses and Hastings began to consider quitting his post and returning to Britain. His resignation was only delayed by the outbreak of fresh fighting in Bengal. Once on the throne Qasim proved increasingly independent in his actions, and he rebuilt Bengal's army by hiring European instructors and mercenaries who greatly improved the standard of his forces.[9] He felt

gradually more confident and in 1764 when a dispute broke out in the settlement of Patna he captured its British garrison and threatened to execute them if the East India Company responded militarily. When Calcutta dispatched troops anyway, Mir Qasim executed the hostages. British forces then went on the attack and won a series of battles culminating in the decisive Battle of Buxar in October 1764. After this Mir Qasim fled into exile in Delhi where he later died. The treaty of Allahabad gave the East India Company the right to collect taxes in Bengal on behalf of the Mughal Emperor.

RETURN TO BRITAIN

Warren Hastings,during his time in England, as painted by Sir Joshua Reynolds in 1767–68.
Hastings resigned in December 1764 and sailed for Britain the following month. He was left deeply saddened by the failure of the more moderate strategy he supported which had been rejected by the hawkish members of the Calcutta Council. Once he arrived in London Hastings began spending far beyond his means. He stayed in fashionable addresses and had his picture painted by Joshua Reynolds in spite of the fact that, unlike many of his contemporaries, he had not amassed a fortune while in India. Eventually, having run up enormous debts, Hastings realized he needed to return to India to restore his finances and applied to the East India Company for employment. His application was initially rejected as he had made many political enemies including the powerful director Laurence Sulivan. Eventually an appeal to Sulivan's rival Robert Clive secured Hastings the position of deputy ruler at the city of Madras. He sailed from Dover in March 1769. On the voyage he met the German Baroness Imhoff and her husband. He soon fell in love with the Baroness and they began an affair, seemingly with her husband's consent. Hastings' first wife, Mary, had died in 1759 and he planned to marry the Baroness once she had obtained a divorce from her husband. The process took a long time and it was not until 1777 when news of divorce came from Germany that Hastings was finally able to marry her.

MADRAS AND CALCUTTA

Hastings arrived in Madras shortly after the end of the First Anglo-Mysore War during which the city had been threatened with capture by the forces of Hyder Ali. The Treaty of Madras which ended the war failed to settle the dispute and there were three further wars. During his time at Madras he initiated reforms of trading practices which cut out the use of middlemen and benefited both the Company and the Indian labourers but otherwise the period was relatively uneventful for him.

By this stage Hastings shared Clive's view that the three major British Presidencies (settlements), Madras, Bombay and Calcutta, should all be brought under a single rule rather than being governed separately as they currently were. In 1771 he was appointed to be Governor of Calcutta, the most important of the Presidencies. In Britain moves were underway to reform the divided system of government and create a single rule across all of British India with its capital in Calcutta. Hastings was considered the natural choice to be the first Governor General.

While Governor, Hastings launched a major crackdown on bandits operation in Bengal which was largely successful.

He also faced the severe Bengal Famine, with around ten million deaths.

GOVERNOR GENERAL

In 1773, he was appointed the first Governor-General of Bengal. The post was new, and British mechanisms to administer the territory were not fully developed. Regardless of his title, Hastings was only a member of a five man council so confusedly structured that it was difficult to tell what constitutional position Hastings actually held.

In 1784, after ten years of service, during which he helped extend and regularize the nascent *Raj* created by Clive of India, Hastings resigned. On his return to England he was charged in Parliament with high crimes and misdemeanors by Edmund Burke, who was encouraged by Sir Philip Francis, whom Hastings had wounded during a duel in India. He was impeached in 1787, but the trial, which ran from 1788 to 1795, ended in acquittal. Though Hastings spent most of his fortune on his defence, the East India Company provided substantial financial support towards the end of the trial.

His supporters from the Edinburgh East India Club, as well as a number of other gentlemen from India, gave a reportedly "elegant entertainment" for Hastings when he visited Edinburgh. A toast on the occasion went to the "Prosperity to our settlements in India" and wished that "the virtue and talents which preserved them be ever remembered with gratitude."

In 1788 he acquired the estate at Daylesford, Gloucestershire, including the site of the medieval seat of the Hastings family. In the following years, he remodelled the mansion to the designs of Samuel Pepys Cockerell, with classical and Indian decoration, and gardens landscaped by John Davenport. He also rebuilt the Norman church in 1816, where he was buried two years later.

HASTINGS'S ADMINISTRATIVE ETHOS AND LEGACY

During the final quarter of the eighteenth century, many of the Company's senior administrators realized that, in order to govern Indian society, it was essential that they learn its various religious, social, and legal customs and precedents. The importance of such knowledge to the colonial government was clearly in Hastings's mind when, in 1784, he remarked:

"Every application of knowledge and especially such as is obtained in social communication with people, over whom we exercise dominion, founded on the right of conquest, is useful to the state … It attracts and conciliates distant affections, it lessens the weight of the chain by which the natives are held in subjection and it imprints on the hearts of our countrymen the sense of obligation and benevolence… Every instance which brings their real character will impress us with more generous sense of feeling for their natural rights, and teach us to estimate them by the

measure of our own… But such instances can only be gained in their writings; and these will survive when British domination in India shall have long ceased to exist, and when the sources which once yielded of wealth and power are lost to remembrance"

Under Hastings's term as Governor General, a great deal of administrative precedent was set which profoundly shaped later attitudes towards the government of British India. Hastings had a great respect for the ancient scripture of Hinduism and set the British position on governance as one of looking back to the earliest precedents possible. This allowed Brahmin advisors to mould the law, as no English person thoroughly understood Sanskrit until Sir William Jones, and, even then, a literal translation was of little use; it needed to be elucidated by religious commentators who were well-versed in the lore and application. This approach accentuated the Hindu caste system and, to an extent, the frameworks of other religions, which had, at least in recent centuries, been somewhat more flexibly applied. Thus, British influence on the fluid social structure of India can in large part be characterized as a solidification of the privileges of the Hindu caste system through the influence of the exclusively high-caste scholars by whom the British were advised in the formation of their laws.

HASTINGS IN THE LATE 18TH CENTURY, AS PAINTED BY LEMUEL FRANCIS ABBOTT.

In 1781, Hastings founded Madrasa 'Aliya; in 2007, it was transformed into Aliah University by the Government of India, at Calcutta. In 1784, Hastings supported the foundation of the Bengal Asiatic Society, now the Asiatic Society of Bengal, by the oriental scholar Sir William Jones; it became a storehouse for information and data pertaining to the subcontinent, and existed in various institutional guises up to the present day. Hastings' legacy has been somewhat dualistic as an Indian administrator: he undoubtedly was able to institute reforms during the time he spent as governor there that would change the path that India would follow over the next several years. He did, however, retain the strange distinction of being both the "architect of British India and the one ruler of British India to whom the creation of such an entity was anathema.

IMPEACHMENT

On the trial of Warren Hastings. He was impeached for crimes and misdemeanors during his time in India in the House of Commons upon his return to England. At first deemed unlikely to succeed. The prosecution was managed by MPs including Edmund Burke, Charles James Fox and Richard Brinsley Sheridan. When the charges of his indictment were read, the twenty counts took Edmund Burke two full days to read.

The house sat for a total of 148 days over a period of seven years during the investigation. The investigation was pursued at great cost to Hastings personally, and he complained constantly that the cost of defending himself from the prosecution was bankrupting him. He is rumored to have once stated

that the punishment given him would have been less extreme had he pleaded guilty. The House of Lords finally made its decision on April 1795 acquitting him on all charges.

Throughout the long years of the trial, Hastings lived in considerable style at his town house, Somerset House, Park Lane. Among the many who supported him in print was the pamphleteer and versifier Ralph Broome. Others disturbed by the perceived injustice of the proceedings included Fanny Burney.

LEGACY

The city of Hastings, New Zealand and the Melbourne outer suburb of Hastings, Victoria, Australia were both named after him.

'Hastings' is the name of one of the 4 School Houses in La Martiniere for Boys, Calcutta. It is represented by the colour red.

'Hastings' is a Senior Wing House at St Paul's School, Darjeeling, India, where all the senior wing houses are named after Anglo-Indian colonial figures.

There is also a road in Kolkata, India named after him

LORD CORNWALLIS

Lord Cornwallis assumed the role of Governor-General of the Company in 1786 and continued till 1793. He was directed to take up three specific matters, one of them being reforms of the judicial system. The other tasks were resolving the problem of land revenue and improvement in the administrative machinery. During his tenure, he made significant and far-reaching reforms in the judicial administration, some of which constitute the foundation of the present legal system. The reforms were primarily made in three stages: first in 1787, then in 1790 and, finally in 1793.

REFORMS UPTO 1793

Prior to the reforms initiated by Cornwallis in 1787, the judicial plan of 1780 brought about by Warren Hastings was in force. The Company was dissatisfied with the plan of 1780 because it had separated the revenue and judicial functions, thus proving to be costly. Accordingly, the

Directors advocated a merger of the two functions on the grounds of simplicity, efficiency and economy. Cornwallis faithfully effectuated the Directors' directive which led to the birth of Cornwallis's plan of 1787.

JUDICIAL PLAN OF 1787

The main feature of this plan, as previously stated, was that the revenue, judicial and magisterial functions would vest in one person, the Collector. The Collector was responsible for the collection of land revenue and to decide all cases relating to revenue. His revenue functions were confined to the revenue court known as the mal adalat. He was to act as the judge in the Moffussil Diwani Adalat of the district. As the sole judge, he had full powers to decide all types

of disputes. Appeals lay to the Sadar Diwani Adalat at Calcutta and further to the King-in-Council depending on the value of the suit. In order to assist the Collector in deciding civil cases, a Registrar was appointed in each adalat. The Collector was also given some magisterial powers. As a Magistrate, he was empowered to arrest, try and punish criminals in petty offences. In the case of graver...

REFORMS

The government of Lord William Bentinck stands forth in high relief in the history of British India as the era of progression. It derives its lustre from his enlightened views of domestic policy, his vigorous administrative reforms, his intrepid philanthropy, and his spirited efforts to promote the material interests of the empire. Lord Cornwallis had given form and consistence to our institutions in 1793, but there had been little attention to their improvement

Since the days of Lord Wellesley, and they were daily becoming more and more effete. Great changes had taken place in the European service, and in the native community, and the whole system of judicial administration required be recasting and adapting to the progress of circumstances. For this task Lord William Bentinck was particularly adapted by the clearness of his perceptions, his freedom from traditional prejudices, and his inflexible resolution; and he was happily aided by the counsels and co-operation of three of the ablest men whose services the Company had ever enjoyed, Mr. Butterworth Bayley, Sir Charles Metcalfe, and Mr. Holt Mackenzie. He found the course of civil justice blocked up by the lumbering wagon of the provincial courts, which he justly characterized as "resting places for those members of the service who were deemed unfit for higher responsibilities." The judicial character of the judges was, with some exceptions, the object of general contempt, and their decisions in appeal, only served to bewilder the judges of the courts subordinate to them, and to disgust the community. In regard to criminal justice their agency was simply a national grievance. They proceeded on circuit to hold the sessions twice in the year, and prisoners were kept in confinement for months before they were brought to trial. The prosecutors and witnesses were detained all this time at their own expense, and subjected to such intolerable inconvenience, while awaiting the arrival of the judges, that the

concealment of crime became an object of universal solicitude throughout the country. Lord William Bentinck earned the gratitude of the public by sweeping away a class of tribunals, which combined the three great evils of delay, expense, and uncertainty. The duties of the session were, at first, entrusted to the officers he appointed Commissioners of Revenue, but finding the functions of tax-gatherer incompatible with those of a criminal judge, he transferred the duty to the judge of the district, with instructions to hold a monthly jail delivery. He entirely remodelled the system of civil judicature. A separate *sudder* or chief court was likewise established in

The north-west provinces and the natives of Delhi were no longer constrained to travel a thousand miles to Calcutta to prosecute an appeal. A similar boon was likewise conferred on those provinces by the erection of a separate Board of Revenue at Allahabad, and the control of the fiscal interests of twenty-five millions of people was established in the most central position. The value of these and all the other judicial reforms of Lord William Bentinck was indefinitely enhanced by restoring to the people the inestimable boon of the use of their own vernacular language in all the courts, civil, criminal, and fiscal, to which they were amenable. The Mohamedans had imposed their own court language, the Persian, on the conquered people of India in every transaction with the state. The Company's functionaries, who had from the first manifested a strong predilection for everything that was Mussulman, retained this language in the courts, although the anomaly and the incongruity was thereby increased, inasmuch as justice was now dispensed in a language foreign not only to the parties and the witnesses, but also to the judge himself. Lord William Bentinck substituted the vernacular for the Persian in all tribunals, though not without a strenuous opposition from the conservatism of the civilians.

REVENUE SETTLEMENT, N W PROVINCES, 1833

The merit of the settlement in the north-west provinces belongs to Lord William Bentinck's administration. On the acquisition of those provinces, consisting of the districts in Oude ceded by the Nabob Vizier, and the districts in the Dooab conquered from Sindia, Lord Wellesley pledged himself to grant them a permanent settlement of the land revenue, but it was repudiated by the Court of Directors, who ordered it to be limited to five years. This was a death blow to all agricultural improvement. Any attempt by the landlord to improve his estates only exposed him to the risk of an increased assessment, and as the period of revision approached he felt it to be his interest to fill up wells, and to neglect cultivation. An effort was at length made by Mr. Holt Mackenzie, the secretary to the Government

in the territorial department, a man of broad and liberal views and great earnestness, to grapple with this large question, and he produced the celebrated Regulation VII, of 1822, a monument of skill and industry, of which any statesman might justly be proud. It was based on mature knowledge and sound and equitable principles, but it was unfortunately too complicated in its details to work well, and it imposed unlimited duties on a limited agency. The collectors disrelished the laborious task imposed on them, and performed it in a perfunctory manner. Some of them affirmed that a period of twenty years

and others that a whole century would be necessary to complete the settlement in the mode required. The Board of Revenue when asked what progress had been made in it, replied that they knew nothing about the matter. At the end of ten years it was found that the work chalked out by the Regulation was scarcely begun. Lord William Bentinck was resolved to remove the opprobrium of this neglect from our administration, and after a residence of two years in Calcutta, made a tour of the north-west provinces, and during his progress invited the revenue officers of the various districts to his tents to discuss the question of the settlement. After obtaining all the information within his reach, he examined the subject in all its bearings during his residence at Simla, and on his return to Calcutta held a meeting at Allahabad of the Revenue Board and the most eminent officers in the department, when the question was fully discussed and finally settled, and the Regulation which resulted from these consultations was passed in Council, after his arrival in Calcutta, in March, 1833.

PLAN OF SETTLEMENT – ROBERT BIRD, 1833

The new settlement possessed the great merit of simplicity. It dispensed with many of the elaborate enquiries of the former Regulation, which, however useful, were not deemed essential to a fair adjustment of the claims of the state. The area of each village was to be surveyed by European officers and recorded in a map, while each individual field was measured by native officers and entered in the village register. Without a minute classification of soils, the proportion of cultivated, culturable, and waste lands, together with every circumstance which could affect the cultivation, was duly recorded. The Collector was required to decide all questions of disputed boundaries on the spot, with the aid of native assessors, and the most prolific source of litigation and misery in India was thus dammed up. All judicial questions which might arise in the course of his proceedings were determined with the aid of the punchayet, the ancient and time-honoured jury of five, in which the natives reposed such unbounded confidence as to believe that "where the *punj* is, there is God." The assessment was fixed by the Collector, after an impartial investigation, and a free and friendly communication with the people, and the settlement was then made for a period of thirty years, either with the ryots individually, or with the landholder, or with the village community, as the case might be. The Collector was assisted by a body of uncovenanted deputies with liberal allowances, and their office was thrown open to the natives of the country, without reference to caste or creed. The general control of these operations was committed to Mr. Robert Bird, the ablest financial officer in the service since the days of Sir John Shore. He possessed a large grasp of mind, and combined an intimate knowledge of the system of land tenures in the north-west, with indomitable energy, and that sternness of purpose which is indispensable in any great and difficult undertaking. He was allowed to select his own subordinates and the zeal and ability they displayed did no little credit to his discernment, while the honour of having served under him was considered a distinction for life. Under such auspices, and with such instruments, the settlement was brought to a termination within ten years. It embraced an area of 72,000 square miles, and a population of 23,000,000. It was the greatest fiscal achievement of the Company's Government. The first

settlement had ruined those for whose benefit it was devised, the last saved millions of much enduring men from misery and ruin. The labours of the renowned Toder Mull, under the

illustrious Akbar, in the department of revenue settlements which historians have never ceased to applaud, were rivalled, if not eclipsed by those of Robert Bird; but there was no public recognition of the services of one who had conferred such inestimable blessings on a country as large and populous as Great Britain. He was only a Company's servant, and the scene of his duties lay in India, and he was allowed to pass into obscurity on his return to his native land, and sink into the grave without the slightest mark of distinction.

EMPLOYMENT OF NATIVES, 1831

But the measure which above all others has endeared the memory of Lord William Bentinck to the natives of India is that which he inaugurated of introducing them to honourable employment in the public service. Allusion has been made in a former chapter to the cardinal error of Lord Cornwallis's policy that of excluding them from every office except the lowest and the worst paid. This exclusion was fortified by the peculiar constitution of the Company, which remunerated the Court of Directors for their labours in the government of India by patronage, and not by money, and thus created a strong tendency to secure the monopoly of offices to their nominees. It would be difficult to discover in history another instance of this ostracism of a whole people. The grandsons of the Gauls who resisted Caesar became Roman senators. The grandsons of the Rajpoots who opposed Baber in his attempt to establish the Mogul power, and at the battle of Biana all but nipped his enterprise in the bud, were employed by his grandson Akbar in the government of provinces and the command of armies, and they fought valiantly for him on the shores of the bay of Bengal and on the banks of the Oxus. They rewarded his confidence by unshaken loyalty to his throne, even when it was endangered by the conspiracies of his own Mohamedan satraps. But wherever our sovereignty was established in India, the path of honourable ambition and every prospect of fame, wealth, and power was at once closed on the natives of the country. This proscription was rendered the more galling by comparison with the practice of the nativecourts around, where the highest prizes of power were open to universal competition. The contrast was, moreover, aggravated by the fact that the native princes themselves, the Nizam and Tippoo, Sindia and Holkar, and Runjeet Sing, adopted a more liberal policy, and freely entrusted offices of the highest responsibility, both military and political, to European foreigners. No benefit which we might confer on the country could be deemed an, adequate compensation for the loss of all shares in the government, one of the highest and most honorable aspirations of humanity. It was vain to expect any attachment to our rule when even the best affected of our native subjects could see no remedy for this degradation but in the subversion of our government. The enlargement of the native mind by education only served to augment the evil, by sharpening expectations which could not be gratified. The argument for this policy was based on a notion of the administrative superiority of Englishmen, and a persuasion of the utter unfitness of the natives for any of the functions of government, mingled with a dread that their venality would be injurious to the administration. It seemed to be forgotten that it was

idle to hope for any improvement in the character of the natives while they were excluded from all places of trust and influence, and left without any object of pursuit but the gratification of their own passions. Some feeble attempts had been made in preceding administrations to modify the system, but they were not based on any broad and generous principle, and were intended simply to relieve the labours of the Company's favorites officers of the civil service. Lord William Bentinck brought with him to India a deep conviction of the viciousness of this policy, and a determination "to throw open the doors of distinction to the natives, and grant them a full participation in all the honours and emoluments of the state." As far back as 1824, the Court of Directors had expressed their conviction that to secure promptitude in the administration of justice, native functionaries must be employed to dispose of all suits, of whatever description and amount.

The leading members of Government were fully prepared to abandon the Cornwallis doctrine, and to give the natives an interest in the stability of our government by giving them a share in the management of it. But it required an intrepid reformer like Lord William Bentinck at the head of the government, to carry out these large views. This liberal policy was inaugurated, by the Regulations of 1831, which completely reconstructed the legal establishments of the Bengal Presidency, and entrusted the primary jurisdiction of all suits, of whatever character or amount, not excluding those instituted against Government, to native agency. The new system provided for three grades of native judges, the highest that of Principal Sudder Ameen, on 500 rupees a-month, subsequently raised to 750, which is still egregiously inadequate to the position and responsibilities of the office. The principle of employing natives in important offices was gradually extended to other departments, and it has resulted in imparting a degree of vigour and popularity to the British administration which it never enjoyed before. So greatly indeed has this privilege been appreciated by the natives, that there is some risk of their losing the manly feeling of independence in their great eagerness for public employ. The policy introduced by Lord William Bentinck has been zealously and nobly followed up by his successors. New paths of distinction have been opened to native ambition, and a native judge now sits on the bench of the highest court in Calcutta, and natives of rank and influence occupy seats in the Legislative Council.

SUTTEES 1830

The most benignant and memorable act of Lord William Bentinck's administration was the abolition of Suttees. Some have questioned whether this atrocious rite could be traced to a religious origin, but it was always consecrated by the solemnities of religion, and it has been practiced for twenty centuries, in a greater or less degree, wherever Hindooism has been professed. Even in Bali, one of the remote islands of the Eastern Archipelago, where the Hindoo faith still lingers, no fewer than seventy widows were burnt alive towards the close of the last century, with the body of one of the rajas. It was discouraged and sometimes prohibited by the Mohamedans, and Akbar himself on one occasion, issued from his palace on horseback and rescued a victim from the pile.

The first effort to interfere with it under the Company's Government was made by Mr. George Udny, the friend and associate of Sir John Shore, and by Dr. Carey. Lord Wellesley to whom they presented an address, was then on the eve of quitting the Government, but he recorded a minute in favour of abolishing the rite, stating "that it was one of the fundamental maxims of the British Government to consult the opinions, customs, and prejudices of the natives, but only when they were consistent with the principles of humanity, morality and reason." The Sudder Court, however, put back the cause of abolition in 1810, by issuing a Circular Order setting forth the circumstances in which the act was to be considered illegal, on which Mr. Courtenay Smith, one of the greatest men who ever adorned the bench of that court, asserted that "these orders had only served to spread and confirm this execrable usage." On this and every subsequent attempt to lessen the evil by regulating it, the Court of Directors justly remarked that such measures tended rather to increase than to diminish the practice, and that, by prohibiting it in certain cases, the Government appeared to sanction it in all others, and was thus made an ostensible party to the sacrifice. The Bombay Government committed a still more fatal error in employing one of its European officers to construct the pile in order to give the unhappy victim an opportunity of escape, if she was unable to sustain the torture of the flames. Subsequent to 1820 the question was discussed with increasing earnestness in England and in India, but some of the most distinguished of the public officers, Mr. Colebrooke, Mr. Mountstuart Elphinstone, and Colonel Sutherland, shrunk from the bold proposal of a direct prohibition, and some went so far as to assert that it would violate the rule of toleration to which our Government owed its stability. In 1823, the Court of Directors sent a dispatch to India, in which all the arguments which had been adduced against the abolition were earnestly and sincerely combated, and the question was referred to the consideration of the local Government, with an implied expression of the gratification it would afford them to learn that the rite could be safely abolished.

Lord Amherst consulted the most eminent of the Government servants, but the diversity of the opinions they expressed only served to increase his embarrassment. Mr. Courtenay Smith and Mr. Alexander Ross boldly urged the immediate and peremptory prohibition of the rite. Mr. Harington, who had been for a quarter of a century a great authority on all local questions, and who was withal a man of strong religious feelings, considered that the rite could be extinguished only by a gradual improvement among the people through the dissemination of moral instruction. Lord Amherst was obliged to inform the Court that he could not, in such circumstances, recommend the absolute interdiction of it under legal penalties, but he trusted to the diffusion of knowledge then in progress for the eventual suppression of "this detestable superstition." In July, 1827, the Court placed the question in the hands of the Governor-General, requesting him, after serious deliberation, to determine in what degree the ordinary course of civilization could be accelerated by a judicious and seasonable interposition of authority.

LORD WILLIAM BENTINCK

Such was the position of this question when Lord William Bentinck landed in Calcutta, feeling, as he said, the dreadful responsibility hanging over his head, in this world and the next, if, as the Governor-General of India, he was to consent to the continuation of this practice one moment longer, not than our security, but then the real happiness and permanent welfare of the native population rendered indispensable. He resolved to take up the question without any delay, and "come to as early a determination as a mature consideration would allow," and "having made that determination, to stand by it, yea or no, and set his conscience at rest." Immediately after his arrival, he circulated a confidential communication among fifty or sixty of the chief military and civil officers of Government, repining their opinion as to the effect which the abolition of "this impious and inhuman sacrifice not of one but of thousands of victims," was likely to produce in the native community generally, and on the minds of the sepoys in particular.

The majority of the officers in the army asserted that the immediate and peremptory abolition of the practice would create no alarm among the native troops. Of the civil functionaries, three fourths advocated its positive prohibition. The most strenuous advocate for non-interference was the eminent orient list, Dr. Horace Wilson, whose literary pursuits had imparted a strong oriental bias to his sympathies, and who was the great patron, and the idol, of pundits and Brahmins. He affirmed that the practice could not be abolished without doing violence to the conscientious belief of every order of Hindoos; that it would be a direct interference with their religion, and an infringement of the pledge we had given them to support it; that it would diffuse a detestation of British authority, create extensive dissatisfaction and distrust, and alienate the affections of the people. The warmest advocate of abolition was Mr. – afterwards Sir William – Macnaghten, second, as an orient list, only to Dr. Wilson. He admitted that, according to the notions of the Hindoos, the sacrifice of suttee was a religious act of the highest merit, and that it was unjust as well as unwise to interfere with religious creeds, however absurd. "Let the Hindoo," he said, "believe in his three hundred and thirty millions of gods until it may please the Almighty to reclaim him from his idolatry; but let him not immolate thousands of helpless females on the altar of fanaticism, in defiance of the eternal laws of nature and the immutable principles of justice." He ridiculed the phantom of danger: "Under the Mohamedans, the Hindoos tamely endured all sorts of insults to their religion and violation of their prejudices. Their temples were polluted and destroyed, and many were constrained to become Mussulmans, yet there was no general organized disaffection. The rite was not respected by the hardy and warlike Hindoos of the north-west, but by the

sleek and timid inhabitants of Bengal, the fat and greasy citizens of Calcutta, whose very existence depended on the prosperity of the British Government."

ABOLITION OF SUTTEE, 1830

Fortified by the opinion of the most experienced and the most liberal minded men in the service, and confident of the support of the Court of Directors, Lord William Bentinck and his two counselors, Mr. Butterworth Bayley and Sir Charles Metcalfe, on the 14th of December, 1829, passed that celebrated Regulation which "declared the practice of Suttee illegal and punishable by the criminal courts as culpable homicide." Thus by one bold and resolute effort, practice which had polluted India from the remotest antiquity, was extinguished under the flag of England, and for the first time since the introduction of Hindooism, "the Ganges flowed unblooded to the sea." Twenty-five attempts at suttee were made after the passing of the Regulation, but they were prevented by the simple interposition of the police. Not the slightest feeling of alarm, still less of resentment, was exhibited in the army, or in the country. In the course of a few years, the practice became a matter of history like the sacrifice of children at Saugor, and the enlightened Hindoo of the present day looks back on this barbarous custom with the same feelings with which Englishmen look back on the human sacrifices of the Druids. Lord William Bentinck was enabled within a twelvemonth to assure the Directors that there never was a greater bugbear than the fear of revolt. The only circle in which the abolition created any sensation was that of the rich and orthodox babus of Calcutta, who resented the decision of Government, and more especially the promptitude with which it had been carried into execution, as it deprived them of the gratification of obstructing it. They drew up a petition to the Government in which the fine Roman hand of their European counselor was distinctly visible, demanding the restoration of the rite as part and parcel of Hindooism, with which Parliament had pledged itself not to interfere. The native organ of the party in his weekly journal affirmed that the signatories to the petition for restoring the "sacred rite of Suttee" included "the learned, the wealthy, the virtuous, the noble, the polite, and the mild." But Lord William Bentinck turned a deaf ear to every remonstrance, and refused to suspend the Regulation for a moment.

A memorial was then drawn up to the Privy Council in England, appealing against the proceedings of the Government of India, because they contravened the Act of Parliament which ordained that "nothing done in consequence of the rule of the caste should be held to be a crime though not justifiable by the laws of England." The appeal was taken into consideration in June 1832, and the venerable Lord Wellesley, the first Governor-General who had recorded his condemnation of the rite, had the high

gratification of assisting in dismissing the petition, and in giving to this sublime act of humanity the sanction of the highest tribunal in the British Empire.

HINDOO LAW OF INHERITANCE, 1832

To Lord William Bentinck is also due the merit of having established the rights of conscience in India. To prevent defections from Hinduism, the Hindu legislators had enacted that ancestral property should

descend only to those who performed the funeral obsequies of a deceased parent or relative, according to the rule of the shasters, and the man who renounced the Hindu creed, was thus consigned to poverty. The Mohamedans, who were enjoined to propagate their religion by the sword, treated this injunction with profound contempt. No Hindu was ever permitted to occupy a seat on the bench during their supremacy, and the Mohamedan judges, who rejected Hindu law, were not likely to deprive a proselyte to their own creed of his patrimony. Mr. Hastings, in a spirit of liberality, guaranteed to the Hindus and Muslims the enjoyment of their own laws of inheritance in his first code of 1772.

This equitable rule was subsequently re-enacted both in England and in India, by those who were as ignorant as Mr. Hastings was of the intolerant character of the Hindu law of property to which they were giving a British sanction. Lord William Bentinck resolved to relieve the Government from the odium of countenancing this illiberal law and, to avoid a fanatical opposition, took advantage of the occasion of remodeling and re-enacting several existing regulations, quietly to introduce a clause which provided that "the Hindu and Mohamedan law of inheritance should apply only to those who were bond fide professors of those religions at the time of its application." The law was passed without observation, and the tendency of it to restore liberty of conscience was not discovered by the bigoted Hindus till it came into operation, when it was found to be too late to demand its repeal. In the same spirit of liberality he abrogated another rule, equally unjust, but of our own creation.

Admission of native Christians

The Mohamedans had encouraged proselytism by the bestowal of honours and estates to office, 1831. And titles and some of the most eminent of their provincial governors – among others the great Moorshed-kooly-khan, the founder of Moorshedabad – were converts from Hinduism. The Company and their servants in India, from that dread of offending native prejudices, which, though in some cases judicious and prudent, too often led to the toleration of evil, had run into the opposite extreme, and expressly debarred native converts to Christianity from holding any post, however humble, under their government. Lord William Bentinck was determined to extinguish this disreputable anomaly, and in the same Regulation which threw open the public service to the natives of the country, ordained that there should be no exclusion from office on account of caste, creed, or nation. The publication of this enactment demonstrated the egregious error into which the Government had fallen by supposing that the unnatural stigma they had cast on their own creed, would tend to conciliate and gratify the Hindus. Those who had been most clamorous for the restoration of suttee were the first to come forward and applaud this act of liberality and justice.

Suppression of Thuggee, 1830

It was during the administration of Lord William Bentinck that the first energetic measures were adopted to extirpate the Thugs, a fraternity of hereditary assassins, who subsisted on the plunder of the victims they strangled. Few districts were without resident Thugs, but they generally adopted the occupation of agriculturists to conceal their nefarious profession, and no district was free from their

depredations. They were in the habit of quitting their homes in a body, leaving their wives and their children in the village. They generally attached themselves, as if by accident, to the travelers they met, from whom they obtained such information as they required, by a free and cheerful intercourse. On reaching some spot suited to their purpose, a strip of cloth, or an unfolded turban, was suddenly thrown around the neck of the victim, the ends of which were crossed and drawn tight till he ceased to breathe. His body was then rifled and thrown into a pit hastily dug with a pickaxe which had been consecrated by religious ceremonies. The Thugs were bound to secrecy by solemn oaths, and recognized each other by peculiar signs and a slang vocabulary. They considered themselves as acting under the immediate auspices of the deity, and had a special veneration for Doorga, the tutelary goddess of vagabonds, thieves, and murderers. They observed her festivals with superstitious punctuality, and presented offerings at her most celebrated shrines in various parts of the country. They had a firm confidence in signs and omens, and endeavored through them to ascertain her pleasure regarding their expeditions, and considered themselves as acting under a divine commission when they were favorable. The gangs were recruited with juvenile apprentices, who were gradually and cautiously initiated into the mysteries of the profession by one of the elders, who were ever after regarded in the light of a spiritual guide. The number of their victims in the year was counted by thousands. The subordinate native chiefs and officers in Central India, as well as the zemindars and policemen in our own provinces, to whom they were well known, connived at their practices on the condition of sharing their plunder. The establishment of British functionaries in the native states first brought this atrocious system to light, and some feeble and ineffectual efforts were made to eradicate it. Lord William Bentinck was resolved to spare no exertion to deliver India from this scourge. With this view, he created a special department for the suppression of Thuggee, and placed it under the direction of Major – afterwards Sir William – Sleeman, whose name is inseparably associated in the annals of British India with this mission of humanity. He threw his whole soul into the work, and organized a comprehensive system of operations, which embraced every province; by means of approvers who turned king's evidence, he obtained a complete clue to the proceedings and movements of the whole fraternity, as well as the means of identifying its members, and was thus enabled, with the efficient staff of officers whom he had the discernment to select, to take the field simultaneously against the various gangs in every direction. It was not among the least important results of the establishment of one paramount authority throughout the continent of India, that the officers in this department were enabled to hunt the Thugs without impediment from province to province, whether under British or native rule, and to leave them no prospect of shelter in any district. In the course of six years, two thousand of these miscreants were arrested and tried, and three fourths of them sentenced to imprisonment, transportation, or death. The confederacy was effectually broken up, and travelling in India ceased to be dangerous. These efforts were crowned by the establishment of a school of industry at Jubbulpore, for the Thugs who had turned approvers, and for the children of convicted offenders. The men were ignorant of any trade save robbery and murder, but in the factory they were instructed in every branch of manufacture, and became skilled artisans, capable of earning an honest livelihood by their labour. The children, instead of being trained to crime, were taught the rudiments of learning

and trade, and fitted to become useful members of society. The scene of cheerful and industrious activity which the institution exhibited, viewed in contrast with the former occupation of its inmates, was calculated to afford the most grateful reflections to the mind of the philanthropist.

Steam communication, 1830–34

The attention of Lord William Bentinck immediately after his arrival was devoted to the establishment of steam communication on the Ganges, and between India and England. Under his directions two vessels were built in Calcutta and fitted up with engines imported from England, and they performed in the brief period of three weeks the distance of eight hundred miles between Calcutta and Allahabad, which had ordinarily occupied three months. The success of this experiment induced him to press the completion of a steam fleet on the Court of Directors, and they responded to his wishes with a laudable alacrity. The system of steam navigation on the rivers in Hindostan was thus fully established under the auspices of Government, and eventually transferred to private enterprise. A still more important object with the Governor-General was the abridgment of the voyage between England and India, which he endeavoured to promote with untiring ardour. A considerable fund had been raised for this object in Calcutta as early as 1823, and a premium was offered for any steamer which should perform the voyage between the two countries within seventy days. The "Enterprise," commanded by Captain Johnson, was the first to compete for the premium, but she was a hundred and thirteen days in reaching Calcutta from Falmouth. The route by the Cape was consequently considered unsuited to the object. An attempt was then made by the King's Government, under the direction of Colonel Chesney, to open a communication by way of the Euphrates and the Persian Gulf, but the obstacles were found to be insuperable. It remained therefore to make an experiment by the Red Sea, and Lord William Bentinck directed the "Hugh Lindsay," a small steamer of four hundred tons, built for Government at

Bombay, to be despatched from that port on the 20th March, 1830, to Suez which she reached in a month. Three other voyages were subsequently performed by that vessel, and it was clearly demonstrated that, with suitable arrangements in the Mediterranean, the voyage from Bombay to England might be accomplished with ease in fifty-five days. But the Court of Directors raised an objection to these experiments on the score of the great expense they entailed. Lord William Bentinck replied that the revenues of India could not, in his estimation, be appropriated to any object more conducive to the good of both countries than that of bringing them into close communication with each other. The Chairman of the Court, however, questioned whether the end in view would be worth the probable expenditure, and the India House at length positively prohibited any further employment of the "Hugh Lindsay" for the conveyance of mails. The subject was soon after brought before the House of Commons, and the committee appointed to investigate it reported that a regular and expeditious communication by steam between England and India was an object of national importance, and that measures ought to be immediately adopted to establish it by way of the Red Sea, at the joint expense of

the Company and the Crown. The indifference of the India House was overruled by the higher authority of Parliament, and the "Hugh Lindsay" was again put in requisition and despatched with the mails to Suez, but the Court of Directors were lukewarm on the subject, and the enterprise, conducted without spirit, fell again into abeyance. A subscription was likewise raised at the three Presidencies to the extent of three lacs of rupees for the promotion of this object, but the plans which were devised proved abortive.

The Peninsular and Oriental Company, 1842

It was reserved for the Peninsular and Oriental Company to carry to a successful issue the comprehensive views to which Lord William Bentinck had devoted his attention, both in India and after his return to England. This Company, which was originally established for service to the ports in the Peninsula, was encouraged by a

Royal charter to extend its labours to India. Commencing with a small capital and a limited object, it has gradually grown up, by a rare combination of enterprise, prudence, and perseverance, into a great national undertaking. During the quarter of a century which has elapsed since its first vessel was despatched to Calcutta in 1843, the sphere of its operations has been expanded till it embraces the whole of the eastern hemisphere. Its fleet, second only to the navies of England, France, and America, now comprises more than sixty steamers, aggregating 100,000 tons, with 20,000 horse-power. By these powerful vessels passengers, letters, books, and merchandise are conveyed, week after week, over 11,000 miles of sea to the extreme points of Sydney in Australia, and Yokohama in Japan; and the voyages are performed with a degree of speed and punctuality which would have appeared fabulous half a century ago. Mails starting from different and distant extremities have traversed half the globe and reached their destination in England, simultaneously, within an hour and a half of their appointed time. The importance of this enterprise of a private company to the interests of the mother country, and her eastern dependencies, it would be difficult to overrate. It has given a character of solidity and compactness to the British empire in the Eastern world, which enables us to contemplate its expansion without any feeling of apprehension. It has linked the most distant countries of the east with the European world, and for the first time after the lapse of more than twenty centuries, given full effect to the views of Alexander the Great when he founded Alexandria, and destined it to be the highway between Europe and Asia. It has covered the Red Sea with steamers, and converted it into an English lake. It has given a political importance to the land of the Pharaohs, which constrains England to consider the maintenance of its independence, even at the hazard of war, an indispensable article of national policy. The empire of India belongs to the nearest European power, and it is the enterprise of this Company which has conferred the advantage of this position on

England. Our base of operations in Asia is the sea, but while transports were four or five months going round the Cape, our interests were always exposed to adverse contingencies. It is the spirited exertions

of this Company which have brought the ports of India within four weeks' reach of the resources of England, and completed our ascendency in the east.

Education; Orientalism, 1813–33

The cause of education received a fresh impulse as well as a beneficial direction during Lord William Bentinck's administration. The earliest movement of Government towards the intellectual improvement of India dates from the year 1813, when on the motion of Mr. Robert Percy Smith, who had been Advocate-General in Calcutta, and, as usual, obtained a seat in Parliament on his return, a rider was added to the India Bill, directing that a lac of rupees should be appropriated "to the revival and promotion of literature, and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories out of any surplus which might remain of the rents, revenues, and profits of our territorial acquisitions." This vote was interpreted both in Leadenhall Street and in Calcutta to apply chiefly to the revival and encouragement of Hindoo and Mohamedan literature; and, considering the brahminised feelings of the period of Mr. Smith's residence in Calcutta, there can be little doubt that the grant was intended primarily, though not exclusively, for that object. During Lord Minto's administration, the only public money expended in education was devoted to the establishment of Hindoo colleges, with the view, as the Government stated, of giving the people the benefit of the beautiful morality embodied in the shasters. Mr. Dowdeswell, the superintendent of police in the lower provinces, had stated in his report, that he could not expect to obtain credit for his narrative of a thousandth part of the atrocities of the dacoits, but the only remedy he could propose was that the institutions of Mohamedanism and Hindooism should be revived, and gradually moulded into a system of

instruction for these banditti. The fund voted by Parliament was allowed to accumulate for ten years, when Mr. Adam distinguished his brief tenure of office in 1823 by appointing a Committee of public instruction to suggest measures for the better education of the people in useful knowledge, and the arts and sciences of Europe, and for the improvement of public morals. This enlightened movement was soon after strengthened by the receipt of an unexpected despatch from Leadenhall Street. Seven years before this period, Lord Hastings had suggested to Mr. Charles Grant the propriety of appropriating the Parliamentary grant to the support of schools rather than of Hindoo colleges. Mr. Grant replied that there had always been in the Direction men of influence opposed to the intellectual improvement of the natives; they were gradually dying out, but it would still be premature to urge the course which the Governor-General proposed. But Mr. James Mill, the historian, the advocate of all liberal principles, now occupied an important position in the India office, where he had acquired that influence which is naturally exercised by a great mind. A proposal had been received from the Government of India to improve the Hindoo college at Benares, and the Mohamedan college in Calcutta, and to add to them a Hindoo college in the metropolis. It fell to Mr. Mill to draft the reply to this despatch, and he stated that "in professing to establish seminaries for the purpose of teaching mere Hindoo or mere Mohamedan literature, the Government bound itself to teach a great deal of what was frivolous, not a little of what

was purely mischievous, and a small remainder indeed in which utility was in any way concerned. The great end of Government should be, not to teach Hindoo or Mohamedan learning, but useful learning." But Orientalism was still supreme in Calcutta. High attainments in Sanscrit and Arabic formed the surest road to promotion and honour in the public service, and the leading members of Government were naturally partial to the cultivation of those studies which had raised them to distinction. The education department, moreover,

was under the absolute control of Dr. Horace Wilson, the great champion of native literature and institutions. The Parliamentary grant was accordingly – with some trifling exceptions to save appearances – devoted for ten years longer to the promotion of studies, of which the mode, the medium, and the scope were altogether oriental in their character, and designed to conciliate old prejudices, and to perpetuate old ideas.

New policy of education; introduction of English, 1833

Meanwhile, a predilection for English was rapidly spreading among the natives in and around the metropolis, and a demand for instruction in that language, and the acquisition of European science, was pressed with increased earnestness on the attention of the Board of Education. The Board itself was divided into two hostile parties; the Orientalists, headed by Dr. Wilson, who deprecated any interference with the patronage of Hindoo literature, and the Anglicists, as they were termed, the advocates of a European education through the medium of English, who were animated by the energy and the counsels of Mr. – now Sir Charles – Trevelyan, to whom the country is under lasting obligations for his untiring zeal at this critical period in the cause of sound and liberal education. The division in the Board brought its operations to a dead lock, and an appeal was made to Government. Mr. Macaulay, the greatest English classic of the age, was now a member of the Supreme Council, as well as President of the Board of Education, and he denounced with irresistible force the continued promotion of Orientalism, as tending, not to support the progress of truth but to delay the death of expiring error. "We are at present," he said, "a Board for printing books which are of less value than the paper on which they are printed was when it was blank, and for giving artificial encouragement to absurd history, absurd metaphysics, absurd physics, and absurd theology." The question was brought to an issue on the 7th March, 1835, by the resolution of the Governor-General in Council, that "the great object of the British Governmentought to be the promotion of European literature and science among the natives of India, and that the funds appropriated to education would be best employed on English education alone." No college or school of oriental learning was, however, to be abolished, while the natives were inclined to avail themselves of it; the stipends to the teachers and students were to be continued, but not renewed; and the publication of oriental works and of translations of medical and mathematical works into Arabic, which neither the teachers nor pupils could comprehend, was at once discontinued.

Remarks on this measure, 1834

This resolution encountered a stern opposition, and the Asiatic Societies in Calcutta and in London, as well as on the Continent. came forward to deprecate it as a severe discouragement of the cultivation of oriental literature. The design of these associations was to prosecute researches into the history, antiquities, and literature of the east, and to unfold the ancient records of Asia to the European world. It was the unquestionable duty of a liberal Government to patronize such labours, and to make suitable provision from the public funds for the preservation of the ancient monuments of Indian civilization, whether in stone or manuscript; but it was a dereliction of duty to divert to the promotion of this object the scanty funds allotted to the education and improvement of the people. Nor was the patronage of the state necessary to the maintenance of Hindoo learning. It had continued to flourish for centuries without any succour from the Mohamedan princes, and there were ample funds in the country for its support, apart from those of the Treasury. To prevent the settlement of the interlopers whom the Directors could not entirely exclude from the country, they had adopted and rigidly enforced the principle, altogether novel in the history of conquest, of prohibiting their own countrymen from acquiring an interest of any description in the soil. With the exception of the estates held by Mohamedans, which were comparatively few, the whole rental of the Gangetic valley was in the hands of Hindoos, and available for the encouragement of their institutions. The celebrity of all religious, social, and family festivals, in popular estimation, depended on the entertainment of brahmins, and the gifts bestowed on them were proportioned to their literary reputation. Hence it was impossible to discover how the withdrawal of Government aid from the two or three colleges it had established could affect in any perceptible degree the cultivation of the sacred language of the Vedas. The encouragement of English was, on the other hand, one of the highest blessings which could be conferred on the country. It unlocked to the natives all the stores of European knowledge and science, and brought them into association with the highest civilization in the world. It shook the fabric of error and the empire of superstition which had survived the lapse of twenty-five centuries. It introduced a flood of light into the minds of the natives upon every object of human enquiry, and communicated to them the secret of our own greatness. The judicious resolution of Lord William Bentinck has been followed by a degree of success which exceeds the most sanguine expectations, and the language and literature of England have now become as familiar to the upper ten thousand, as ever the language of Rome was within the sphere of her conquests. The only drawback connected with it has been the neglect of vernacular education, through which alone the great body of the people can receive the elements of mental improvement. But public measures in every department in India depend so greatly on the idiosyncrasies of those who happen, for the time, to be in power, that there is no reason to despair of seeing this error remedied at some future time, and the million rescued from the barbarism of ignorance.

General Assembly's institution, 1838

The cause of sound and enlightened education was materially promoted during this period by the efforts of the General Assembly, under the superintendence of the Rev. Dr. Duff. He proceeded to India in 1830, with the view of establishing an institution which should combine secular instruction of the highest order, through

the medium of English, with an unreserved communication of the doctrines and morals of Christianity, which were altogether, excluded from the Government colleges. The tuition imparted in the institution he founded embraced every branch of a liberal education, and was in no respect inferior to that which the colleges supported by the state professed to bestow. He and his colleagues made no secret of the fact that their system of education was inseparably associated with Christian instruction, but their rooms were soon crowded with twelve hundred scholars, and the teachers were regarded with feelings of distinguished confidence. The eminent success of this institution is to be traced to the sturdy energy, and the classical endowments of its conductors, who are entitled to public gratitude for their exertions to elevate the native character, and to give the country the benefit of a complete education, in every department of human pursuit.

The Medical College, 1833

No attempt worthy of the Government had been made before the time of Lord William Bentinck to supersede native quackery by the cultivation of medical science. In the Sanscrit and Arabic colleges the systems of Galen and Hippocrates were taught in combination with a smattering of European ideas; and a public institution existed, though of a very inferior description, for training native doctors, as they were called, but they never rose above the dignity of apothecaries. As the crowning act of his administration, the Governor-General founded a medical college in Calcutta in the month of March, 1835, to afford, through the medium of English treatises and English lectures, a professional education to the natives in every branch of the science, as cultivated in Europe. The most eminent medical officers in the service were placed in the professors' chairs; a library and a museum were established, and every appliance necessary to place it on the same footing of efficiency as European colleges was furnished with a bountiful hand. Sage men of long experience and reputed wisdom confidently predicted the failure of the experiment. Contact with a dead body had for twenty centuries

been considered a mortal pollution by the Hindoos, and it was traditionally affirmed that native prejudices were invincible. But these anticipations, when brought to the test of actual practice, proved, as usual, to be the phantoms of a morbid imagination. Natives of high caste were found to resort freely to the dissecting room, and to handle the scalpel with as much indifference as European students. In the first year they assisted in dissecting sixty subjects, and the feeling of ardour with which they entered on these studies, and the aptitude for acquiring knowledge which they exhibited created a universal feeling of surprise. The downfall of one prejudice paved the way for the removal of others. In 1844, Dwarkenath Tagore, one of the most liberal and enlightened native gentlemen of the time, offered to take two of the students with him to England, and complete their professional education at his own expense. His views were cordially seconded by Dr. Mouat, the secretary of the college, to whose ability and energy the infant institution was indebted in no small measure for its efficiency, and he persuaded two of the most advanced pupils to accept the offer and cross the "black water," though at the risk of forfeiting the privileges of their caste. They entered the medical schools in London, and successfully competed with the best scientific students in England.

Sir John Malcolm Governor of Bombay, 1827

The eminent services of Sir John Malcolm during a career of forty years in India, were tardily rewarded in the year 1827 with the Government of Bombay. His political opinions carry little weight in comparison with those of Munro, Elphinstone, Metcalfe, and others, but no officer of the Company ever possessed in a higher degree the happy art of conciliating the attachment of the people. He did not, like too many of his countrymen, keep himself aloof from the natives, but associated with them with all that freedom and ease, and that genial humour for which the French in India have always been more distinguished than the English. In the provinces of Central India he was

remembered with the same feelings of affectionate veneration which Bussy had excited in the Deccan, of whom it was remarked, that fifty years after he had left Hyderabad, the highest honour which the common people could pay to a European was to address him as Mons. Bussy. In the peaceful condition of Western India at the period of Sir John's appointment there was little scope for the exercise of his political or diplomatic talents, and his administration might have passed almost without observation, but for the collision which took place between the Supreme Court and his Government.

Collision of the Supreme Court and Gov, 1832

For a quarter of a century Bombay had been content with the court of a Recorder for the administration of English law, and the bench had been adorned with the genius of Sir James Mackintosh. In 1823, the growing importance of the town and port rendered it advisable to establish a Supreme Court of Judicature, with three judges, as at Calcutta and Madras. The recollection of the unseemly and perilous struggle between the Court in Calcutta and the Government, in the days of Hastings and Impey, might have suggested the necessity of preventing a similar conflict by a clear definition of the powers and jurisdiction of the new court. But the same error was repeated, and with the same mischievous results. The new judges gave the utmost latitude of construction to the indefinite powers conferred on them by their charter, and manifested the same disposition to treat the Government of the Company with contempt, and to encroach on its authority, which had been exhibited in Calcutta fifty years before. In their "thirst for jurisdiction," as the great historian of India remarked of the Supreme Court of Bengal, "they availed themselves of the hooks and handles which the ensnaring system of law administered by them afforded in abundance, to draw within their pale the whole transactions of the country." It was in reference to these remarks of Mr. Mill, that the Bombay Chief Justice went out of his way to assert that "if the whole of what

Mr. Mill had said about judges and law had been inserted in the *Bombay Courier*, he knew where the editor of that paper would be now, or in a day or two." The conflict between the two powers was brought to an issue in 1829. A Mahratta youth of fourteen, Moro Roghoonath, was left at the decease of his parents under the guardianship of his uncle, Pandoorang, a man of the highest family connections, and a kinsman of the late Peshwa. A near relative of the girl to whom Moro had been affianced, was anxious to obtain the wardship of the wealthy minor, and was advised by the lawyers to prefer his suit

to the Supreme Court. He accordingly proceeded to Bombay, and under their directions made affidavit that the youth was compulsorily detained by Pandoorang at the risk of his life, and a writ of habeas corpus was immediately granted to bring him up to the Presidency. Under the instructions of Government, the Magistrate resisted the execution of the writ, alleging that neither the uncle nor the nephew had ever resided, or been possessed of property, within the jurisdiction of the Supreme Court, and were not therefore amenable to its process. The judges maintained on the contrary, that their Court had been invested with all the powers of the Court of King's Bench, and was bound to watch over the liberty of the King's subjects to the farthest limits of the Presidency. Sir John Malcolm addressed a temperate and conciliatory letter to them, pointing out the injurious consequences of a contest between the Royal Court and the Company's Government, and proposing the suspension of all proceedings pending a reference to England. This communication was treated as an unconstitutional and a criminal proceeding, and denounced as an insult to the majesty of British law. During these discussions two of the judges died, but Sir John Grant, who was left alone on the bench, continued to multiply the issue of writs. A criminal, who had been sentenced to imprisonment for two years by the Sessions Judge of one of the districts in the interior, was released by order of the Supreme Court. The Guickwar refused the payment of a loan due to the Company, under the impression that the Supreme Court had power to release him from the obligation. The authority of Government was shaken to its foundation, and it became necessary to vindicate it in the eyes of the natives. Sir John Malcolm deemed it his duty to resist the encroachments of the Court with the same vigour which Warren Hastings had exhibited under similar circumstances in Calcutta. He placed a guard at the door of Pandoorang's residence to prevent the entrance of the constable, and he issued a circular to all the Company's Judges and Magistrates directing them to make no return to any of the writs of the Court. Sir John Grant, finding the Government immoveable, closed the doors of the Court, and they remained shut for two months. The question was referred to the Privy Council in England, and his proceedings were pronounced to be utterly repugnant to law. Lord Ellenborough, the President of the Board of Control, in his private letter to Sir John Malcolm, also expressed his strong disapprobation of the measures of the Court, and informed him that he had appointed .two other judges, one of whom was the Advocate-General at Bombay, and that no further mischief was to be apprehended, as "Sir John Grant would be like a wild elephant led away between two tame ones." Elated with this communication, Sir John Malcolm read it aloud at his own breakfast table, amidst the acclamation of thirty or forty guests. A copy of it found its way – it was said mysteriously – into the Calcutta newspapers, and created a profound sensation throughout the country. The Governor was chagrined at the position in which he was placed by this disclosure of a private communication, but instead of ascribing his mortification to his own indiscretion, attributed it to the liberty which Lord William Bentinck bad given to the press, which was to him an object of abhorrence. Sir John Grant immediately retired from the Bombay bench.

CONFLICT OF THE COURT OF DIRECTORS AND THE BOARD, 1832

The current of Indian affairs in England at this period, presented some singular exhibitions, both at the Board of Control and in Parliament. It has been already noticed that the debt due by the Nizam to the

banking house of Palmer & Co. was liquidated in 1823, and that they became insolvent within a twelvemonth, when their affairs were placed in the hands of trustees. During the discussions on this subject at the India House, the Court of Directors had solicited the opinion of three of the most eminent counsel in England whether British subjects in India were not debarred by Act of Parliament from enforcing claims for interest beyond twelve per cent., and they affirmed that such claims could not be sustained. Soon after, Lord Hastings brought the question forward in the House of Lords and it was referred to the decision of the twelve judges, who decided that the limitation of the rate of interest by Parliament did not apply to loans made to the subjects of independent princes by British subjects residing in their dominions. The opinion of counsel was sent out, forthwith, to India from the India House with alacrity, and the Resident at Hyderabad was directed to give it all due publicity. This notification ought, in all fairness, to have been withdrawn as soon as the judges had pronounced that opinion illegal, but it was allowed to continue in force, and the trustees of Palmer & Co. complained, not without reason, that under these circumstances they found it impossible to realize the debts due to the estate. The chief debtor was Moneer-ool-moolk a near relative of the Nizam, and the ostensible prime minister He had made over some of his jageers to Palmer & Co., and the rents had been duly collected and regularly applied to the liquidation of his debts, which had been fully effected, together with interest, at the rate of twelve per cent. The remainder of their demand consisted simply of a balance of interest beyond that rate. Decrees had been obtained for this claim in the local courts, but it was difficult to execute them against one who occupied so high a position in the state without strong external pressure. Application was accordingly made on the subject to the Court of Directors, who drafted a reply in July, 1830, in which the

Resident was forbidden to interfere in the matter. But the President of the Board of Control took a different view of the case, and returned the draft with this material modification, that the Resident was directed not only to inform the Nizam that the Government would hear with much satisfaction that the house had recovered their just claims from their private debtors, but also to adopt measures to promote this object. The Court remonstrated against these alterations, which reversed the policy they had resolutely maintained for ten years, of refusing the influence of their Government in reference to the private debts of the firm. They justly argued that the exorbitant interest which constituted the present claim arose from the risk with which the transaction was originally attended, and from the uncertainty of payment, both of which ceased to exist with the interposition of Government. The remonstrance was not without effect, and the despatch was withheld.

Writ of Mandamus, 1832

The question slumbered till the beginning of 1832, when the Whigs being in office, the Court of Directors were desired by the Board to prepare a despatch in the room of that to which they had formerly raised objections. But when it arrived in Cannon Row, the President of the Board drew his fatal pen across thirty-three out of its thirty-seven paragraphs, and substituted ten of his own. In this amended despatch the Court were required to declare their conviction that the joint interposition of our

Government and that of the Nizam would be requisite to bring the matter in dispute to a final settlement. The Nizam was to be allowed the alternative of an arbitration, with an umpire nominated by Government, or a commission appointed by the Governor-General. The Court declined to sanction the authoritative interference of their Government in the adjustment of a debt which they considered unjust, and they refused to adopt the amendments. The President disclaimed any idea of bringing the authority of Government to bear on the case, and made some trivial alterations in the despatch; but the Court justly remarked that in the relative position of the

parties at Hyderabad, no interference of the head of the Government of India could be divested of the character of authority; and they proceeded to cancel both the amended and the original despatch. The correspondence on this subject was extended over eight months, but nothing could shake the resolution of the Directors. They persisted in refusing to sign and transmit the despatch, and at length informed the President that "they had nothing to do but to leave the law to take its course." He immediately applied to the Court of King's Bench for a writ of mandamus to compel the Directors to adopt the despatch as dictated by the Board, and they were constrained to yield to this irresistible argument; but at the same time they recorded their solemn protest against the orders which they had been compelled to sign as their own act and deed. The debt of the minister was settled by Mr. Macleod, the umpire appointed by Government, but upon the preposterous principle of allowing interest against the debtor to the utmost farthing, and refusing interest on the payments which had been successively made by him; and the transaction ended with the same disregard of justice with which it had been commenced and carried on.

The Lucknow Bankers, 1832

During these transactions, a still more objectionable case was brought under discussion in England. Between the years 1792 and 1797 the Nabob of Oude had borrowed large sums of money from Europeans and natives for his voluptuous pleasures. The chances of repayment were very remote, and altogether uncertain; and the charge for interest was proportionately high. He was at length awakened to a sense of his increasing embarrassments by the representations of the Resident, and began in earnest to compound with his creditors. The Europeans were offered better terms than the natives; but all parties were prevailed on to accept the composition, with the exception of the eminent banking firm of Monohur Doss, from whom he had borrowed about eleven lacs of rupees for the support of his wild beasts, and for the "cattle department." Soon after the king died, and his successor repudiated the debt. The bankers eventually engaged the services of a Mr. Prendergast who had amassed a fortune as a trader at Lucknow, and, like Mr. Paull, obtained a seat in Parliament on his return to England.

He brought the claims of his clients before the House for the first time in 1811, but though he met with no success, he continued for twenty years to make the most strenuous efforts in a spirit of indomitable perseverance to promote their suit, both in Parliament and in the courts of law. But the Court of Directors invariably refused to enforce an unacknowledged and unproved claim against one who had

not contracted the debt, and whom they recognized and treated as a sovereign prince. In this equitable decision they were fully supported by Lord Hastings, who, though he had on one occasion directed the Resident to mention the claim to the Nabob, yet, finding him determined to resist it, at once decided that it was not a case in which the British Government would be warranted in affording any official support. Mr. Canning went still further, and directed the Court to inform the Governor-General that they were so clearly aware of the difficulty of divesting a friendly communication to a weaker power of the character of authority, that they positively forbade the subject to be brought again before the Nabob by any of the officers of Government. But in 1830 the President of the Board of Control was persuaded to lend a favourable ear to the demands of Mr. Prendergast's clients, now swelled, by the accumulation of interest, to a crore of rupees. He affirmed, that while he duly honoured the principle of non-interference, he considered the present an exceptional case, and that it was his determination to make our representations to the king of Oude, "direct and formal." It was the day after the Court had refused to adopt the obnoxious despatch to Hyderabad, regarding the claims of Palmer and Co., that they were desired by the Board to prepare a despatch to the Governor-General directing him to use his utmost efforts to procure the payment of the alleged debt from the king of Oude. The Court felt that any expression

of the wishes of Government could only signify compulsion, either by intimidation or by force, and, instead of drawing up a despatch, prepared a vigorous remonstrance, in which they pointed out the impolicy and the injustice of a course which would open the door to endless claims, not only at Lucknow, but at every din-bar in India, and beggar half its princes. A despatch was then drawn up in the office of the Board of Control, and transmitted for the acceptance of the Directors, but they passed a resolution, without a single dissenting voice, that this interference with the king of Oude was unjust, inconsistent, and mischievous, and they refused to act, though only ministerially, on the orders of the Board, until compelled to do so by process of law. Mr. Tucker, the deputy chairman, and five of his colleagues, went so far as to declare that even under the pressure of a mandamus they would not consent to affix their signature to an order which was nothing less than "an act of spoliation towards an ancient and prostrate ally." They felt that in India, where the intricate machinery of the home Government was not understood, the act would be regarded as emanating from them, and that the odium of it would be attached to their administration. The steady resistance of the India House produced the happy effect of inducing the President to pause on the threshold of a conflict, which must have been damaging alike to the Ministry and to the Government in India, and the question was allowed to die out.

The Nozeed affair

The anomalous proceedings of the two Houses at this period in what was termed the "Nozeed affair," exhibited a very disreputable abuse of Parliamentary influence. In 1776, Mr. Hodges, a member of the council at Masulipatam, lent money to the zemindar of Nozeed without the knowledge of the government of Madras, and in direct contravention of the orders of the Court of Directors. In June,

1777, in a communication to Madras, the Court renewed in more peremptory language their former injunction that none of their servants should advance loans on mortgage of lands. Two years after, Mr. Hodges presumed to take a mortgage

of a portion of the zemindar's estate for his debt, and the transaction received the support of the Governor and Council of Madras. The whole zemindaree was soon after taken over by Government for arrears of revenue, and an application was made in 1784 to Lord Macartney, then Governor of the Presidency, on the subject of these loans. He considered that the whole transaction was in every respect unwarranted in principle and pernicious in its tendency; but out of delicacy to the preceding Government, which had sanctioned this infraction of the Company's rules, recorded his opinion that the creditors were entitled to some consideration on resigning the district they had so long and so irregularly held on pledge. The Court of Directors, however, resisted every solicitation to entertain the claim. A permanent settlement of the estate was made in 1803, when it was restored to the zemindaree family, leaving them to make any settlement they could effect with the creditors. Nothing further was heard of the claim for nearly thirty years, till the grandson of Mr. Hodges, having some influential friends in Parliament, induced them to bring in a bill to compel the Company to make good the whole demand, which was stated to amount to two lacs of rupees. It will be remembered that when the claims of the nabob of Arcot were introduced to the House, fifty years before, a commission was appointed to investigate their validity, and that ninety per cent. of the amount turned out to be fictitious; but in the present instance, the House passed the bill enjoining the Court of Directors to pay the full amount of this private and illegal claim, without enquiry, from the revenues of India. In the House of Lords it encountered the most strenuous opposition from Lord Ellenborough, and from the Lord Chancellor, Lord Brougham, who deprecated the interference of the Legislature to enforce a claim, "contaminated in its origin, and illegal in its prosecution; "but it passed with a majority of two to one.

Financial Results of Lord William Bentinck's Administration, 1828–1835

With the exception of the Coorg campaign, which was concluded in ten days, the administration of Lord William Bentinck was a reign of peace, and it produced the usual result on the finances of India. The reductions which he effected in the various departments of expenditure, combined with an improvement of the sources of revenue, extinguished the deficit of a crore of rupees which he found on his arrival, and enabled him to leave a surplus of a crore and a half on his departure in 1835. The magnificent expectations with which the trade of India had been thrown open to the nation in 1813, were but partially realized in the following twenty years, and the returns during Lord William Bentinck's administration exhibited a decrease both of exports and imports.

Fall of the great Houses in Calcutta, 1833

This was to be attributed, in a large measure, to the great crisis of 1833, which brought down the whole commercial fabric of Calcutta. During the administration of Warren Hastings some free mariners, as the licensed interlopers were designated, opened houses of business in Calcutta on a humble scale, and

gathered up the fragments of the trade to England, which dropped from the great monopoly of Leadenhall street. They embarked, moreover, in the country trade, as it was called, from one Indian port to another, and from Calcutta to the eastward, as well as in the internal traffic of the country. The famine on the Coast occasioned by Ryder Ali's irruption into the Carnatic in 1780, created a large demand for freight and the new houses commenced shipbuilding, first at Sylhet and Chittagong, and eventually in Calcutta. They established indigo factories in the interior of the country and drove the drug which had hitherto been furnished from other countries out of the European markets. Their transactions expanded and their prosperity increased with the growth of British power. They acquired the confidence of the native and the European community, and became the bankers of the civil, military, and medical services, whose savings were transferred, month by month, to their coffers, and whose balances were annually augmented, through the process of compound interest. A desk at one of those firms was considered more valuable than a seat in Council, and the retiring partners drew out colossal fortunes, with which, on their return to England, they bought boroughs, and seated themselves in Parliament. The opening of the trade in 1813, brought out to Calcutta a bevy of new adventurers, who were regarded at first with a feeling of contemptuous indifference by the stately old houses. But they were animated with the vigour of youthful enterprise, and gradually undermined the established firms, drawing away the most profitable branches of their business, and leaving them saddled with their old factories and ships which were not worth a fourth of their original cost. The confidence of the public, which had continued unshaken for half a century, received a rude shock in 1830 by the unexpected collapse of the great firm of John Palmer & Co., usually styled the prince of merchants. The other houses, five in number, continued to struggle with increasing embarrassments, and were enabled to remain afloat as long as the credulity of their constituents provided them with deposits sufficient to meet the withdrawal of funds. But the candle at length burnt down into the socket, and they went one by one into the Insolvent Court, which engulfed sixteen crores of rupees. A large portion of this sum consisted of the savings of the services, and the extent of the calamity may be estimated from the remark of Lord William Bentinck, who had heard, he said, to his utter surprise, that a civilian, when pressed to make a purchase after the failures, had actually replied that he could not afford it.

Remarks on Lord W Bentinck's Administration, 1886

Lord William Bentinck was residing at the sanitarium of Ootacamund, in the Neelgeree hills, when the new charter reached India, but his health had been so seriously impaired by a constitutional malady, that his physicians considered it unsafe for him to descend into the plains till the cold weather had set in. Sir Frederick Adam, the governor of Madras, and Mr. Macaulay and Colonel Morrison, who had been appointed members of the Supreme Council, were accordingly summoned to join him in the hills, where the first Council under the new Act was

held, and the new Government constituted. These proceedings were unavoidably deficient in legal form, but the defect was covered the next year by an Act of indemnity. Lord William Bentinck returned to Calcutta in November, and embarked for his native land in March, 1835, after having held the reins of

Government for nearly eight years. His administration marks the most memorable period of improvement between the days of Lord Cornwallis and Lord Dalhousie, and forms a salient point in the history of Indian reform. He repudiated the stationary policy of the Government, and introduced a more liberal and progressive spirit into every department of the state. With the intuition of a great mind, he discovered the weak points of our system of administration, which was becoming effete under the withering influence of routine, and the remedies he applied went to the root of the disease. He infused new blood into our institutions, and started them upon a new career of vigour and efficiency. The marked difference which they presented in the thirty years succeeding his Government, as compared with the thirty years which preceded it, was due entirely to the impulse of his genius, which became the main spring of a long succession of improvements. He was not less bold in the conception of his plans than resolute in the execution of them, to which he was sometimes obliged to sacrifice the amenities of life. He earned the gratitude of the natives by opening an honourable career to them in the government of their own country, and he was rewarded with the gratitude of Christendom for the moral courage he evinced in putting down Suttees. He has been charged with a love of innovation; but, even if the imputation be correct, such an error is far less injurious to the interests of society than the dull stagnation into which the Government was sinking, and which was an unerring symptom of decay. The great defect of his administration was the fluctuation of his political policy; but, the renewal of the non-intercourse system was ordered from England, and though at first supported by his own views, it was gradually modified, as the exigency of circumstances appeared to demand the adoption of another course for the protection of the people, as in the cases of Coorg and Mysore. The natives vied with the European community in commemorating the blessings of his administration, and united in raising a subscription for the erection of his statue in Calcutta. The pedestal was enriched with groups representing the great and good features of his government, and bore an inscription from the classic pen of Mr. Macaulay:"This statue is erected to William Cavendish Bentinck, who during seven years ruled India with eminent prudence, integrity, and benevolence; who, placed at the head of a great empire, never laid aside the simplicity and moderation of a private citizen; who infused into Oriental despotism the spirit of British freedom; who never forgot that the end of government is the welfare of the governed; who abolished cruel rites; who effaced humiliating distinctions; who allowed liberty to the expression of public opinion; whose constant study it was to elevate the moral and intellectual character of the Government committed to his charge; – this monument was erected by men who, differing from each other in race, in manners, in language, and in religion, cherish, with equal veneration and gratitude, the memory of his wise, upright, and paternal administration."

Unit II: Evolution of Law and Legal Institution

DEVELOPMENT OF PERSONAL LAWS
DEVELOPEMENT OF LAW IN PRESIDENCY TOWNS
DEVELOPMENT OF CIVIL LAW IN MUFASSIL

What is common law? The expression 'Common Law of England' refers to those Unwritten legal doctrine embodying English custom and English 'traditions, which have been Developed over the centuries by the English courts. So understood It would not Include and Would be different from the English statutes Law, which has from time to time modified the Common law. But the English brought into India not only the mass of legal rules strictly Known as the common law, but also their traditions, outlook and techniques In establishing. Maintaining and developing the judicial system.

The history of present day Indo-British Jurisprudence commences with he formation of the London East India Company In 1600 in the reign of Queen Elizabeth I. The Charters of Queen Elizabeth granted to the Company In the years 1600 and 1609 gave the power to them to make and constitute such and so many reasonable laws, constitution, orders and ordinances as to them so seems necessary .The position of the Company's factories In India was at that time some what anomalous. They were generally a part of the dominion of the Mughal. Yet since the very early days, the Company had obtained the authority of the British Crown to administer justice and constitute judicial authorities fn the areas covered by these factories, In order that they might be able to administer justice according to their own notions and in accordance wIth the laws which they were familiar, the Company had endeavoured to obtain permission to administer their own laws in these areas.

In 1661 the Charter of Charles II gave to the Government and Council of several places belonging to the Company the power to judge all persons belonging to the said Government and Company according to the laws of this kingdom and to execute judgment accordingly.

Almost contemporaneously with this Charter came the Cession of the Island of Bombay by the Portuguese to the English and Its lease by Charles II to the East India Company In 1668, Prior to that this was the territory which had been under Portuguese rules and Portuguese law governed It.

The Charter of Charles II transferring the Island of Bombay to the Company, required the Company to enact laws “consonant to reason and not repugnant or contrary to” and “as near as may be agreeable to” the English laws. The charter also directed that the courts and their procedures should be like those that the established and used in the realm of England.

Rules for the Civil Government and equal distribution of justice upon the Island were drafted in England by the Company's Law Officers and after the approval of the Solicitor General a draft was settled and engrossed to be sent out to India In 1669. These laws provided for the establishment of a court of judicature for the decision of all suits and criminal matters under a Judge to be appointed by the Governor and Council and for all trials in the court to be by a jury of 12 Englishmen, except when any party to the dispute was not English, In which case the jury was to be half English and half non-English. It also made provision for regular sitting of the court, the recording of its proceedings In registers, the fixing of reasonable court-fees and for a right of appeal from the court of judicature to the Governor and Council it was constituted the Supreme Court in the Port and Island.
There is little information about the administration of criminal justice during this period and the application of laws of the Company. But the correspondence between Bombay and Surat, where the factory of the Company was situated and where the Governor resided contains references of the trial by jury, of crimes, like theft, murder and mutiny. ,
Thus, were laid the foundation In the Seventeenth Century I although In the small area of the town and Island of Bombay of the application of English laws to Indians residing in the Presidency towns and of the system of administering justice fostered by the common law in England.

'Common Law In England' and 'Common Law In India' are distinct expression.
Whereas the former referred to the common law prevalent in England, the latter expression referred to the common law expanded by English in India. The common law, i.e., unwritten legal doctrines embodying English customs and English traditions developed over the centuries by English courts was in the beginning applied to the areas which later became the Presidency towns of Calcutta and Bombay.

Common Law In Mufassil

Then the common law trickled down to Mufassil. Between 1686 and 1694 the Company purchased certain villages in Bengal with the consent of Nawab of Bengal and acquired the status of a Zamindar in regard to those villages. As the Zamindar the Company held Zamindar's courts exercising both civil and criminal jurisdiction. These courts derive their authority from the Mughals, as the Company held this Zamindari from them. The law administered and the procedure followed in these courts were similar to those in the courts where other Zamindars exercised the jurisdiction.
There was a rise of the factories at Bombay, Madras and Calcutta, which in course of time grew into three Presidency towns. The company gradually increased the area of its supervision and control over the places surrounding these growing factories which in contradistinction to the Presidency towns were lied the Mufassil. These Presidency towns played the leading role in the introduction of the common law into india .

Presidency town & adalat system

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

With the coming of the British to India, the legal system of India changed from what it was in the Mughal period where mainly the Islamic law was followed. The legal system currently in India bears a very close resemblance to what the British left us with. As per the needs of the changing times changes and amendments were made, but the procedure which is followed not has its roots in the era of British-India. Little did the traders of the English East India Company while establishing their trade in India know that they would end up establishing their rule for about 200 years here. But the evolution of law as it is today did not come about in one go altogether. It was the Presidency Towns individually that were first affected by this change in hands of the governance of India after which the steps towards amalgamation of the judicial system were taken by the Charters of 1726 and 1753. To improve upon this, under the Regulating Act of 1773 Supreme Courts in the Presidency Towns and then under the Act of 1798 the Recorder's Courts at Madras and Bombay were established. These were ultimately replaced by the establishment of the High Courts under the Act of 1861, which are still running in the country. It was only after independence in 1950 that the Supreme Court was established. Reforms and codifications were made in the pre and post independence eras and are still continuing. Thus law, as we know today has evolved through a complex procedure which is discussed in detail herein below.

Ancient Period

India has a golden history of over 5000 years. Therefore a comprehensive study of Indian legal history comprises of the historical process of development of legal institutions in Hindus and Muslim periods.

Pre-Mughal Era

The various sources of law relied upon by the kings at that time were shrutis, smritis, puranas, dharmasutras, dharmashastras, etc. The Arthashastra and Manusmriti were influential treatises in India, texts that were considered authoritative legal guidance.

Ancient India represented a distinct tradition of law, and had a historically independent school of legal theory and practice. The political structure in the Vedic Period consisted of kingdoms, each tribe forming a separate kingdom. The basic unit of political organization was the kula (family). A number of kulas formed a grama (village), Gramani being the head. A group of gramas formed a vis (clan) and a number of vis formed the jana (tribe). The leader was Rajan (the Vedic King). The king (raja) was the supreme head of the legislative, executive and judiciary branches. The members of the council of minister could

give advice to the king, but final decisions were left to the king. The ministers and other officials were directly appointed by the king. The sabha and the samithi were responsible for the administration of justice at the village level.

According to Brihaspati Smiriti, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadivivaka, or adhyaksha; and at the top was the King's court.

Early in this period, which finally culminated into the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearances of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition.

Mughal Era

The ideal of justice under Islam was one of the highest in the Middle ages.

The administration of justice was regarded by the Muslim kings as a religious duty.

Sources of Islamic Law are divided into Primary and Secondary Sources.

Quran is the first and the most important source of Islamic law. It is believed to be the direct words of God as revealed to Muhammad through angel Gabriel in Mecca and Medina. Muslim jurists agree that the Quran in its entirety is not a legal code.

Sunna is the traditions or known practices of Prophet Muhammad, recorded in the Hadith literature. Quran justifies the use of Sunna as a source of law.

Ijma and Qiyas are the secondary sources of Islamic law. There are 72 Muslim sects in all with the Shia sect being the most popular in India

Under the Moghal Empire the country had an efficient system of government with the result that the system of justice took shape. The unit of judicial administration was Qazi. Every provincial capital had its Qazi and at the head of the judicial administration was the Supreme Qazi of the empire (Qazi-ul-quzat). Moreover, every town and every village large enough to be classed as a Qasba had its own Qazi.

.During this period, the personal laws of the non-Muslims were applied in civil matters, but the criminal law was the Islamic in nature. Whenever there was a conflict between Islamic Law and sacred laws of the Hindus, the former prevailed.

Medieval Period *1600*-1726

The charter of 1600 established the English East India Company in India. as per the charter of 1661 the English and the Indians residing under the Company came under its jurisdiction.

From the period ranging from 1661 till 1726, laws of equity and justice in conformity with the laws in England were followed. There was no codified law.

In Calcutta, the judicial system was based on the Company's authority as a zamindar. This continued till the charter of 1726 was passed.

Before Madras attained the position of a Presidency in 1665 it had two courts namely, the Choultry Court and the Court of the Agent and Council.

By the charter of 1668 the Company was conferred powers to make laws for the island of Bombay.

From this period till the passing of the Charter of 1726, there were civil and criminal courts in these presidencies. In madras, there was the choultry court, the mayor's court and the admiralty court as well. On the other hand, in Bombay till 1726 judicial systems were not stable and kept changing. Earlier there were courts like the Court of Judicature (1672) which dealt with civil and criminal cases and matters of probates and testaments, and a Court of Conscience to decide petty cases.

There was a system of appeals as well. In madras the appeals from the Mayor's Court were filed to the Governor and Council. On the other hand, Bombay had Deputy-Governor and Council as its appellate Court. In Bombay this system elapsed due to lack of independence of the judiciary. In the following judicial system of Bombay an admiralty court was established with a Judge-Advocate as its head. This court apart from its existing powers enjoyed civil and criminal jurisdiction. Later a court of Judicature was established under this system after which the Admiralty Court lost its ground. The Admiralty court in Madras also became irregular by this time. Another system came about in 1718 in Bombay and this gave representation to the Indians as well by appointing 4 Indian Judges, known as Black Justices, in the Court.

Charter of 1726

In the subsequent years the Charter of 1726 was passed which granted special powers to the Company as was requested by it. Under this Charter the Mayor's Court was established. This superseded all the other courts of Bombay, Madras and Calcutta. This was a court of record.

The Laws under this Charter were also applied in conformity with the laws in England on the principles of equity and justice. Appeals from this court could be filed in the court of Governor and Council and further in the court of King-in-Council in England.

Requisite independence was assured to the Mayor's Courts but this along with their strict adherence to English laws became the cause of some difficulties like hostility between the Mayor and the Governor and Council, and non clarity regarding jurisdiction of the Mayor's Court in respect of the natives. The judiciary did not possess expert staff for administering justice and the executive did not have respect for the judiciary

This system remained suspended while the French had occupied Madras which they later surrendered in 1749. Then the Charter of 1753 was passed in order to remove the difficulties of the preceding Charter.

This charter put the Mayor under the subjection of the Governor and Council in order to avoid disputes between the two. Suits and actions between the natives were expressly excluded from the jurisdiction of the Mayor's Court unless both parties submitted them to its determination, and a Court of Requests was created to hear small civil cases. The defects of this Charter can be summarized by mentioning the executive ridden judiciary, failure of impartial judgment, judiciary suffering from lack of legal knowledge, limitation

of the jurisdiction of the Courts to Presidency Towns, and no representation of Indian Judges as opposed to earlier provisions in some courts in Bombay.

The Company's financial break-down was the immediate cause for the enforcement of the Regulating Act of 1773. Section 13 of the Act provided for the establishment of a Supreme Court at Calcutta. The court, also a court of record with the power to punish for its contempt, had civil, equity, criminal, ecclesiastical and admiralty jurisdiction. Appeals against decisions of this Court and through the Court could be filed in all civil and criminal cases respectively before the King-in-Council. The establishment of this Court was a welcome as it was the first British Court in India consisting of lawyers, its jurisdiction was so wise that it covered all kinds of legal wrongs and that since all British subject came under its jurisdiction it ensured rule of law.

The Act of Settlement 1781 aimed at removing the ambiguities created by the former Act, but was not successful in its entirety.

With the increase in activities of the Company an urgent need of a lawyer-judge was felt to deal with new cases. The Charter in 1798 did the needful by establishing the Recorder's Court at Madras and

Bombay. This Court had similar jurisdiction and was subject to the same restrictions as the Supreme Court of Calcutta. In 1801 and 1824 Supreme Courts were established in Madras and Bombay respectively. The Constitutional powers, functions, limitations and jurisdiction of these courts were the same as that of the Supreme Court at Calcutta.

A parallel system of judiciary was running in the mofussil areas. The Company attained the Diwani of Bengal, Bihar, and Orissa in 1765. As per the plan of 1772 under Warren Hastings, the Courts of Original Jurisdiction were Mofussil Faujdari Adalat, the court of criminal jurisdiction; Mofussil Diwani Adalat, the court of civil jurisdiction and Small Cause Adalat. Under the Appellate Courts we had Sadar Nizami Adalat, the criminal court of appeals; Sadar Diwani Adalat, civil court of appeals. The Collectors started monopolizing the trade in the districts putting the end to this system and giving rise to a new plan of 1774.

Under this system, diwan or amil, acted as the judge of the Mofussil Diwani Adalat. The Mofussil areas of Bengal, Bihar and Orissa were divinded into six districts with a Provincial Council in each district acting as the Appellate Court. The Council started creating difficulties and monopolizing trade within its jurisdiction. This led to an end of this plan as well and a new plan of 1780 was formulated.

This plan separated the executive from the judiciary. Provincial courts were left with the function of collecting land revenue only. For civil cases, a Diwani Adalat was established from which appeals went to the Sardar Diwani Adalat. Though this system assured the independence of the judiciary there were certain set-backs.

For the administration of criminal justice in a more efficient manner Warren Hastings drew a scheme in 1781 under which for apprehending criminals, Judges of the Mofussil Diwani Adalats were authorised to work as Magistrates and a department headed by the Remembrance of criminal Courts was opened to look after the working of the said courts.

The Governor –General Lord Cornwallis (1786-1793) introduced changes in the judicial system in 1787, 1790, and 1793. He had thoroughly reorganized the civil and criminal judicial system in India in Bengal, Bihar, and Orissa. He for the first time introduced the principle of administration according to law.

In 1787 he merged the revenue collection and power to try the revenue disputes in the same hands of the magistrate who formed the Mal Adalat. Appeals from the Mal Adalat had to go to the Governor General.

In the year 1790 the policy of 1787 was annulled. Cornwallis took a great step to improve administration of justice in the Mofussil by reforming the criminal law. The scheme had three limbs: at the lowest were the magistrates in the district, then the courts of circuits, and ultimately there was the Sadar Nizamat Adalat at Calcutta (initially at Murshidabad). Sadar Nizamat Adalat, put under the control of Governor-General and his Council, was being assisted by the Muslim law officers who were to expound the law.

But later he brought reforms to the plan in year 1793 and introduced the most famous plan of the history.

According to this plan the Supreme Court was divested of all its powers except for the power of appeal and the Collector was to be given civil as well as revenue cases. Executive was estranged from the judiciary in its entirety. He introduced professional lawyers or vakeels in the courts to appear on behalf of the parties to contest their case in order to increase efficiency.

Cornwallis did everything on structural and procedural side but he could not do much to reform the substantive law, particularly the criminal law which 'was based on Muslim law and suffered from a number of defects'.

MODERN PERIOD

PRE INDEPENDENCE:

The year 1861 also constituted a conspicuous landmark in the process of development of legal and judicial institutions in India. It was during this year that the steps were taken to establish High Courts at Calcutta, Madras and Bombay. These High Courts were not only better instruments of justice than the preceding courts, but also represented the amalgamation of the hitherto existing two disparate and distinct judicial systems, the Company's Courts in the Provinces of Bengal, Bombay Madras, and the three Supreme Courts(established by the Royal Charter) in the Presidency town.

The High Court enjoyed the same power over all persons and estates. It had ordinary original, appellate and extraordinary original jurisdiction in civil cases whereas extraordinary and appellant jurisdiction in criminal cases. While exercising ordinary original jurisdiction the Courts were to apply the law of equity of the corresponding Supreme Court. In extraordinary original jurisdiction, the Courts applied the law of the corresponding local court, whereas in case of appellate jurisdiction the Courts applied the law of the court of original case filing. Acting as the court of appeal, reference or revision in Criminal cases, the courts applied the Indian Penal Code. The High Courts were empowered to make rules and orders for regulating all its proceedings in civil matters. By the subsequent charters High Courts were formed in Allahabad (1875), Patna (1912), Lahore (1865) etc.

The King, in the capacity of the being regarded as the fountain of justice in English legal system, could hear any petition filed by a party with respect to any matter with the help of the Privy Council. This was later, exercised by the King in the form of appeals and not otherwise. Appeals from India could be filed as of right or with the special leave of the Privy Council.

After the mutiny of 1857 the Company's Government came to an end and the administration of the country was placed in the hands of the Crown through the Secretary of State for India. For this purpose the Indian Councils Act, 1861 and 1892 were passed. But these Acts were not enough to satisfy the

growth and organized demand for self-government by the Congress. Thus came about the Morley Minto Reforms in the year 1909 with its most important aspect being the increase of the representative element in the Legislative Councils and the extension of their powers. But the defects such as lack of true representation, etc led to the passing of the Government of India Act in 1919 which emphasized maximum autonomy to provinces with the target of achieving self-government. The dissatisfaction of this led to the Government of India Act, 1935 which aimed to establish federalism.

A Federal Court set up in Delhi was established under this Act. It is believed that out of all the institutions set up under the Act; this was proved to be the most successful in operation. The Court was to consist of Chief Justice and not more that six judges. This Court had original, appellate, and advisory jurisdiction. The Court had exclusive original jurisdiction in all disputed between the federation and the units or between the units inter se.

An appeal could go to the Privy Council without leave, against the Judgements of the Federal Court given in its original jurisdiction and in any other matter with the leave of the Privy Council or of the Federal Court.

In the matter of the laws to be applied the very idea of a single omni-competent legislative body in India had been mooted in 1829 by the Governor–General, Lord William Bentick. Administrators at that time wanted to secure uniformity of law throughout the country and that was unattainable with three co-extensive legislative powers existing in the country. Charter of 1833 helped to receive the object desired. Under this the Governor–General of Bengal, nominated as Governor-General of India, proposed a uniform All India Legislation and thereby created a Legislative Council. The laws made by the Council were applicable on all persons and courts. It had Lord Macaulay appointed as its first Law Member whose powers were increased by the Charter of 1853. The creation of new council at Calcutta caused the centralization and concentration of power depriving the Councils of Bombay and Madras of their law-making powers.

An important step towards fulfilling the goal of securing a uniform and simple system of law in India through the process of integration of the general system of codes was taken by the Charter Act of 1833. Section 53 provided for the appointment of a Law Commission in India, subsequently forming the **first commission** of India with its members appointed by the Governor-General. The commissions' most noteworthy contribution was the Penal Code prepared under the guidance of the Macaulay. The Commission then drew its attention to the complaint of the non- Hindu and non- Muslims and thus passed the lex loci report in 1837. The report proposed an Act making a declaration that except for Hindus and Muslims all others in Mofussil were to be put under English substantive Law to the extent that it suited the Indian conditions.

The Second Law Commission, formed in 1853 submitted two reports, one dealing with reforms of the judiciary and the other with the reforms of law. It recommended the amalgamation of the Sadar Adalats

and the Supreme Court in all the presidencies and the adoption of uniform civil and criminal procedure codes.

The proposals of the first two Commissions resulted in the codification of the Code for civil and criminal cases in the year 1857 and 1861 respectively and the enactment of the Penal Code in 1860. The Limitation Act and the High Courts Act were passed in 1855 and 1861 respectively.

The Third Law Commission proved to be the most successful of all the Commissions. It drafted several codes in its seven reports, the important ones being Indian Succession Act, Contract Act (1872), Evidence Act, the new Limitation Act and the Divorce Act 1869. Interestingly, the Government at this time was also considering the preparation of the Law Digest of cases. But it ended abruptly due to the dispute amongst its members.

Many branches of law had been ascertained by now but certain were still un-codified resulting in great deal of complexities. To this, Lord Salisbury recommended the formation of a small body to codify the remaining laws and it resulted in the codification of the Transfer of Property Act, the Easement Act, the Trusts Act and revision of the existing Codes.

With the expiry of the Fourth Commission, there came an end of a large scale codification undertaken by the British Government. They had successfully enacted the necessary laws to suit the pressing needs of the country.

CHARTER ACT 1853, CODIFICATION OF LAWS AND LAW COMMISSIONS UNDER BRITISH INDIA.

The charter Act of 1853 made the law member a fully fledged member of the governor general's council. Thus He got the right to vote at executive meetings of the governor general meetings.
As per charter act of 1833, legislative council member ship was limited.
But charter act of 1853 increased the number of legislative council members.

The new legislative council was consisted of
1.Governor general and members of his council
2.one member from each presidency
3.lieutenant governor to be appointed time to time
4.chief justice of the supreme court at Calcutta
5.one judge of the supreme court to be named by governor general
6.court of directors could direct the governor general to add two more persons

The sittings, meetings of the legislative council were made public and their proceedings were officially published.

The charter act of 1853 again made provision for the law commission.
This time law commission worked sits in England and not in India.

The preamble to S.28 of the act of 1853 accepted publicly and openly the failure of First law commission in India.

First law commission worked hard in the beginning but it ultimate result was that it failed.

Thus the law was that her majesty can appoint any time persons to study the recommendations of first law commission to reform judicial law system, to reform laws of India.

Second law commission was formed for the next 3 years that is up to year 1856.

Second law commission was appointed in England on the 29th November 1853.

Following were the members of the 2nd law commission.

1.Sir, Lord john Romilly

2.master of the rolls as president of the commission

3.Sir john jervis

4.chief justice of the pleas

5.sir Edward ryan

6.ex chief justice of the supreme court at Calcutta Robert lowe

7.lord sherbrook M.P

8.c.h.cameron

9.john m.macleod

10.hawkings

The second law commission consisted of leading lawyers of England and few persons who worked in India and knew about the Indian laws and adalat system

In next 3 years second law commission submitted 4 reports
The first report recommended formation of single court at the place of Supreme Court and sadar adalat, this court was to be called as High court.

Recommended adoption of civil and criminal procedure code throughout the jurisdiction of the High court.

In third report commission made plan for the establishment of judicial system in north western provinces.

The fourth report made plan for the presidencies of Bombay and Madras.

In 1858 the East India Company was dissolved and the Government of India was taken over by the British crown.

After this many important Indian laws were passed by the British crown, Indian legislature which we Indians are still using them.

1.code of civil procedure 1859

2.limitation act 1859

3.Indian penal code 1860

4.code of criminal procedure 1861

Formation of third law commission –

On 2nd December 1861 a new commission was formed.

The 3rd law commission was directed to frame a body of substantive law, in preparing which the law of England should be used as basis but which once enacted should itself be the law of India on the subject it embraced.

The third commission submitted seven reports containing the drafts of the future proposed laws to the secretary of India.

The first report submitted draft, bill of the future law

And this bill was enacted and was titled as The Indian succession act 1863

First report, draft was submitted on 23 June 1863

July 18, 1866

2nd report was about law of contracts

July 24 1867

3rd report was about law of negotiable instrument

December, 18 1867

4th report was answer to the questions or doubts ask by the Indian legislature regarding proposed law of contract.

August 3, 1868
5th report proposed the law of evidence

May 28 1870 -
6th report proposed the draft of law of transfer of property

June 11 1870, last and final report or draft
7th report proposed the revision, changes in the code of criminal procedure code.

Third commission worked for 9 years and did excellent job.

Law commission was working speedily but Indian legislative council in India was very slow, it was raising doubts which delayed the work.
Even Indian educated people started to oppose these new proposed laws as before this everything was done as per custom and religion which was beneficial to upper caste, or rich Muslim people of India.

Indian legislation delayed the implementation of new laws by one or another reason.

During Sir Henry Summer Maines tenure as the law member 211 acts were passed.

Indian companies act was enacted in year 1866.

General clauses act was passed on 1868

Divorce act was passed in 1869

New limitation act was passed in 1871

Evidence act was passed in 1872

After this 4th law commission was established.
This commission also suggested the how the codification of Indian law should be made.
And many other provisions.

Indian negotiable instrument act was passed on 1881
Transfer of property and easement act was passed on 1882

The fourth law commission was the last law commission which was formed in British India.

The 4th law commission directed that there should be a uniform code for India, which we Indians haven't achieved yet.

In 1858, British crown took the charge of India from East India Company.
Indian council's act 1861 was passed by British Parliament
The act had three main objectives –

1.expansion of governor generals legislative council

2.restoring legislative powers to the presidencies of Bombay and Madras

3.Providing establishment of legislative bodies in other provinces

The first meeting of the National congress was held in 1885 and it demanded the presence of elected members in the councils, the right to discuss the budget and to ask questions.

After the Indian council act of 1861, Indian council act of 1892 was enacted.
The act increased the membership, representation of public opinion by increasing number of additional and of non official members in the central council.
After this Indian council act 1909 was enactedwas based on Minto Morlay reforms.

CHARTER OF 1833

In 1780 Bengal First time British rulers introduced the maxim justice, equity and conscience and later it was introduced in other presidencies like Bombay and Madras and rest of India.
In Punjab 1872 Punjab laws act 1872 introduced the doctrine, maxim Justice, Equity and Conscience in judicial system.
Central Provinces Laws Act 1875, Section 6 mentions when the judge that is court should use the maxim Justice, Equity and Conscience while deciding a case.
Later it was added to other laws also.
How this maxim worked?
When court found that there is no provision in Hindu religious law or Muslim religious law then the maxim Justice, Equity and Conscience came to help the court and accordingly court decided the case.
This depends on the education of judge, his thinking thus what he felt right was right.
Very slowly this began to influence and bring more and more English law into India.
In 1862 High courts were established and Englishmen became the judge who were studied and knew English judicial system, they were barristers and were trained in law.
From India appeals went to Privy Council in England thus automatically more and more English law was introduced in India.
But English law was not used in every case.
It depend on case, there are many cases which one can find where English law was not used.
Few examples -
Khwaja Muhammad khan vs Husaini Begum
Srinath Roy vs Dinabandhu sen
English courts also always gave importance to Hindu customs and Muslim customs in India.
After India became independent today also courts use the English Judgments, now a day's even American judgment is referred while giving judgment.

But while doing this Indian courts see that and give more importance to religion and mob and not to individual freedom.
As in India number of courts increased, high courts increased and every court gave its own judgment and there was no supreme court, a court whom other courts can look for guidance and to find the correct meaning of law.
Thus English people felt the need for codification of laws in India.
Thus charter of 1833 made provision to create uniform and codified system of law in India.

The charter introduced and established.

1.It established an omni competent all India legislature having legislative authority throughout the country

2.it created a new office of the law member in the government of India

3.it provided for the appointment of a law commission in India

It established an omni competent all India legislature having legislative authority throughout the country – First time in 1829 Lord William Bentinck spoke about this.

The charter act 1833 received royal assent on august 28 1833 and came into force on April 22, 1834.

The important provisions of this charter, law are as follows.

1.The governor general of Bengal was designated as the Governor General of India.

2.Governor General in council got powers of superintendence, direction and control of the whole civil and military government and the revenues of India.

3.centralization of legislative power

4.setting up of legislative council

5.legislative council got the power to repeal, amend any law in India exception charter of 1833

6.All the laws and enacts passed by the legislative council were called as Acts of the Government of India, before this they were called as regulations. All laws were binding on all the courts in India.

7.The office of the law member was created who helped or assisted governor general in law making

8.appointment of law commission

First law commission in India was established in year 1835; under the act membership of the commission had to be approved by the court of directors.
The charter act placed the law commission wholly under the direction and control of Governor General in council

The first project commission got was to codify the penal law for India.
After this commission prepared draft and presented it to the Governor General in 1837.
Macaulay did lot of work regarding creation of draft.
When Maculay retired after that the work of law commission lost the speed.
It did nothing special.
In 1842 it prepared draft of the law of limitation.

The concept of Lex loci, a report was prepared as there were situations when neither Hindu nor Muslim law was applicable.

Law Commission of India is an executive body established by an order of the Government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted a mandate by the Government. The Commission is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice.

The first Law Commission was established during the British regime in 1834 by the *Charter Act of 1833*. After that three more Commissions were established in pre-independent India. The first Law Commission of independent India was established in 1955 for a three year term. Since then Eighteen more Commissions have been established. The Centre appointed Justice D K Jain as the chairman of the 20th Law Commission of India less than three weeks before his retirement as a Judge of the Supreme Court. Justice Jain, who would take up the assignment after his retirement on January 24, will have a three-year tenure and has been saddled with a wide terms of reference including one to examine existing laws from the gender equality perspective and suggest necessary amendments.The Nineteenth Law Commission was established on 1 September 2009 under the Chairmanship of a justice P.Venkatarama Reddy. Its tenure has been fixed till 31 August 2012. Other than the Chairman, the Eighteenth Law Commission has one Permanent Member, one Member-Secretary and six Part-time Members.

INDIAN HIGH COURTS ACT 1861

Indian Legal History - Indian High courts act 1861
Company kept judicial and executive functions separate since year 1793.
But this system was not perfect; the appointment procedure of judges was faulty.
Executive became judge and judge became executive vice versa because of lack of experience judiciary suffered as executive failed to do justice to judiciary.
In 1868, company officers pointed out that native judges and pleaders who had received a regular legal education at the Calcutta University had a better knowledge than the civilian, executive judges.
Therefore Bengal officers proposed the establishment of a separate judicial service.
Sir Henry Maine in 1868 condemned the [British] district judges as shamefully inefficient.In year 1872 Law member Stephen supported the idea of a separate judicial service but nothing happened.In 1924, the Rankin committee disfavored appointment of civilian as district judges, saying that the subordinate judges got more knowledge than civilian judges as subordinate judges got experience and legal education.But nothing happened.
The Indian High Courts Act 1861 –
The Indian High Courts Act was passed by the British Parliament on the 6th August, 1861 and was titled as an act for establishing high courts of judicature in India.
This legislation contained only 19 sections only.
Its main function was to abolish the supreme courts and the Sadar Adalats in the three Presidencies and to establish the high court's in their place.
The records and document of the various courts became the records and documents of the High Court concerned.
It gave power authority in Her Majesty to issue letters patent under the great seal of the United Kingdom, to erect and establish High courts of judicature at Calcutta, Madras and Bombay.
Each High court was to consist of a chief justice and as many puisne judges not exceeding fifteen as her majesty might think to fit to appoint.
Who became the high court judge or who was eligible to become the high court judge?
Judges were selected out of the following categories of persons
1. Barrister must have 5 years or more experience
2. members of the covenanted civil service of not less than ten years standing who should have served as Zillah judges for at least three years of that period

3. Persons who shall have held judicial office not inferior to that of principal sadar amen or judge of small cause court for a period of not less than five years.
4. Person who have been pleaders of a Sadar court or high court for a period of not less than ten years.
But the rule was made that, not less than one third of the judges in a High court, including chief justice were to be barristers and not less than one-third of the judges were to be members of the covenanted civil service.
The judges of the High court were to be held office during her majesty's pleasure.

Each high court was to have and exercise all such civil and criminal admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction and original and appellate
The High Court was to have superintendence over all courts subject to its appellate jurisdiction. It got power, authority to call for return, to transfer any suit or appeal from one court to another and to make an issue general rules for regulating the practice and proceedings of such courts.

The charter for the Calcutta high court was issued on May 14, 1862 and was published in Calcutta on the 1st July 1862 establishing the high court from the next day.
The charter for the high court's of Bombay and Madras were issued on June 26, 1862 and these courts were inaugurated on the 14th and 15th august 1862.

PRIVY COUNCIL

The Privy Council's jurisdiction over the Indian subcontinent grew in patches that extended unevenly inwards from coastal locations, mirroring the process by which the East India Company, incorporated in 1600, gradually acquired political power in the region. The result of this process was that right up until India and Pakistan's emergence as independent countries in 1947, 'India' as such did not form a jurisdiction. Instead, the courts that the Privy Council heard appeals from were provincial tribunals, themselves taking appeals from lands far beyond the subcontinent.

The earliest appeals to the Privy Council from India were not appeals against the decision of any court, but petitions to the English Crown against alleged oppression by East India Company officials. The earliest appeal from a court in India to the Privy Council was in 1679.

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

"The King is the fountain of all justice throughout his Dominions, and exercises jurisdiction in his Council, which act in an advisory capacity to the Crown."
At the beginning of the fourteenth century, receivers were appointed to aid the dispensation of justice in Parliament. One group was appointed for Great Britain and Ireland, and one for the Channel Islands.
Appeals from the Channel Islands became the first regular appellate business of the King's Council, now the Judicial Committee of the Privy Council. With the growth of the British Empire, this business increased with appeals and petitions from the Royal Council, and Privy Council Committees were formed.

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

Privy Council - Abolished the Sati system of India.

In 1831 the Privy Council heard an appeal against the East India Company "from certain Hindus of Calcutta complaining of a regulation of the Governor General… abolishing the practice of Sati system".

In India Sati is a custom in which after the death of Husband it was a rule that the wife should commit suicide or burn herself with her dead husband.
The ban was upheld by the Privy Council, but it was heard by an unusually large board of nine judges.This court was highest court of appeal for over two centuries, setting high standard of justice system in India.
In 1726 for the first time a right to appeal to the king in council was granted from the courts in India.From period 1726 to 1833 more than three hundred appeals were disposed of by the Privy Council.

During its period as the highest court of appeal from India the Privy Council rendered more than 2500 judgment which for a great body of precedents. These judgments constitute the fountain source of law on many points.
Privy Council was situated and bases in London and distance was 5000 miles or more.
All the Privy council documents are kept at the Public Record office, London.

If ever you read their letters, discussions about the slave colonies in England parliament you will realize how less our own Politicians discuss about the progress of India in our own parliament. Today our politicians wait for Supreme Court of India to order them in writing to give free food to poor people of India, give free medicine or reduce the medicine prices.
K.M. Munshi, a lawyer-statesman observed –The British Parliament and the Privy Council are the two great institutions which the Anglo Saxon race has given to mankind.

The Privy Council during the last few centuries has not only laid down law but coordinated the concept of right and obligations throughout all the dominions and colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important.

It has been a great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our constitution.
Alladi Krishnaswami Ayyar, an eminent lawyer-member of the constituent assembly observed regarding work of Privy Council, he said,
There can be no doubt that the record of the judicial committee of the Privy Council has been a splendid one.On 6th February,1950 at a sitting of the Privy council a message was read from the Government of India paying a tribute to the Valuable services rendered by Privy council to India over a period of more than two centuries .
Government of India act 1935 started the federal policy in India.
This act established, made provision for the establishment of federal court in India.
Federal policy, constitution means distribution of power between centre and the constitutional unit.

Federal court is one which solves disputes between the centre and the constitutional unit.
Federal court was formally inaugurated on the 1st October, 1937
The viceroy administered the oath of allegiance to the first three judges of the court namely,
• Sir Maurice Gwyer – chief Justice from 1 October, 1937 to 25 April, 1943
• Sir shah Muhammad Sulaiman
• M.R. Jayakar.
The court held its first sitting at New Delhi on December 6.1937.
The governor general was not bound to accept the opinion of the Federal court.
Governor General = Today's Prime minister and his council
From Federal court appeals went to the Privy Council.

The judges of the federal court were appointed by his Majesty.
They were to remain in office till they reached age of 65 years.
A judge could be removed from office for misbehavior or infirmity of mind or body.
In India federal court worked for only 12 years but the job done was excellent.
Federal court is predecessor of the present day supreme court of India.

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

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

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

Thus Indian Legal history started its new era.

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

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

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

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

United Kingdom appeals

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

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

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

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

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

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

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

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

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

Appeal therefore lies from these countries:

• Antigua and Barbuda
• Bahamas
• Barbados
• Belize
• Cook Islands and Niue (Associated States of New Zealand)

- Grenada
- Jamaica
- St Christopher and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Tuvalu

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

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

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

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

Overseas territories and sovereign base appeals

The Judicial Committee hears appeals from the following overseas territories of the United Kingdom:

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar

- Monserrat
- Pitcairn Islands
- St Helena and dependencies
- Turks and Caicos Islands

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

- Akrotiri
- Dhekelia

Appeals to local head of state

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

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

FEDERAL COURT

The Government of India Act, 1935 changed the structure of the Indian Government from "Unitary" to that of "Federal" type. The Distribution of powers between the Centre and the Provinces required the balance to avoid the disputes which would be arisen between the constituent units and the Federation.

The system of Federation clearly demanded the creation of a Federal Court which would have jurisdiction over the States as well as the Provinces. Federal Court functioned only for 12 years.

It was the highest Court in India. Over it, there was Privy Council. But to approach the Privy Council required huge expenses to the litigants' Hence the establishment of the Federal Court was made necessary.

It saved the time, expenses to the litigants. It was also a convenience to the Indians. Therefore, the Federal Court lessened the work load of the Privy Council, and gradually it occupied the position of Privy Council. Lastly, in the place of Federal Court, the Supreme Court of India has been established on 25-1-1950.

Establishment:

Section 200 of the Government of India Act, 1935 provided for the establishment of Federal Court in India. On 1 -10-1937, the Federal Court was inaugurated at Delhi. Sir Mauric Gwyer was the First Chief Justice of the Federal Court. It was a Court of Record.

Appointment of Judges:

Judges and the Chief Justice were to be appointed by His Majesty. They were to lode office till the age of 65 years. His Majesty was empowered to remove any Judge from his office on the grounds of misbehavior or infirmity of mind or body, on the recommendation of the judicial committee of the Privy Council.

Qualifications:

Qualifications required for a judge are-

i. 5 years experience as a Judge of a High Court; or

ii. 10 years standing as an advocate or barrister; or

iii. 10 years standing Court.

Salary:

The Judges of the Federal Court were entitled such salaries and allowances and to such rights in respect of leave and pensions, as were laid down by His Majesty from time to time.

Jurisdiction of the Federal Court:

The Federal Court got three kinds of jurisdictions

i. Original;

ii. Appellate; and

iii. Advisory.

i. Original Jurisdiction:

The Original Jurisdiction was confined to disputes between Units of the Dominion or between the Dominion and any of the units. The private individuals had no right to sue any Dominion before the Federal Court.

Ii. Appellate jurisdiction:

The Federal Court exercised appellate jurisdiction in constitutional cases under the Act of 1935. Its appellate jurisdiction was extended to civil and criminal cases. On the same principles and jurisdiction the Supreme Court of India was established.

An appeal from any judgment, decree or final order of a High Court would be entertained by the Federal Court, if the High Court certified that the case involved a substantial question of law as to the interpretation of the Act of 1935 or any other Act and law. The certificate was a condition precedent to every appeal.

iii. Advisory Jurisdiction:

The Federal Court was empowered to give advisory opinion to the Governor-General, whenever a question of law had arisen or is likely to arise which is of such a nature and of such public importance that it was expedient to obtain the opinion of the Federal Court upon it. The Court after such hearing as it thinks fit report to the Governor- General thereon.

Authority of Federal Court:

The High Courts were subordinate to Federal Court. The law declared by the Federal Court and any judgment of the Privy Council will be binding on all the courts in British India. Expansion of

Jurisdiction:

From 1937 to 15-8-1947, the Federal Court entertained only the appellate jurisdiction in constitutional cases. After Independence Act, 1947, the Federal Court was empowered to have the appellate jurisdiction in civil and criminal matters also. But at the same time, geographical area was reduced, as the Pakistan was separated.

Abolition of Federal Court:

The abolition of the Privy Council Jurisdiction Act 1949 severed the connection of Privy Council with Federal Court with effect from 15-12-1949 by the Act of 1949, "Period of golden Age of Federal Court" began when lasted till the establishment of the Supreme Court of India on 26-1-1950.

Conclusion:

Federal Court worked for a short period of 12 years. But it left a permanent work and mark on the legal history of India. It was the First Constitutional Court. It was also the First All-India Court of extensive Jurisdiction.

During the period of 1937 to 1950, two English and 6 Indian Justices performed their services. All of them got the rare distinction of being the Federal Court of India. They maintained the noble traditions.

They contributed a great deal to the establishment of sound federal judiciary in India. They also built up great traditions of independence, impartiality and integrity which were inherited by its successor the Supreme Court of India.

EVALUATION: SPECIAL REFERENCE TO RACIAL DISCRIMINATION, MERIT AND DEMERITS

Contemporary India is a multicultural society that is pluralistic with regards to religious law. Different groups in India have separate religious personal laws (RPLs), which India's secular state is reluctant to reform. However, these laws have generated debate about the meaning of gender equality in India, since all RPLs to various extents give women fewer rights than men, but Indian women have been promised equality as a constitutional right. Though the RPLs allow for inclusiveness in religion, the history of these laws in India shows that they have been used selectively as a tool of governance and often to the disadvantage of women. In the past, feminists argued that various differences of identity—such as race, ethnicity, and sexuality—should be recognized and accounted for in the law. But in the case of India's cultural pluralism, religious difference comes into conflict with gender equality. I argue for replacing the religious personal laws with gender-just family laws. Though this argument may seem exclusionary, cultural identity and gender justice do not have to be antithetical values. One way of pursuing both goals is to keep the historical and social specificities in the forefront of any discussions. It is possible to argue for common rights for all women by re-conceptualizing the feminist project as one of constructing inclusive legal theory that is sensitive to demands of differences but also those of justice.

This article is divided into four broad parts. The first part explains the origin of the concept of religious personal laws and their selective reform by the state. The second part traces the development of

various feminist legal responses to the issue of gender equality and the post-structural proliferation of differences. Here an argument is made for contextualizing the demand for recognizing differences and examining whether feminists can argue without contradiction that different religious personal laws can be replaced with a common family law. The third part illustrates how the shape of RPLs has repercussions for the design and scope of other laws. The example of domestic violence legislation is used to argue that law can recognize the different social contexts of women in India and women in the global North, but must also pursue the goal of justice. Legal feminists must carry the responsibility of generating legal discourse that can be context-specific. The fourth and last part of the article develops an argument for a reconceptualizing of categories that allow for pursuing differences and justice together.

The Origin of the Conceptof Religious Personal Laws

India's legal system is a common law system—a relic of British imperialism that is at the same time very different from the original British common law. During colonization, novel ideas of utilitarianism and legal positivism informed many English innovations in India.1 The usual organic relationship between a legal system and its society was violently disrupted doubly by this experiment. Indians came to have a legal system developed in response to the needs of a very different society, that of England. But whereas laws in England have abandoned or modified most of these legal concepts, India maintains the "tradition" of the colonial laws. The concept of religious personal laws is one of those ideas.

Historically, in Europe, the law made a distinction between personal (often ecclesiastical) laws and the legal codes of the territory as a whole. In India before colonization, however, Hindus and Muslims—with very few exceptions—were governed by their own respective laws. Colonization in India happened in a complex and geographically varied manner. Different parts of the country came under colonial control under different legal arrangements. British laws were introduced gradually and selectively and "personal matters" were to remain governed by the religious laws of these communities. However, the content of personal laws was determined almost randomly in the successive charters and regulations. Moreover, the substantive content of these rules was modified in judicial and legislative actions. The judicial role in this regard was significant even if unintentional. Gradually legislative changes were also introduced, but despite these changes the idea has persisted that the RPLs are immutable.

The practice of applying laws of religious communities in personal matters was regarded as the "saving" of religious laws, in part because of the language used. Different communities in India were identified by the religions they followed and the personal laws that the English administrators had decided to save were also in turn understood as religious, although in practice they could be community customs rather than scriptural rules. Thus religious laws and personal laws became interchangeable, and in the process

it was forgotten that before the arrival of the British administrators, all aspects of the laws of Hindus and Muslims were religious. Moreover, British policies determined what should be designated as a personal matter, and of course the final shape of the laws governing such personal matters—whether administered by the English courts or legislated by the colonial parliaments—modified the religious laws of the people.

One marked feature of most RPLs is that women have fewer rights than men.The history of legislative reforms of RPLs in the independent Indian state shows that the goal of gender equality is frequently subordinated to other political considerations. The state has selectively used the argument of religious sanctity of these laws but at other times introduced legislative changes. Most of the changes have been introduced in the Hindu Laws but the changes in the minority communities' laws have been more halting. Ostensibly the minority status of some communities has been given priority over gender equality, but Hindu women have also not managed to gain complete parity of rights with men. The most recent reform, in 2005, of the Hindu Succession Act was proposed in order to make daughters equal coparceners; however, the legislation nevertheless still leaves women with lesser rights than men.4 It is in these particular circumstances that gender equality for Indian women is more likely to be achieved by introducing a regime of common family law that would formulate rules so as to recognize the principle of gender equality as the defining feature of the law Liberalism and positivism have joined to formulate a view of modern law as autonomous of the economy and society, in contrast to earlier conceptions of law that relied on historical or theological explanations.5 In this widely accepted view, the legitimate authority of law is dependent upon universal, neutral, and abstract principles. The law defines who is a legal subject and the same rights irrespective of their religion, wealth, gender, or any other characteristic. Liberal legalism in particular finds its legitimacy in this guarantee of non-arbitrariness, of fairness to everyone irrespective of their specific characteristics or differences.

Legal feminists have extensively critiqued claims about the neutrality and universality of law. Traditionally feminist engagements with law are divided into three broad phases.6 The earliest feminists, liberal feminists, argued for equal legal rights based upon the idea of the essential sameness of women and men.7 However, even after women gained formal equality it was obvious that men and women remained in a gender-based hierarchical relationship.8 Feminists now explained that neutrality of law in effect maintained male privilege while portraying legal rules as gender neutral.

This in turn gave rise to the sameness–difference debate in the feminist discourse: whether law should be gender neutral or gender specific.10 Feminists who demanded that the different needs and interests of women be acknowledged in law had to confront the charge that any deviation from neutral rules amounts to special or preferential treatment. The emphasis on difference has become more complex with the advent of post-structural critiques about the essentialism of modernist thought. Post-structural theory has challenged the idea of universal rules on the grounds that any closure of definitions is exclusionary and therefore unjust. The category of woman is thus deconstructed to make evident the differences among women (e.g., race, ethnicity, sexuality, etc.). If *woman* is not a unified category, the implication is that not all women have similar interests, and thus feminist politics of reform and especially of legal reform becomes problematic. This development, known as the anti-essentialism idea in post-structural theory, has a consequence that cultural pluralism often comes at the cost of gender equality.11 I wish to challenge this reification of differences and argue that recognizing differences is not a virtue in itself.

These developments of western feminism did not have exact parallels for women in India. The political and social context for women in India was very different from the world of European women. The formal equality guaranteed in the Indian constitution has not been understood as extending to gender parity in RPLs. This contradiction rests on the use of religious (minority) identity for political purposes. The same constitution that guarantees gender equality also ensures the right to religious freedom and minority identity. That Indian women of different communities have yet to gain complete gender equality lends credence to feminist political philosopher Susan Moller Okin's suggestion that multiculturalism is bad for women.12 However, rather than simply reverting to the orthodoxy of universal rights, it might be more useful to contextualize the demand for different rights. It could and should be made incumbent upon those demanding different rights to explain how these demands are not antithetical to gender equality. The feminist challenge therefore is to acknowledge that gender equality demands more everyone who meets these requirements is entitled to the same rights irrespective of their religion, wealth, gender, or any other characteristic. Liberal legalism in particular finds its legitimacy in this guarantee of non-arbitrariness, of fairness to everyone irrespective of their specific characteristics or differences.

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Differences Matter

The challenge now is to re-conceptualize categories of law in a manner that women's interests are neither dismissed nor marginalized.14 Post-structuralism does not mean either that all women must be treated the same or that no general rules can be formulated. Rather it demands that attention is paid to the consequences of recognizing differences. Therefore feminist analyses of law must constantly theorize the complex relationships between women and law by conceptualizing law as a site of struggle, meaning that law is not a pre-given or final. It is always an outcome of contestation and women like any other community have to constantly argue for gender-just laws.15 Moreover, what constitutes gender justice can only be a contingent definition under constant scrutiny, always available for redefining—which allows for many different voices to inform the content of law. This can be illustrated with a brief analysis of the enactment of domestic violence legislation in India.

Religious Personal Laws and Other Laws

The enactment of the 2005 Domestic Violence [Prevention] Act (DVA) in the Indian Parliament raises a number of relevant issues for feminists seeking to understand law as a site of struggle. It is also an example of how the "wrong" of domestic violence needs very different remedies for women of Northern and Southern nations. The differences between the conditions of women in different societies ought to be recognized but always with the proviso that such recognition leads to a just or fair outcome. Women's groups' demand for a law on domestic violence was reiterated by the National Commission for Women and later adopted by the government.16 It is reasonable to ask what prompted the women's groups to articulate this demand for a legal response to violence against women and what is it that the backers of the act hoped to achieve. Domestic violence arises in a specific socioeconomic context for most Indian women. The lack of real economic independence of most Indian women underpins the cultural construction of women as dependents.17 The so-called religious personal laws deny women even formal legal equality in personal relations. In this context it is no surprise that domestic violence is a real

problem. The efforts of women's groups problem and to seek legal redress for it are understandable but are informed by certain problematic ideas about the law.

The DVA is an example of the effort to name certain social realities as a gender-specific harm suffered by women in India. Naming domestic violence as a subject of civil law is an important re-conceptualization. The proposed remedy for domestic violence however, is less than encouraging. The DVA has defined the major issue as the "right" of the woman complainant to stay in the matrimonial home. Thus when a woman, subject to violence, makes a legal complaint, the courts are empowered to allow her (to the exclusion of the violent husband) to occupy the home. In the absence of this law her only option would be to walk out of the house. Presumably, this law gives her time to make arrangements for getting out of a violent marriage, but this is where the wider social, economic, and cultural conditions block her exit. The high cultural premium on the idea of a woman's place in the husband's house is a social reality for most women. The economic underpinning of this cultural norm is the fact that most women are financially dependent. Furthermore, they cannot realistically expect either maintenance or a share of property on divorce. The right of residence in the matrimonial home (legally the husband's house) therefore, is an empty achievement. The woman cannot live there indefinitely and nothing else in her circumstances has changed to enable her to be financially independent. Even if this law is a limited advance, why are Indian feminists so modest in their demands? No doubt they are acknowledging the particular social realities of Indian women, but a more integrated response is required.

The domestic violence law is as much limited by the wider social, economic, and political contexts as our failure to challenge the inequalities built into the religious personal laws. A woman who seeks the protection of the DVA will invariably be economically dependent, and that dependence in itself is to a large extent underpinned by various laws. For example, the lack of rights in matrimonial property, illusory maintenance rights, deficient rights in agricultural land, and absence of employment opportunities maintain the inequalities. How then can the DVA change anything?19 Still, it is undeniable that for all its limitations, the law is a step forward in working towards gender justice. It of course does not mean that the struggles for all other kinds of equality rights are no longer necessary.

Legal feminist discourse in India at present does not deal adequately with these fundamental issues. A possible explanation of this state of affairs is that, as a specific legacy of the history of colonization, legal scholarship in India is mostly caught in a time warp. In keeping with the conservative view of legal knowledge as technical know how, most legal analyses in India restrict themselves to doctrinal emphases.20 Legal scholarship that confines itself to examining the minutiae of the doctrine cannot engage with the interdisciplinary developments in legal theory elsewhere. This absence of theoretical concerns can be illustrated by examining the developments related t thr reforms of aspects of Christian personal laws

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Difference and Justice as Dual Feminist Goals

The Divorce Act of 1869 governs the dissolution of marriage for two Christians. The British colonial administrators originally enacted this act to govern Indian Christian subjects. The act was reformed in 2001, after protracted community consultations and persistent demands by women's organizations. There is no doubt that the amendments to the act are a major gain for Indian Christian women. Nevertheless, it is disturbing that in 2001 the Indian legislature, in consultation with women's organizations, could endorse ideas about fault-based divorce laws, the concept of dependent domicile, and the concept of restitution of conjugal rights.

In order to assess the scope of the amendments to this legislation and its suitability for the Indian Christians it is necessary, at the very least, to know the reasons behind this act and the relevant legal model used. The original IDA of 1869 was enacted as a follow up to the first Divorce Act in England. English law up to that point, in keeping with the ecclesiastical principles, did not allow for a Christian marriage to be dissolved. Social, economic, and religious changes in Europe resulted in a gradual acceptance of divorce in certain circumstances, manifested in the Married Women's Right to Property Acts and the Divorce Act. In other words there was a correspondence between the social changes and the legal changes.21

None of this correspondence existed in colonial India. Yet, the IDA of 1869 was enacted as a religious law for the Christian community. The model derived from the English divorce law, which was a major legislative innovation that was duly transferred to India in 1869. However, when the legislature of a long-independent India enacted an amendment to this law in 2001 and it insisted on retaining the "religious" grounds of divorce, it is surprising that legal scholars do not see this as incredulous.

Feminist legal thinkers must surely be able to point out the anachronistic nature of this law, but instead the amendments are portrayed as a major gain for Indian Christian women. There is an almost total lack of discussion as to the ideal divorce law for women in the twenty-first century. The continued presence of fault-based grounds of divorce, the lack of recognition of marriage as a partnership, no mention of the concept of matrimonial property, or the anachronistic continuation of the idea of father as the natural guardian of a child makes divorce a very problematic remedy for women. The fact that women's groups are the main force behind these changes makes it even more difficult to accept that appeasing religious and other community leaders takes priority over gaining a realistic right of divorce for Christian women.

Even though most of the international legal feminist literature is Eurocentric, it can nevertheless be a good starting point for Indian legal feminists to build specifically Indian legal theory. One of the peculiar legacies of being in a postcolonial country is the fact that the scholars can neither ignore the scholarship in the developed world countries nor employ it directly. Most legal thinkers in the developed world write

as if the developing world simply has to catch up with the developed world, and ignore the specificities of postcolonial societies. For thinkers in the developing world, however, all scholarship is judged by its engagement with contemporary developments in the global North.22 That being said, Indian legal feminists can use these developments to illustrate that what constitutes knowledge, including feminist knowledge, has an effect of silencing the marginalized voices.

The postmodernist insight that knowledge is constructed and partial can allow a space for arguments about the justice of law recognizing differences among people. Feminist legal thinkers can make the theoretical issues relate to the specific Indian conditions. In liberal democratic societies the right to freedom of conscience is routinely recognized. But nowhere does this right extend to imposing one's view of religion on other people, even other members of one's own community. This is not a particularly novel situation faced by Indian thinkers. In all European states, personal laws originated in religious laws, but family laws are now secular. Nowhere has the existence of modern family laws given rise to the argument that they prevent people from being good Christians. Neither is there a credible argument made that in a Protestant country where divorce is allowed, the Roman Catholics are denied the right to cultural autonomy. It is not particularly radical to formulate the issue as one of comparing the compatibility of group rights and individual rights. In a liberal polity, how far the law can or should go in upholding communal identities is a question that legal scholars ought to concern themselves with. It is worth repeating here that cultural/religious differences are not a good per se. If the discourse of difference is being used to deny women legal equality, it is incumbent upon the analysts to point that out and argue for a discourse of fairness in the law.

The religious autonomy that various communities claim in turn invokes a simplistic notion of choice. Invariably there is no discussion of who is making the choice and whether the structural nature of hurdles in exercising choice makes it a futile concept for most women. With regard to personal matters it could be imagined that law, rather than enforcing religious authority, can facilitate equality by making all family laws gender non-discriminatory. Such a family law would not interfere with anyone's religious autonomy but neither will it enforce religiously sanctioned inequalities.

The conceptual issue for legal scholars is to develop arguments that gender and religious autonomy can coexist. India, being a religiously plural society, faces this tension more so than many other societies. It is no surprise that most legal theory, developed in industrialized countries, does not concern itself with this issue. The specific responsibility of Indian legal scholars, feminists, and others is to develop ideas about the relationship between law and their social institutions. It is not enough to simply replicate ideas developed elsewhere and end up with the absurd situation that in contemporary India women are denied equality by reference to anachronistic laws that are now supported in the name of progressive pluralism.

UNIT III: LEGAL PROFESSION AND EDUCATION

SUPREME COURT

On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

The inaugural proceedings were simple but impressive. They began at 9.45 a.m. when the Judges of the Federal Court - Chief Justice Harilal J.Kania and Justices Saiyid Fazl Ali, M. Patanjali Sastri, Mehr Chand Mahajan, Bijan Kumar Mukherjea and S.R.Das - took their seats. In attendance were the Chief Justices of the High Courts of Allahabad, Bombay, Madras, Orissa, Assam, Nagpur, Punjab, Saurashtra, Patiala and the East Punjab States Union, Mysore, Hyderabad, Madhya Bharat and Travancore-Cochin. Along with the Attorney General for India, M.C. Setalvad were present the Advocate Generals of Bombay, Madras, Uttar Pradesh, Bihar, East Punjab, Orissa, Mysore, Hyderabad and Madhya Bharat. Present too, were Prime Minister, other Ministers, Ambassadors and diplomatic representatives of foreign States, a large number of Senior and other Advocates of the Court and other distinguished visitors.

Taking care to ensure that the Rules of the Supreme Court were published and the names of all the Advocates and agents of the Federal Court were brought on the rolls of the Supreme Court, the inaugural proceedings were over and put under part of the record of the Supreme Court.

After its inauguration on January 28, 1950, the Supreme Court commenced its sittings in a part of the Parliament House. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice. The Central Wing of the building is the Centre Beam of the Scales. In 1979, two New Wings - the East Wing and the West Wing - were added to the complex. In all there are 15 Court Rooms in the various wings of the building. The Chief Justice's Court is the largest of the Courts located in the Centre of the Central Wing.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges - leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger

Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India.

The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.

MAYOR'S COURTS

In the year 1726 the Crown granted Letters Patent creating Mayor's court the Presidency towns. These were not the Company's courts, but courts of the King of England, though at that time the King had no claim of sovereignty to any part of the country, except the Island of Bombay. These courts consisted of e Mayor and certain Alderman and were authorized to try, hear and determine civil suits and actions between party and party and to give judgment and sentence according to justice and right. Appeal from the Mayor's court lay to the Governor and Council, who were made a court of record. To give judgment and sentence according to justice and right, the Englishmen drew upon the rules of the common law and prevalent statute law in England in so far as they thought them applicable in the circumstances of this country. With the advent of the Mayor's court In 1726, the Company had sent to each Presidency a book of instructions prescribing the" method of proceeding civil suits, criminal trials, probate and administrative matters. the straight and narrow path of English IW, as English Law was unsuited for the prompt and satisfactory disposal of III and criminal cases of the natives, the Charter of 1726 came to be amended 1753. The Letters Patent of 1753 expressly excepted from the jurisdiction of e Mayor's courts all suits and actions between the natives only and directed at these suits and actions should be determined amongst themselves, unless both parties submitted them to th e jurisdiction of Mayor's court. The criminal jurisdiction of Mayor's court was confined to the Presidency towns

where the controller existed and was not to extend beyond 10 miles. These courts and the law administered by them commanded confidence of Indians, who continued to sort to these courts. Indian litigation had, In fact, constituted the bulk of the work of these courts from their start and It continued to be so notwithstanding e requirement of the consent of Indians to the court exercising Jurisdiction over them. In the Mufassil, the Company's courts gradually changed their character coming more and more the courts of the ruling power rather than the courts the Zamindars. The law administered in the courts in the Mufassil was not the English law, but the law of the Mughal to which the people had been accustomed. Application of the personal laws- Hindu Law and Mohammedan Law- remained undisturbed. Regulation II of 1872 provided that these subjects of the Crown were to be governed by their own laws In suits regarding Inheritance, marriage ,caste and other religious usages and institutions. In 1781 was added the word 'succession' to the word 'inheritance' and the judges were to act according to justice, equity and good conscience. This is how the rules of English Law were made applicable to Indian society and circumstances.

THE LEGAL PRACTITIONERS ACT, 1879

1. Short title, commencement. This Act may be called the Legal Practitioners Act, 1879 ; and shall come into force on the first day of January, 1880 . Local extent. - This section and section 2 extend to the whole of India 3[except the State of Jammu and Kashmir]. 4[The rest of this Act extends, in the first instance, only to the territories which, immediately before the 1st November, 1956 , were comprised in West Bengal, Uttar Pradesh, Punjab, Bihar, Madhya Pradesh, Assam, Orissa and Delhi. But the State Government of any State may, from time to time, by notification in the Official Gazette, extend 1[all or any of the provisions of the rest of this Act to the whole or any part of that State to which such provisions extend.] The provisions of this Act shall not apply to the Union territory of Manipur, vide Act 30 of 1950 , as amended by Act 68 of 1956 . As amended in Madras by Mad. Act 12 of 1960 . Extended to the transferred territories in Punjab by Pun Act 41 of 1960 . Extended to the whole of Madhya Pradesh by Madhya Pradesh Act 23 of 1958 (when notified).

1. This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941). It has been declared to be in force in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch., and also by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga (now called the Ranchi District, see Calcutta Gazette, 1889, Pt. I, p. 44) included at this time the District of Palamau, which was separated in 1894. It has been amended in its application to-- Bengal by Ben. Act 5 of 1942; C. P. and Berar by C. P. and Berar Act 25 of 1939: Madras by Mad. Acts 3 of 1943, 14 of 1944, 9 of 1947 and 17 of 1950; Orissa by Orissa Act 6 of 1938; and

U. P. by U. P. Acts 4 of 1925 and 4 of 1936. The Act has not been extended to the State of Manipur, vide Act 30 of 1950, s. 3 and Sch. as amended by Act 68 of 1956.

2. Subs. by the A. O. 1948 for" the Lower Provinces of Bengal, the North- Western Provinces, the Punjab, Oudh, the Central Provinces and Assam, and to empower each of the Local Government of the rest of British India to extend to the territories administered by it". 3 Subs. by Act 3 of 1951, s. 3 and Sch., for" except Part B States". 4 Subs. by the Adaptation of Laws (No. 2) Order, 1956, for the former paragraph.

2. [Repeal of enactments.] Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

3. Interpretation- clause. In this Act, unless there be something repugnant in the subject or context,--" Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:" subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. 9 of 1850 2[or Act No. 11 of 1865 3[:" revenue- office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to land- holders and their tenants or agents:" legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue- agent: 4[tout" means a person--

(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business;

1. Under this power, the Act has been extended, subject to certain omissions and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882, see Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, see Bombay Government Gazette, 1885, Pt. I. p. 290; and ss. 13 except clauses (a), (b), (c), (d) and (f) thereof], 34, 36 and 40 have been extended to the whole of the Bombay Presidency (Bombay Gazette, 1904, Pt. I, p. 1635). Ch. I, s. 40, Sch. II, and so much of Chs. III, V, VI and VII as relates to pleaders, have been extended to Coorg, see Mysore Gazette, 1879, Pt. I, p. 355; see also Coorg District Gazette, 1891, Pt. I, p. 140, for notification extending ss. 4, 5 and 38; Coorg District Gazette, 1899, Pt. I, p. 122, for notification extending ss. 3, 13 and 36 as amended by Act 11 of 1896 so far as they relate to pleaders; and Coorg Gazette, 1935, Pt. I, p. 2, for notification extending ss. 4 and 41. Ss. 4 and 41 have been extended to Ajmer- Merwara, see Gazette of India, 1927, Pt. II- A, p. 214. 2 See now the Presidency Small Cause Courts Act, 1882 (15 of 1882). 3 See now the Provincial Small Cause Courts Act, 1887 (9 of 1887). 4 Subs. by Act 15 of 1926, s. 2 for the former definition.

or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue- offices, or railway stations, landing stages, lodging places or other places of public resort.]

CHAPTER II OF ADVOCATES, VAKILS AND ATTORNEYS CHAPTER II OF ADVOCATES, VAKILS AND ATTORNEYS

4. Advocates and vakils. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court, or 1[under section 41 of this Act], 2[or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act], shall be entitled to practice in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue- offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue- agents; and any person so entered who ordinarily practices in the Court on the roll of which he is not entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in 3[the territories to which this Act extends] other than a High Court on whose roll he is not entered, or, with the permission of the Court, 4[or, in the case of a High Court in respect of which the Indian Bar Councils Act, 1926 (38 of 1926 .), is in force, subject to rules made under that Act] in any High Court on whose roll he is not entered, and in any revenue- office: Provided that no such vakil 2[or pleader] shall be entitled to practice under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

1. Subs. by Act 9 of 1884, s. 2, for" as an advocate on the roll of the Chief Court of the Punjab". 2 Ins. by Act 1 of 1908, s. 2. 3 Subs. by Act 3 of 1951, s. 3 and Sch., for" Part A States and Part C States". 4 Ins. by Act 38 of 1926, s. 19 and Sch.

5. Attorneys of High Court. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practice in all the Courts subordinate to such High Court and in all revenue- offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practices in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practice in any Court in 1[the territories to which this Act extends] other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue- office. The High Court of the State in which an attorney practices under this section

may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practicing. CHAPTER III OF PLEADERS AND MUKHTARS CHAPTER III OF PLEADERS AND MUKHTARS

6. [Power to make rules as to qualifications, etc., of pleaders and mukhtars. Publication of rules.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (2) w. e. f. 1- 12- 1961 .

7. [Certificates to pleaders and mukhtars.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961).

8. 2[Pleaders on enrolment may practice in Courts and revenue offices. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue- office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue- authority 3[may, from time to time, make in this behalf, the presiding Judge or officer shall enroll him accordingly; and thereupon he may appear, plead and act in such Court or office and in any Court or revenue- office subordinate thereto.

9. 2[Mukhtars on enrolment may practice in Courts. Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall

1. Subs. by Act 3 of 1951, s. 3 and Sch, for" Part A States and Part C States". 2 So much of the section as relates to the admission and enrolment of legal practitioners repealed by the Advocates Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961). 3 For definition, see the General Clauses Act, 1897 (10 of 1897), s. 3.

enrol him accordingly; and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure 1[ ) appear, plead and act in such Criminal Court and any Court subordinate thereto.

10. No person to practice as pleader or mukhtar unless qualified. Except as provided by this Act or any other enactment for the time being in force, no person shall practice as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate: Revenue agents may appear, plead and act in Munsifs' Courts in suits under Ben. Act 8 of 1869 . Provided that persons who have been admitted as Revenue- agents before the first day of January, 1880 , and hold certificates, as such, under this Act in the territories administered by the Lieutenant Governor of Bengal, may be enrolled in manner provided by section 9 in any

Munsifs' Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act 8 of 1869 2[(to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Power to declare functions of mukhtars. Notwithstanding anything contained in the Code of Civil Procedure 3[, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practicing in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. [Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

16. 1[Power to make rules for mukhtars on appellate side of High Court. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure 2[section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):--

(a) the qualifications and admission of proper persons to be mukhtars practicing on the appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such mukhtars; and

(e) declaring what shall be deemed to be their functions, powers and duties; and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court' s ordinary original criminal jurisdiction.

CHAPTER IV OF REVENUE- AGENTS CHAPTER IV OF REVENUE- AGENTS

17. 1[Power to make rules as to qualifications, etc., of revenue agents. The Chief Controlling Revenue- authority 3[may, from time to time, make rules consistent with this Act as to the following matters (namely):--

(a) the qualifications, admission and certificates of proper persons to be revenue- agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such revenue- agents; and

(d) declaring what shall be deemed to be their functions, powers and duties;

1. So much of the section as relates to the admission and enrolment of legal practitioners repealed by the Advocate Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961) and so much of the section as relates to the suspension, removal or dismissal of legal practitioners repealed by s. 50 (4), ibid, (w. e. f. 1- 9- 1963). 2 See now the Code of Civil Procedure, 1908 (Act 5 of 1908). 3 For definition, see the General Clauses Act, 1897 (10 of 1897), s. 3.

Publication of rules. All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

18. [Certificates to revenue- agents.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961).

19. 1[Enrolment of revenue agent. Every revenue- agent holding a certificate issued under section 18 may apply to be enrolled in any revenue- office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue- authority 2[; and, subject to such rules as the Chief Controlling Revenue- authority 2[may, from time to time, make in this behalf, the officer presiding in such office shall enroll him accordingly, and thereupon he may practice as a revenue- agent in such office and in any revenue- office subordinate thereto.

20. No person to act as agent in revenue- offices unless qualified. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practice as a revenue- agent in any revenue- office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate: Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue- authority 2[, or of an officer empowered by the State Government in this behalf, transact all or any business in which his principal may be concerned in any revenue- office. The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

21. [Dismissal of revenue- agent convicted of criminal offence.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

22. [Suspension and dismissal of revenue- agents guilty of unprofessional conduct.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

23. [Procedure when revenue- agent is so charged in subordinate office.] Rep. by the Advocates, Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

1. So much of the section as relates to the admission and enrolment of legal practitioners repealed by the Advocate Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961). 2 Ror definition, see the General Clauses Act, 1897 (10 of 1897), s. 3.

12. to 16

CHAPTER V OF CERTIFICATES CHAPTER V OF CERTIFICATES

25. Fee for certificates. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the Second Schedule hereto annexed 1 and of such description as the State Government may, from time to time, prescribe]: Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed: 2 Provided also that no stamped paper shall be required in the case of a certificate whether original or renewed authorizing, under 1 Ins. by Act 9 of 1884, s. b. 2 Ins. by Act 1 of 1908, s. 4.

section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practice as a pleader.]

26. Dismissed practitioners to surrender certificates. When any pleader, mukhtar or revenue- agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practicing at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue- authority 1[(as the case may be) orders him to deliver the same.

CHAPTER VI OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE- AGENTS CHAPTER VI OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE- AGENTS

27. High Court and Chief Controlling Revenue- authority to fix fees on civil and revenue proceedings. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary' s advocate, pleader, vakil, mukhtar or attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, 2[and in respect of the fees of his adversary' s revenue- agent appearing, pleading or acting under section 10]. The Chief Controlling Revenue- authority 1[shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue- offices by any party in respect of the fees of his adversary' s advocate, pleader, vakil, attorney, mukhtar or revenue- agent. Tables of the fees so

fixed shall be published in the Official Gazette. Exception as to agents mentioned in section 20. Nothing in this section applies to the agents mentioned in the proviso to section 20. 28 to 31. Agreements with clients. Power to modify or cancel agreements. Agreements to exclude further claims. Reservation of responsibility for negligence. 28 to 31.[Agreements with clients. Power to modify or cancel agreements. Agreements to exclude further claims. Reservation of responsibility for negligence.] Rep. by the Legal Practitioners (Fees) Act, 1926 (21 of 1926). CHAPTER VII PENALTIES CHAPTER VII PENALTIES

32. On persons illegally practicing as pleaders, mukhtars or revenue agents. Any person who practices in any Court or revenue- office in contravention of the provisions of section 10 or section 20 shall be

1. For definition, see the General Clauses Act, 1897 (10 of 1897), s. 3. 2 Ins. by Act 9 of 1884, s. 6.

liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practice in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months. He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtar or revenue- agent, whilst he has been contravening the provisions of either of such sections.

33. On suspended or dismissed pleader, etc., failing to deliver certificate. Any pleader, mukhtar or revenue- agent, failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. On suspended or dismissed practitioner practicing during suspension or after dismissal. Any pleader, mukhtar or revenue- agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practices as a pleader, mukhtar or revenue- agent in any Court or revenue- office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

35. Revision of fines. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue- authority 1[where the order has been passed by an officer subordinate to such authority.

36. 2[Power to frame and publish lists of touts.

(1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue- officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto) may frame and publish lists of persons proved to their or his satisfaction,

1. For definition, see the General Clauses Act, 1897 (10 of 1897), s. 3. 2 Subs. by Act 11 of 1896, s. 4, for the originl section.

1[or to the satisfaction of any subordinate Court as provided in sub- section (2A)] by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists. 1[Explanation.-- The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practice as legal practitioners in any Court or revenue- office, shall be evidence of the general repute of such person for the purposes of this sub- section.]

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(2A) 1[Any authority empowered under sub- section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub- section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority: Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d).]

(6) [Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.]

CHAPTER VIII MISCELLANEOUS CHAPTER VIII MISCELLANEOUS

37. [State Government to appoint examiners.] Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1- 12- 1961).

38. Exemption of High Court practitioners from certain parts of Act. Except as provided by section 4, 5, 1[7,] 16, 1[25,], 27, 32 and 36, nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practicing in such Court or to advocates enrolled 2[under section 41 of this Act] 3[and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926 .)].

For a certificate authorizing the holder to practice as a pleader--

(a) in the High Court and any subordinate Court- rupees fifty:

(b) in any Court of Small Causes in a Presidency- town-- rupees twenty- five:

(c) in all other subordinate Courts-- rupees twenty- five:

(d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency- towns and in all Criminal Courts subordinate to the High Court- rupees fifteen:

(e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned-- rupees five.

1. Ins. by Act 32 of 1925, s. 2 and Sch.

II For a certificate authorizing the holder to practice as a mukhtar--

(f) in the High Court and any subordinate Court-- rupees twenty- five:

(g) in any Court of Small Causes in a Presidency- town-- rupees fifteen:

(h) in all other subordinate Courts-- rupees fifteen:

(i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency- towns and in all Criminal Courts subordinate to the High Court- rupees ten:

(j) in the Courts of Munsif and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned-- rupees five. III For a certificate authorizing the holder to practise as a revenue- agent--

(k) in the office of the Chief Controlling Revenue- authority and in any revenue- office subordinate to such authority-- rupees fifteen:

(l) in the office of a Commissioner and in any revenue- office subordinate to a Commissioner-- rupees ten:

(m) in the office of a Collector and in any revenue- office subordinate to a Collector-- rupees five.

ADVOCATES ACT, 1961

1. Short title, extent and commencement.—(1) This Act maybe called the Advocates Act, 1961.[(2) It extends 2to the whole of India.]
(3) It [shall, in relation to the territories other than those referred to in sub-section (4), come into force] on such date4 as the Central Government may, by notification in the Official Gazette ,appoint, and different dates may be appointed for different provisions of this Act.[(4) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.]

3. State Bar Councils.—(1) There shall be a Bar Council—(a) for each of States of Andhra Pradesh, Bihar, Gujarat,[Jammu and Kashmir], [Jharkhand] [Madhya Pradesh, Chhattisgarh], 4[***], 5[***], 6[Karnataka], Orissa, Rajasthan[Uttar Pradesh and Uttaranchal], to be known as the Bar
Council of that State;[(b) for the States of Arunachal Pradesh, Assam, Manipur ,Meghalaya, Mizoram, Nagaland and Tripura to be known as the
Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh;](c) for the State of Kerala and 9[the Union territory of Lakshadweep], to be known as the Bar Council of Kerala;[(cc) for the[State of Tamil Nadu] and the Union territory o Pondicherry to be known as the Bar Council of Madras□;][for the States of Maharashtra and Goa, and the Union territories of Dadra and Nagar Haveli and Daman and Diu, to be known as

the Bar Council of Maharashtra and Goa;]Punjab and Haryana;(d d) for the State of Himachal Pradesh, to be known as the Bar Council of Himachal Pradesh;](e) for the State of West Bengal and the [Union territory of Andaman and Nicobar Islands], to be known as the Bar Council of West Bengal; and(f) for the Union territory of Delhi, to be known as the Bar Council of Delhi.
(2) A State Bar Council shall consist of the following members,
namely:—
(a) in the case of the State Bar Council of Delhi, the Additional Solicitor General of India *ex officio* 3[in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate General of each of the State of Assam, Manipur, Meghalaya, Nagaland and Tripura, *ex officio*; in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the State of Punjab and Haryana, *ex officio*;] and in the case of any other State Bar Council, the Advocate-General of the State, *ex officio*;[(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of the State Bar Council with an electorate exceeding ten thousand ,twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council:][Provided that as nearly as possible one-half of such elected members shall subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has beenani advocate enrolled under the Indian Bar Councils Act, 1926
(38 of 1926).][(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may
be prescribed.(3A) Every person holding office as Chairman or as Vice-
Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of1977) shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be: Provided that every such person shall continue to carry on the
duties of his office until the Chairman or the Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of1977), assumes charge of the office.][(4) An Advocate shall be disqualified from voting at an election
under sub-section (2) or for being chosen as, and for being, a
member of State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the
Advocates (Amendment) Act, 1964 (21 of 1964), but every election
after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.][(6) Nothing in clause (b) of sub-section (2) shall affect the

representation of elected members in any State Bar Council as constituted immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), until that State Bar Council is reconstituted in accordance with the provision of this Act.]

4. Bar Council of India.—(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members ,namely:—

(a) the Attorney-General of India, *ex officio*;(b) the Solicitor-General of India, *ex officio*;

(c) one member elected by each State Bar Council from amongst its members.[(1A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (2) of section 3.][(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as maybe prescribed.(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be :Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendments) Act, 1977 (38 of 1977), assumes charge of the office.]

[(3) The term of office of a member of the Bar Council of In diaelected by the State Bar Council shall—(i) in the case of a member of a State Bar Council who hold s office *ex-officio,* be two years from the date of hi selection 2[or til the ceases to be a member of the State Bar Council, whichever is

earlier]; and(ii) in any other case, be for the period for which he holds

office as a member of the State Bar Council: Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected.]

9. Disciplinary Committees.—(1) 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 the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to 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 the Chairman thereof.(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964, (21 of 1964) may dispose of the proceedings pending before it as if this section had no t been amended by the said Act.

10. Constitution of committees other than disciplinary committees.—(1) A State Bar Council shall constitute the following standing committees, namely:—(a) an executive committee consisting of five members elected by the Council from amongst its members;(b) an enrolment committee consisting of three member selected by the Council from amongst its members.(2) The Bar Council of India shall constitute the following standing committees, namely:—(a) an executive committee consisting of nine member selected by the Council from amongst its members;(b) a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst

its members and five shall be persons co-opted by the Council who are not members thereof.(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of this Act.

36. Disciplinary powers of Bar Council of India.—(1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate 3[***] whose name is no tendered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, 4[either of its own motion or on a report by a State Bar Council or on an application made to it by any person interested],withdraw for inquiry before itself any proceedings for disciplinary action
against any advocate pending before the disciplinary committee f any State Bar Council and dispose of the same.(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry 5[before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order.

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1[36A. Changes in constitution of disciplinary committees.—Whenever in respect of any proceedings under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding may continue the proceeding from the stage at which the proceedings were so left by its predecessor committee.]

2[36B. Disposal of disciplinary proceedings.—(1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 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 the 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 under sub-section (2) of section 36.(2) Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 1973(60 of 1973), any proceedings in the respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such commencement or within a period of one year 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 the State Bar Council, whichever is later, failing which such other proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).]

42. Powers of disciplinary committee.—(1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5of 1908), in respect of the following matters, namely:—
(a) summoning and enforcing the attendance of any person
2 Clause (b) omitted by Act 60 of 1973 w.e.f. 31.01.1974.
3 The words "or the common roll, as the case may be" omitted by Act 60 of 1973 w.e.f. 31.01.1974.
4 Sub-section (2) omitted by Act 60 of 1973 we've. 31.01.1974.
and examining him on oath;
(b) requiring discovery and production of any documents;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copies thereof from any court or office;
(e) issuing commissions for the examination of witness or documents;
(f) any other matter which may be prescribed :Provided that no such disciplinary committee shall have the right to require the attendance of—
(a) any presiding officer of a Court except with the previous sanction of the High Court to which such court is subordinate;
(b) any officer of a revenue court except with the previous sanction of the State Government.
(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860(45 of 1860), and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482and 485 of the Code of Criminal Procedure, 1898 (5 of 1898).
(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civi l court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.1[(4) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:
Provided that no final orders of the nature referred to in subsection (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.]1[(5) Where no final order of the nature referred to in sub-section
(3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the
Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, and the said Chairman or the Vice Chairman of the Bar Council, as the case may be,

after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion.]

[42A. Powers of Bar Council of India and other committees.—The provisions of section 42 shall, so far as maybe, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they, apply in relation to the disciplinary committee of a Bar Council.]

43. Cost of proceedings before a disciplinary committee.—The disciplinary committee of a Bar Council may make such order as to the cost of any proceedings before it as it may deem fit and any such order shall be executable as it were an order—(a) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

44. Review of orders by disciplinary committee.— The disciplinary committee of a Bar Council may of its own motion or otherwise review any order 1[within sixty days of the date of that order] passed by it under this Chapter: Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

[58B. Special provision relating to certain disciplinary proceedings.—(1) As from the Ist day of September, 1963 every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56:

Provided that where in respect of any such proceeding the High court .

THEORY OF PRECEDENTS

In common law legal systems, a precedent or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The general principle in common law legal systems is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases."[1] Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and regulatory law (regulations promulgated by executive branch agencies).

Stare decisis is a legal principle by which judges are obliged to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed."[2] In a

legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

Case law is the set of existing rulings which have made new interpretations of law and, therefore, can be cited as precedent. In most countries, including most European countries, the term is applied to any set of rulings on law which is guided by previous rulings, for example, previous decisions of a government agency - that is, precedential case law can arise from either a judicial ruling or a ruling of an adjudication within an executive branch agency. Trials and hearings that do not result in written decisions of a court of record do not create precedent for future court decisions.

Principle

The principle of stare decisis can be divided into two components.

The first is the rule that a decision made by a superior court, or by the same court in an earlier decision, is binding precedent that the court itself and all its inferior courts are obligated to follow. The second is the principle that a court should not overturn its own precedent unless there is a strong reason to do so and should be guided by principles from lateral and inferior courts. The second principle, regarding persuasive precedent, is an advisory one that courts can and do ignore occasionally.

Case law in common law systems

In the common law tradition, courts decide the law applicable to a case by interpreting statutes and applying precedent which record how and why prior cases have been decided. Unlike most civil law systems, common law systems follow the doctrine of stare decisis, by which most courts are bound by their own previous decisions in similar cases, and all lower courts should make decisions consistent with previous decisions of higher courts.[5] For example, in England, the High Court and the Court of Appeal are each bound by their own previous decisions, but the Supreme Court of the United Kingdom is able to deviate from its earlier decisions, although in practice it rarely does so.

Generally speaking, higher courts do not have direct oversight over the lower courts of record, in that they cannot reach out on their own initiative (*sua sponte*) at any time to overrule judgments of the lower courts. Normally, the burden rests with litigants to appeal rulings (including those in clear violation of established case law) to the higher courts. If a judge acts against precedent and the case is not appealed, the decision will stand.

A lower court may not rule against a binding precedent, even if it feels that it is unjust; it may only express the hope that a higher court or the legislature will reform the rule in question. If the court believes that developments or trends in legal reasoning render the precedent unhelpful, and wishes to evade it and help the law evolve, it may either hold that the precedent is inconsistent with subsequent authority, or that it should be *distinguished* by some material difference between the facts of the cases. If that judgment goes to appeal, the appellate court will have the opportunity to review both the precedent and the case under appeal, perhaps overruling the previous case law by setting a new precedent of higher authority. This may happen several times

as the case works its way through successive appeals. Lord Denning, first of the High Court of Justice, later of the Court of Appeal, provided a famous example of this evolutionary process in his development of the concept of estoppel starting in the *High Trees* case: *Central London Property Trust Ltd v. High Trees House Ltd* [1947] K.B. 130.

Judges may refer to various types of persuasive authority to reach a decision in a case. Widely cited non-binding sources include legal encyclopedias such as *Corpus Juris Secundum* and *Halsbury's Laws of England*, or the published work of the Law Commission or the American Law Institute. Some bodies are given statutory powers to issue Guidance with persuasive authority or similar statutory effect, such as the Highway Code.

In federal or multi-jurisdictional law systems there may exist conflicts between the various lower appellate courts. Sometimes these differences may not be resolved and it may be necessary to distinguish how the law is applied in one district, province, division or appellate department. Usually only an appeal accepted by the court of last resort will resolve such differences and, for many reasons, such appeals are often not granted.

Any court may seek to distinguish its present case from that of a binding precedent, in order to reach a different conclusion. The validity of such a distinction may or may not be accepted on appeal. An appellate court may also propound an entirely new and different analysis from that of junior courts, and may or may not be bound by its own previous decisions, or in any case may distinguish them on the facts.

Where there are several members of a court, there may be one or more judgments given; only the ratio decidendi of the majority can constitute a binding precedent, but all may be cited as persuasive, or their reasoning may be adopted in argument. Quite apart from the rules of precedent, the weight actually given to any reported judgment may depend on the reputation of both the reporter and the judges.

Type of precedent

Verticality

Generally, a common law court system has trial courts, intermediate appellate courts and a supreme court. The inferior courts conduct almost all trial proceedings. The inferior courts are bound to obey precedent established by the appellate court for their jurisdiction, and all supreme court precedent.

The Supreme Court of California's explanation of this principle is that

under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense. The decisions of this court are binding upon and must be followed by all the state courts of California. Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts

exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.

Appellate courts are only bound to obey supreme court decisions.

The application of the doctrine of stare decisis from a superior court to an inferior court is sometimes called *vertical stare decisis*.

However, in federal systems the division between federal and local law may result in complex interactions. For example, state courts in the United States are not considered inferior to federal courts but rather constitute a parallel court system. While state courts must follow decisions of the United States Supreme Court on issues of federal law, federal courts must follow decisions of the courts of each state on issues of that state's law. If there is no decision on point from the highest court of a state, the federal courts must either attempt to predict how the state courts would resolve the issue, by looking at decisions from state appellate courts at all levels, or, if allowed by the constitutions of the relevant states, consult the state supreme courts. Decisions of the lower federal courts (i.e. the federal circuit courts and district courts) are not binding on any state courts, meaning that interpretations of certain federal statutes can and occasionally have diverged depending upon whether the forum is state or federal. In practice, however, judges in one system will almost always choose to follow relevant case law in the other system to prevent divergent results and to minimize forum shopping.

Horizontality

The idea that a judge is bound by (or at least should respect) decisions of earlier judges of similar or coordinate level is called horizontal stare decisis.

In the United States federal court system, the intermediate appellate courts are divided into "circuits". Each panel of judges on the court of appeals for a circuit is bound to obey the prior appellate decisions of the same circuit Precedent of a United States court of appeals may be overruled only by the court *en banc,* that is, a session of all the active appellate judges of the circuit, or by the United States Supreme Court.

When a court binds itself, this application of the doctrine of precedent is sometimes called *horizontal stare decisis*. The State of New York has a similar appellate structure as it is divided into four appellate departments supervised by the final New York State Court of Appeals. Decisions of one appellate department are not binding upon another, and in some cases the departments differ considerably on interpretations of law.

Binding precedent

Precedent that must be applied or followed is known as *binding precedent* (alternately *metaphorically precedent*, *mandatory* or *binding authority*, etc.). Under the doctrine of *stare decisis*, a lower court must honor findings of law made by a higher court that is within the appeals path of cases the court hears. In state and federal courts in the United States of America, jurisdiction is often divided geographically among local trial courts, several of which fall under the territory of a regional appeals court. All appellate courts fall under a highest court

(sometimes but not always called a "supreme court"). By definition, decisions of lower courts are not binding on courts higher in the system, nor are appeals court decisions binding on local courts that fall under a different appeals court. Further, courts must follow their own proclamations of law made earlier on other cases, and honor rulings made by other courts in disputes among the parties before them pertaining to the same pattern of facts or events, unless they have a strong reason to change these rulings (see Law of the case re: a court's previous holding being binding precedent for that court).

In law, a binding precedent (also mandatory precedent or binding authority) is a precedent which must be followed by all lower courts under common law legal systems. In English law it is usually created by the decision of a higher court, such as the Supreme Court of the United Kingdom, which took over the judicial functions of the House of Lords in 2009. In Civil law and pluralist systems precedent is not binding but case law is taken into account by the courts.

Binding precedent relies on the legal principle of *stare decisis*. *Stare decisis* means to stand by things decided. It ensures certainty and consistency in the application of law. Existing binding precedent from past cases are applied in principle to new situations by analogy.

One law professor has described mandatory precedent as follows:

> Given a determination as to the governing jurisdiction, a court is "bound" to follow a precedent of that jurisdiction only if it is directly in point. In the strongest sense, "directly in point" means that: (1) the question resolved in the precedent case is the same as the question to be resolved in the pending case, (2) resolution of that question was necessary to the disposition of the precedent case; (3) the significant facts of the precedent case are also presented in the pending case, and (4) no additional facts appear in the pending case that might be treated as significant.

In extraordinary circumstances a higher court may overturn or overrule mandatory precedent, but will often attempt to distinguish the precedent before overturning it, thereby limiting the scope of the precedent.

Under the U.S. legal system, courts are set up in a hierarchy. At the top of the federal or national system is the Supreme Court, and underneath are lower federal courts. The state court systems have hierarchy structures similar to that of the federal system.

The U.S. Supreme Court has final authority on questions about the meaning of federal law, including the U.S. Constitution. For example, when the Supreme Court says that the First Amendment applies in a specific way to suits for slander, then every court is bound by that precedent in its interpretation of the First Amendment as it applies to suits for slander. If a lower court judge disagrees with a higher court precedent on what the First Amendment should mean, the lower court judge must rule according to the binding precedent. Until the higher court changes the ruling (or the law itself is changed), the binding precedent is authoritative on the meaning of the law.

Although state courts are not part of the federal system, they are also bound by U.S. Supreme Court rulings on federal law. State courts are not generally bound by Federal District courts or

Circuit courts, however. A federal court interpreting state law is bound by prior decisions of the state supreme court.

Lower courts are bound by the precedent set by higher courts within their region. Thus, a federal district court that falls within the geographic boundaries of the Third Circuit Court of Appeals is bound by rulings of the Third Circuit Court, but not by rulings in the Ninth Circuit, since the Circuit Courts of Appeals have jurisdiction defined by geography. The Circuit Courts of Appeals can interpret the law how they want, so long as there is no binding Supreme Court precedent. One of the common reasons the Supreme Court grants certiorari (that is, they agree to hear a case) is if there is a conflict among the circuit courts as to the meaning of a federal law.

There are three elements needed for a precedent to work. Firstly, the hierarchy of the courts needs to be accepted, and an efficient system of law reporting. 'A balance must be struck between the need on one side for the legal certainty resulting from the binding effect of previous decisions, and on the other side the avoidance of undue restriction on the proper development of the law (1966 Practice Statement (Judicial Precedent) by Lord Gardiner L.C.)'.

Binding precedent in English law

Judges are bound by the law of binding precedent in England and Wales and other common law jurisdictions. This is a distinctive feature of the English legal system. In Scotland and many countries throughout the world, particularly in mainland Europe, civil law means that judges take case law into account in a similar way, but are not obliged to do so and are required to consider the precedent in terms of principle. Their fellow judges' decisions may be persuasive but are not binding. Under the English legal system, judges are not necessarily entitled to make their own decisions about the development or interpretations of the law. They may be bound by a decision reached in a previous case. Two facts are crucial to determining whether a precedent is binding:

1. The position in the court hierarchy of the court which decided the precedent, relative to the position in the court trying the current case.
2. Whether the facts of the current case come within the scope of the principle of law in previous decisions.

Super stare decisis

Super-stare decisis is a term used for important precedent that is resistant or immune from being overturned, without regard to whether correctly decided in the first place. It may be viewed as one extreme in a range of precedential power, or alternatively, to express a belief, or a critique of that belief, that some decisions should not be overturned.

In 1976, Richard Posner and William Landes coined the term "super-precedent," in an article they wrote about testing theories of precedent by counting citations. Posner and Landes used this term to describe the influential effect of a cited decision. The term "super-precedent" later became associated with different issue: the difficulty of overturning a decision. In 1992, Rutgers professor Earl Maltz criticized the Supreme Court's decision in *Planned Parenthood v. Casey* for endorsing the idea that if one side can take control of the Court on an issue of major national importance (as in *Roe v. Wade*), that side can protect its position from being reversed "by a kind

of super-stare decisis."[14] The controversial idea that some decisions are virtually immune from being overturned, regardless of whether they were decided correctly in the first place, is the idea to which the term "super stare decisis" now usually refers.

The concept of super-stare decisis (or "super-precedent") was mentioned during the interrogations of Chief Justice John Roberts and Justice Samuel Alito before the Senate Judiciary Committee. Prior to the commencement of the Roberts hearings, the chair of that committee, Senator Arlen Specter of Pennsylvania, wrote an op/ed in the *New York Times* referring to *Roe* as a "super-precedent." He revisited this concept during the hearings, but neither Roberts nor Alito endorsed the term or the concept.

Advantages and disadvantages

There are advantages and disadvantages of binding precedent. The advantages include: certainty, consistency, preciseness, and time-saving. The disadvantages include: rigidity, complexity, illogical reasoning (the differences between some cases may be very small and appear illogical), and slow to grow (some areas of the law are unclear or in need of reform).

Persuasive precedent

Persuasive precedent (also persuasive authority or advisory precedent) is precedent or other legal writing that is not binding precedent but that is useful or relevant and that may guide the judge in making the decision in a current case. Persuasive precedent includes cases decided by lower courts, by peer or higher courts from other geographic jurisdictions, cases made in other parallel systems (for example, military courts, administrative courts, indigenous/tribal courts, state courts versus federal courts in the United States), statements made in dicta, treatises or academic law reviews, and in some exceptional circumstances, cases of other nations, treaties, world judicial bodies, etc.

In a case of first impression, courts often rely on persuasive precedent from courts in other jurisdictions that have previously dealt with similar issues. Persuasive precedent may become binding through its adoption by a higher court.

In Civil law and pluralist systems, as under Scots law, precedent is not binding but case law is taken into account by the courts.

Lower courts

A lower court's opinion may be considered as persuasive authority if the judge believes they have applied the correct legal principle and reasoning.

Higher courts in other circuits

A court may consider the ruling of a higher court that is not binding. For example, a district court in the United States First Circuit could consider a ruling made by the United States Court of Appeals for the Ninth Circuit as persuasive authority.

Horizontal courts

Courts may consider rulings made in other courts that are of equivalent authority in the legal system. For example, an appellate court for one district could consider a ruling issued by an appeals court in another district.

Statements made in obiter dicta

Courts may consider *obiter dicta* in opinions of higher courts. Dicta of a higher court, though not binding, will often be persuasive to lower courts.

The *obiter dicta* is usually translated as "other things said", but due to the high number of judges and several personal decisions, it is often hard to distinguish from the *ratio decidendi* (reason for the decision).

For this reason, the obiter dicta may usually be taken into consideration.

Dissenting opinions

A case decided by a multi-judge panel could result in a split decision. While only the majority opinion is considered precedential, an outvoted judge can still publish a dissenting opinion. A judge in a subsequent case, particularly in a different jurisdiction, could find the dissenting judge's reasoning persuasive. In the jurisdiction of the original decision, however, a judge should only overturn the holding of a court lower or equivalent in the hierarchy. A district court, for example, could not rely on a Supreme Court dissent as a rationale for ruling on the case at hand.

Treatises, restatements, law review articles

Courts may consider the writings of eminent legal scholars in treatises, restatements of the law, and law reviews. The extent to which judges find these types of writings will vary widely with elements such as the reputation of the author and the relevance of the argument

Courts in other jurisdictions

An English court might cite judgments from countries that share the English common law tradition. These include other Commonwealth states (for example Canada, Australia, or New Zealand) and, to some extent, the United States (most often where the American courts have been particularly innovative, e.g. in product liability and certain areas of contract law).

It is controversial whether it is appropriate for a U.S. court to consider foreign law or precedent. The Supreme Court splits on this issue. In *Atkins v. Virginia*, for example, the majority cited the fact that the European Union forbids the death penalty as part of their reasoning, while Chief Justice Rehnquist denounced the "Court's decision to place weight on foreign laws." The House of Representatives passed a nonbinding resolution criticizing the citing of foreign law and "reaffirming American independence. However, it is relatively uncontroversial for American state courts to rely on English decisions for matters of pure common (i.e. judge-made) law; this was most common through the 19th and early 20th century, until the growing body of American law made the practice of referring to England increasingly unnecessary.

Within the federalist legal systems of several common-law countries, and most especially the United States, it is relatively common for the distinct lower-level judicial systems (e.g. state courts in the United States and Australia, provincial courts in Canada) to regard the decisions of other jurisdictions within the same country as persuasive precedent. Particularly in the United States, the adoption of a legal doctrine by a large number of other state judiciaries is regarded as highly persuasive evidence of the general prefer ability of that doctrine; a good example is the adoption of comparative negligence (replacing contributory negligence as a complete bar to recovery) in Tennessee by the 1992 Tennessee Supreme Court decision *McIntyre v. Balentine* (by which point all US jurisdictions save Tennessee, five other states, and the District of Columbia had adopted comparative negligence schemes). Moreover, in American law, the *Erie* doctrine requires federal courts sitting in diversity actions to apply state substantive law, but in a manner consistent with how the court believes the state's highest court would rule in that case. Since such decisions are not binding on state courts, but are often very well-reasoned and useful, state courts cite federal interpretations of state law fairly often as persuasive precedent, although it is also fairly common for a state high court to reject a federal court's interpretation of its jurisprudence.

Contrasting role of case law in common law, civil law, and mixed systems

The different roles of case law in civil law and common law traditions create differences in the way that courts render decisions. Common law courts generally explain in detail the legal rationale behind their decisions, with citations of both legislation and previous relevant judgments, and often an exegesis of the wider legal principles. The necessary analysis (called *ratio decidendi*), then constitutes a precedent binding on other courts; further analyses not strictly necessary to the determination of the current case are called *obiter dicta*, which constitute persuasive authority but are not technically binding. By contrast, decisions in civil law jurisdictions are generally very short, referring only to statutes. The reason for this difference is that these civil law jurisdictions adhere to a tradition that the reader should be able to deduce the logic from the decision and the statutes, so that, in some cases, it is somewhat difficult to apply previous decisions to the facts presented in future cases.

Some pluralist systems, such as Scots law in Scotland and so-called civil law jurisdictions in Quebec and Louisiana, do not precisely fit into the dual "common-civil" law system classifications. Such systems may have been heavily influenced by the Anglo-American common law tradition; however, their substantive law is firmly rooted in the civil law tradition. Because of their position between the two main systems of law, these types of legal systems are sometimes referred to as "mixed" systems of law.

Law professors in common law traditions play a much smaller role in developing case law than professors in civil law traditions. Because court decisions in civil law traditions are brief and not amenable to establishing precedent, much of the exposition of the law in civil law traditions is done by academics rather than by judges; this is called doctrine and may be published in treatises or in journals such as *Recueil Dalloz* in France. Historically, common law courts relied little on legal scholarship; thus, at the turn of the twentieth century, it was very rare to see an academic writer quoted in a legal decision (except perhaps for the academic writings of prominent judges such as Coke and Blackstone). Today academic writers are often cited in legal argument and

decisions as persuasive authority; often, they are cited when judges are attempting to implement reasoning that other courts have not yet adopted, or when the judge believes the academic's restatement of the law is more compelling than can be found in precedent. Thus common law systems are adopting one of the approaches long common in civil law jurisdictions.

Critical analysis of precedent

Court formulations

The United States Court of Appeals for the Third Circuit has stated:

> A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy.

The United States Court of Appeals for the Ninth Circuit has stated:

> Stare decisis is the policy of the court to stand by precedent; the term is but an abbreviation of stare decisis et non quieta movere — "to stand by and adhere to decisions and not disturb what is settled." Consider the word "decisis." The word means, literally and legally, the decision. Under the doctrine of stare decisis a case is important only for what it decides — for the "what," not for the "why," and not for the "how." Insofar as precedent is concerned, stare decisis is important only for the decision, for the detailed legal consequence following a detailed set of facts.

Justice McHugh of the High Court of Australia in relation to precedence remarked in *Perre v Apand*:

> [T]hat is the way of the common law, the judges preferring to go 'from case to case, like the ancient Mediterranean mariners, hugging the coast from point to point, and avoiding the dangers of the open sea of system or science

Academic study

Precedent viewed against passing time can serve to establish trends, thus indicating the next logical step in evolving interpretations of the law. For instance, if immigration has become more and more restricted under the law, then the next legal decision on that subject may serve to restrict it further still.

Scholars have recently attempted to apply network theory to precedent in order to establish which precedent is most important or authoritative, and how the court's interpretations and priorities have changed over time.

Application

Development

Early English common law did not have or require the stare decisis doctrine for a range of legal and technological reasons:

- During the formative period of the common law, the royal courts constituted only one among many fora in which in the English could settle their disputes. The royal courts operated alongside and in competition with ecclesiastic, manorial, urban, mercantile, and local courts.
- Royal courts were not organised into a hierarchy, instead different royal courts (exchequer, common pleas, king's bench, and chancery) were in competition with each other.
- Substantial law on almost all matters was neither legislated nor codified, eliminating the need for courts to interpret legislation.
- Common law's main distinctive features and focus were not substantial law, which was customary law, but procedural.
- The practice of citing previous cases was not to find binding legal rules but as evidence of custom.
- Customary law was not a rational and consistent body of rules and does not require a system of binding precedent.
- Before the printing press, the state of the written records of cases rendered the stare decisis doctrine utterly impracticable.

These features changed over time, opening the door to the doctrine of stare decisis:

By the end of the eighteenth century, the common law courts had absorbed most of the business of their non royal competitors, although there was still internal competition among the different common law courts themselves. During the nineteenth century, legal reform movements in both England and the United States brought this to an end as well by merging the various common law courts into a unified system of courts with a formal hierarchical structure. This and the advent of reliable private case reporters made adherence to the doctrine of stare decisis practical and the practice soon evolved of holding judges to be bound by the decisions of courts of superior or equal status in their jurisdiction.

Pros and cons

There is much discussion about the virtue or irrationality of using case law in the context of stare decisis. Supporters of the system, such as minimalists, argue that obeying precedent makes decisions "predictable." For example, a business person can be reasonably assured of predicting a decision where the facts of his or her case are sufficiently similar to a case decided previously. This parallels the arguments against retroactive (ex post facto) laws banned by the U.S.

Constitution. An argument often used against the system is that it is undemocratic as it allows judges, which may or may not be elected, to make law.

A counter-argument (in favor of the concept of stare decisis) is that if the legislature wishes to alter the case law (other than constitutional interpretations) by statute, the legislature is empowered to do so.[33] Critics sometimes accuse particular judges of applying the doctrine selectively, invoking it to support precedent that the judge supported anyway, but ignoring it in order to change precedent with which the judge disagreed.

Regarding constitutional interpretations, there is concern that over-reliance on the doctrine of stare decisis can be subversive. An erroneous precedent may at first be only slightly inconsistent with the Constitution, and then this error in interpretation can be propagated and increased by further precedent until a result is obtained that is greatly different from the original understanding of the Constitution. *Stare decisis* is not mandated by the Constitution, and if it causes unconstitutional results then the historical evidence of original understanding can be re-examined. In this opinion, predictable fidelity to the Constitution is more important than fidelity to unconstitutional precedent. See also the living tree doctrine.

Criticism of precedent

In a controversial 1997 book, attorney Michael Trotter blamed over-reliance by American lawyers on binding and persuasive authority, rather than the merits of the case at hand, as a major factor behind the escalation of legal costs during the 20th century. He argued that courts should ban the citation of persuasive precedent from outside their jurisdiction, with two exceptions:

(1) Cases where the foreign jurisdiction's law is the subject of the case, or

(2) Instances where a litigant intends to ask the highest court of the jurisdiction to overturn binding precedent, and therefore needs to cite persuasive precedent to demonstrate a trend in other jurisdictions.[34]

Civil law systems

Stare decisis is not usually a doctrine used in civil law systems, because it violates the principle that only the legislature may make law. However, the civil law system does have jurisprudence constante, which is similar to Stare decisis and dictates that the Court's decision condone a cohesive and predictable result. In theory, inferior courts are generally not bound to precedent established by superior courts. In practice, the need for predictability means that inferior courts generally defer to precedent by superior courts. In a sense, the most superior courts in civil law jurisdictions, such as the *Cour de cassation* and the *Conseil d'État* in France are recognized as being bodies of a quasi-legislative nature.

The doctrine of jurisprudence constant also influences how court decisions are structured. In general, court decisions of common law jurisdictions give a sufficient statement of rationale as to guide future courts. This occurs to justify a court decision on the basis of previous case law as well as to make it easier to use the decision as a precedent for future cases.

By contrast, court decisions in some civil law jurisdictions (most prominently France) tend to be extremely brief, mentioning only the relevant legislation and not going into great detail about how a decision was reached. This is the result of the theoretical view that the court is only interpreting the view of the legislature and that detailed exposition is unnecessary. Because of this, much more of the exposition of the law is done by academic jurists which provide the explanations that in common law nations would be provided by the judges themselves.

In other civil law jurisdictions, such as the German-speaking countries, court opinions tend to be much longer than in France, and courts will frequently cite previous cases and academic writing. However, some courts (such as German courts) have less emphasis on the particular facts of the case than common law courts, but have more emphasis on the discussion of various doctrinal arguments and on finding what the correct interpretation of the law is.

The legal systems of the Nordic countries are sometimes included among the civil law systems, but as a separate branch, and sometimes counted as separate from the civil law tradition. In Sweden, for instance, case law arguably plays a more important role than in some of the Continental civil law systems. The two highest courts, the Supreme Court (*Högsta domstolen*) and the Supreme Administrative Court (*Högsta förvaltningsdomstolen*), have the right to set precedent which is in practice (however not formally) binding on all future application of the law. Courts of appeal, both general courts (*hovrätter*) and administrative courts (*kammarrätter*) may also issue decisions that act as guides for the application of the law, but these decisions may be overturned by higher courts.

FEATURES OF LAW REPORTING

Law reports supreme courts:

Law reporting started in India with the creation of supreme court of Calcutta in1774 .In the beginning was a private enterprise .Attempts at reporting were made by the practicing lawyers of judges the purpose was to prevent much contrariety of judgment and to produce uniformity of decision on matters on which a conflict of decisions would be disastrous .Sir Francis Macnauhgten included certain cases regarding in his considerations upon Hindu law1824. Sir William Macnaughten wrote principles and precedents of Moohamaedan law, 1825.

Some efforts were made at law reporting by the barristers and judges associated with some efforts were made at law reporting by the barristers and judges associated w with these courts . Reports pertaining to the Calcutta ,supreme court are :morton;s reports ,fulton's report,boulnois reports etc .for supreme court at Bombay perry;s oriental cases by sir Erskine perry ,.For supreme court at madrass ,the only collectionof cases to be found is that published by CJ Sir Thomas Strange in 1816.Most of the above mentioned od reports became too difficult to procure as the went out of print & became rare .They literally became sealed books for long .references tpo the old cases and their citation in courts became very difficult . the value of these old

decisions were great as the cases not only contained good law but depicted how the judges laid the foundation of a system of anglo Indian jurisprudence in india .An attempt was made to reprint the cases in the old reports and re issue a new series known as the Indian decisions old series . it was edited by TA Venkaswamy RAO in 1911.

Law reports sadar adalat

The sadar adalat were Co. Courts and were at the apex of the mofussil judicial system. The sadar diwani adalat at Calcutta had suggested publication of its decisions. The law commission had also suggested formation of a digest of decisions of the courts .the first printed reports of the cases decided in the sadae diwani adalat at Calcutta were started by Sir Willaim Macnaughten, when he was the registrar of the adalat .The series has 7 volume covering the period of 1791-1849 .there was another series of reports known as select report of summary cases. these reports were adapted to serve as precedents to the inferior courts .Act nil of 1843 directed the sadaer adalats to record their judgments in English and to publish them every month thesr were known as bengal sadar diwani adalat reports .the cases recorded in the sadar adalats at madras were few in number.
For decisions for the sadar diwani adalats at Bombay there are 2 collections available, series of reports by borradaile and a small anonymous publication which apperred in 1843.only 2 series of reports appear to have been printed for criminal cases. One comprises 5 volumes and contains sentences of the nizamat adalat at Calcutta. The 2nd seriescontains reports of criminal case determined in the sadar faujdari adalat of Bombay from 1827 to 1846.

Early high court reports

High court was established in 1862. The high court's brought in their wake official reports . the madras high court brought with it the madras's high court reports in 8 volumes covering a period from 1862-1875.these reports contained some of the best written judgments of the madras high court .
Similar reports came into existence for the high court's of Bombay and Calcutta. There here are 12 volumes of the Bombay high courts reports and 15 volumes of Bengal law reports. The various high court reports were published by the government through the help of official reports.
Along with these official reports there came into existence some private publications also, such as the weekly reporter, Indian jurist at Calcutta, madras jurist at madras etc.

Provisions and applications
The Act authorizes the publication of the reports of the cases decided by the High Courts also to control the indiscriminate citation of the cases in the courts.
Although the Act nowhere said that the decisions of the High Court were binding on the inferior courts within its jurisdiction yet it was implied through the provisions that a court would be bound to treat the cases decided by the High Courts as binding.
The Act in effect provides that courts are not bound to hear cited any unauthorized series of law reports.

The Act 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

After enactment of the Indian Law Reporters Act, 1875, it becomes necessary to have an official series of reports. The councils of Law reporting were set up in the several high courts and reports began to be published under the authority of State govt.

The CJ of each HC nominates a committee with himself or another judge as chairman to supervise the publication of these reports. Each HC had a series of Indian Law Reports for itself e.g.. ILR Madras, ILR Bombay etc…These reports came out monthly.

Non Official Reports

The Law reports act could not suppress the publication of a large no. of private reports. The deficiencies in the official series of reports have given rise to the system of private reports, some which are extremely popular.

A no. of law reports are being published by non-official agencies on a commercial basis, they cover a very wide range and are published from various point of view. Eg.. All India reporter 1922, Madras Law Journal 1891, Allahabad Law Journal 1904, Bombay Law reporter 1899 etc…

There are also a no. of reports of specialized nature devoted to specific areas of law. E.g.. Criminal Law Journal, Taxation law Reports, sales tax Cases etc…

Reports of the Privy Council

The Privy Council served as the highest court of appeal from India and its decisions were binding on all the courts of India. The reports of the privy councils cases were thus of a fundamental value to the Indian lawyers and courts.

Some cases of the Privy Council on appeal from India was complied by Jerome W. Knapp in 3 volumes covering the period from 1829-1836. Then E.F. Moore brought out Moore's P.C. in volumes from 1836-62.

From 1872-1950, Privy Council's decisions on appeal from India are reported in 77 volumes of Indian Appeals published annually from England under the superintendence and control of the incorporated council of law reporting for England and Wales.

Reports Of the federal court

With the inauguration of the Federal Court of India under the government of India Act 1935, an official series of reports, known as federal court reports, was started in 1939 and continued till 1949, these reports reported cases determined by the federal court of India as well as by the privy council on appeal from that court.

Besides the official reports, there were unofficial reports also; The federal Law journal was started in 1937 to report the proceedings of the federal court and the federal legislature of India

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Legal Education: History and Basic Aims of Legal Education

Legal education generally has a number of theoretical and practical aims, not all of which are pursued simultaneously. The emphasis placed on various objectives differs from period to period, place to place, and even teacher to teacher. One aim is to make the student familiar with legal concepts and institutions and with characteristic modes of legal reasoning. Students also become acquainted with the processes of making law, settling disputes, and regulating the legal profession, and they must study the structure of government and the organization of courts of law, including the system of appeals and other adjudicating bodies.

Another aim of legal education is the understanding of law in its social, economic, political, and scientific contexts. Prior to the late 20th century, Anglo-American legal education was less interdisciplinary than that of continental Europe. With the development of a more or less scientific approach to social studies since the late 20th century, however, this has been changing. Some American law schools appoint economists, historians, political scientists, or sociologists to their staffs, while most permit their students to take courses outside the law school as part of their work toward a degree. Continental legal education tends to be highly interdisciplinary, if more abstract and doctrinal than its American counterpart, with non legal subjects compulsory for students taking their first degree in law.

Traditionally, legal education has included the study of legal history, which was once regarded as an essential part of any educated lawyer's training. Although economics is increasingly popular as a tool for understanding law, much legal history is nonetheless taught in the context of the general law curriculum. Since the corpus of the law is a constantly evolving collection of rules and principles, many teachers consider it necessary to trace the development of the branch of law they are discussing. In civil-law countries, where most parts of the law are codified, it is not generally thought necessary to cover topics that antedate the codes themselves. On the other hand, in countries that have a common-law system, knowledge of the law has traditionally depended to a great extent on the study of the court decisions and statutes out of which common law evolved.

Even in jurisdictions that require four or five years of law study (as in Japan and India), the graduating law student is not expected to have studied the whole body of substantive law but is, however, typically expected to be familiar with the general principles of the main branches of law. To this end, certain subjects are regarded as basic: constitutional law, governing the major organs of state; the law of contract, governing obligations entered into by agreement; the law of tort (or delict in civil-law systems), governing compensation for personal injury and damage to property, income, or reputation; the law of real (or immovable) property (*see* property law), governing transactions with land; criminal law, governing punishment, deterrence, rehabilitation, and prevention of offenses against the public order; and corporation (or company) law, governing the leading form that economic actors take in modern society. The materials studied

are largely the same everywhere: codes (where these exist), reports of court decisions, legislation, government and other public reports, institutional books (in civil-law countries), textbooks, and articles in learned periodicals. The aim is not so much that the students should remember "the law" as that they should understand basic concepts and methods and become sufficiently familiar with a law library to carry out the necessary research on any legal problems that may come their way.

Aims and Objectives:

To educate tomorrow's lawyers by:

Giving students an opportunity in a clinical supervised setting to work for disadvantaged clients

Developing student understanding of how the legal system works, and its impact upon disadvantaged clients

Providing students with an opportunity to reflect upon social justice issues, the legal system and the role of lawyers within it including the values and objectives underpinning the work of community legal centers

Assisting students to understand the integral role that systemic advocacy and community legal education play in legal service provision

To improve access to justice for residents of the Botany Bay and Randwick areas by providing free legal advice and assistance including specialist employment advice

To reduce discrimination through the provision of specialist legal advice and representation on discrimination matters to residents of NSW and those who are discriminated against in NSW

To enhance people's knowledge of, and access to appropriate legal services through the dissemination of information and by making and receiving referrals

To promote access and equity in all areas of the organization including service delivery, legal education, community education and policy work.

To ensure Kingsford Legal Centre is respectful of Indigenous cultures and people

To improve the community's knowledge of the legal system and the capacity for people to enforce their legal rights, by delivering community legal education

To undertake systemic advocacy, including law reform, and to represent the interests of clients and the local community on social policy and administration of justice issues

To create partnerships with other community organizations on legal issues

To maintain an efficient infrastructure for the Centre to provide support for staff, volunteers and students and outcomes for clients.

UNIT IV: CONSTITUTIONAL HISTORY

A. The Indian Councils Act, 1861

It is was an Act of the Parliament of the United Kingdom that transformed the Viceroy of India's executive council into a cabinet run on the portfolio system. This cabinet had six "ordinary members" who each took charge of a separate department in Calcutta's government: home, revenue, military, law, finance, and (after 1874) public works. The military Commander-in-Chief sat in with the council as an extraordinary member. The Viceroy was allowed, under the provisions of the Act, to overrule the council on affairs if he deemed it necessary - as was the case in 1879, during the tenure of Lord Lytton.

The Secretary of State for India at the time the Act was passed, Sir Charles Wood, believed that the Act was of immense importance: "the act is a great experiment. That everything is changing in India is obvious enough and that the old autocratic government cannot stand unmodified is indisputable.

The 1861 Act restored the legislative power taken away by the Charter Act of 1833. The legislative council at Calcutta was given extensive authority to pass laws for British India as a whole, while the legislative councils at Bombay and Madras were given the power to make laws for the "Peace and good Government" of their respective presidencies. The Governor General was given the power to create new provinces for legislative purposes. He also could appoint Lt. Governors for the same.

B. The Indian Councils Act, 1892

It was an Act of the Parliament of the United Kingdom that authorized an increase in the size of the various legislative councils in British India. Enacted due to the demand of the Indian National Congress to expand legislative council, the number of non-official members was increased both in central and provincial legislative councils. The non official members of Indian legislative councils were henceforth to be nominated by Bengal chamber commerce and provincial legislative council. The universities, district board, municipalities, zamindars and chambers of commerce were empowered to recommend members to provincial councils. Thus was introduced the principle of representation. It also relaxed restrictions imposed by the Indian Councils Act 1861, thus allowing the councils to discuss each year's annual financial statement. They could also put questions within certain limits to the government on the matter of public interest after giving six days' notice but none of them was given right to ask supplementary question. Thus it prepared the base of Indian Democracy.

C. The Indian Councils Act, 1909

It was commonly known as the **Morley-Minto Reforms**, was an Act of the Parliament of the United Kingdom that brought about a limited increase in the involvement of Indians in the governance of British India.

John Morley, the Liberal Secretary of State for India, and the Conservative Governor-General of India, The Earl of Minto, believed that cracking down on uprising in Bengal was necessary but not sufficient for restoring stability to the British Raj after Lord Curzon's partitioning of Bengal. They believed that a dramatic step was required to put heart into loyal elements of the Indian upper classes and the growing Westernised section of the population.

They produced the Indian Councils Act of 1909 (Morley-Minto reforms), these reforms did not go any significant distance toward meeting the Indian National Congress demand for 'the system of government obtaining in Self-Governing British Colonies'.

The Act of 1909 was important for the following reasons:

It effectively allowed the election of Indians to the various legislative councils in India for the first time. Previously some Indians had been appointed to legislative councils. The majorities of the councils remained British government appointments. Moreover the electorate was limited to specific classes of Indian nationals;

The introduction of the electoral principle laid the groundwork for a parliamentary system even though this was contrary to the intent of Morley. As stated by Burke and Quraishi -

"To Lord Curzon's apprehension that the new Councils could become 'parliamentary bodies in miniature', Morley vehemently replied that, 'if it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it'. But he had already confessed in a letter to Minto in June 1906 that while it was inconceivable to adapt English political institutions to the 'nations who inhabit India...the spirit of English institutions is a different thing and it is a thing that we cannot escape, even if we wished...because the British constituencies are the masters, and they will assuredly insist.. .all parties alike.. .on the spirit of their own political system being applied to India.' He never got down to explaining how the spirit of the British system of government could be achieved without its body."

Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 stipulated, as demanded by the Muslim leadership

that Indian Muslims be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils and in the Imperial Legislature;

that the number of reserved seats be in excess of their relative population (25 percent of the Indian population); and,

that only Muslims should vote for candidates for the Muslim seats ('separate electorates').

These concessions were a constant source of strife 1909-47. British statesmen generally considered reserved seats as regrettable in that they encouraged communal extremism as Muslim candidates did not have to appeal for Hindu votes and vice versa. As further power was shifted from the British to Indian politicians in 1919, 1935 and after, Muslims were ever more determined to hold on to, and if possible expand, reserved seats and their weightage. However, Hindu politicians repeatedly tried to eliminate reserved seats as they considered them to be undemocratic and to hinder the development of a shared Hindu-Muslim Indian national feeling.

In 1906, Lord Morley, the Secretary of State for Indian Affairs, announced in the British parliament that his government wanted to introduce new reforms for India, in which the locals were to be given more powers in legislative affairs. With this, a series of correspondences started between him and Lord Minto, the then Governor General of India. A committee was appointed by the Government of India to propose a scheme of reforms. The committee submitted its report, and after the approval of Lord Minto and Lord Morley, the Act of 1909 was passed by the British parliament. The Act of 1909 is commonly known as the Minto-Morley Reforms. The following were the main features of the Act of 1909:

1. The number of the members of the Legislative Council at the Center was increased from 16 to 60.

2. The number of the members of the Provincial Legislatives was also increased. It was fixed as 50 in the provinces of Bengal, Madras and Bombay, and for the rest of the provinces it was 30.

3. The member of the Legislative Councils, both at the Center and in the provinces, were to be of four categories i.e. ex-officio members (Governor General and the members of their Executive Councils), nominated official members (those nominated by the Governor General and were government officials), nominated non-official members (nominated by the Governor General but were not government officials) and elected members (elected by different categories of Indian people).

4. The right of separate electorate was given to the Muslims.

5. Official members were to form the majority but in provinces non-official members would be in majority.

6. The members of the Legislative Councils were permitted to discuss the budgets, suggest the amendments and even to vote on them; excluding those items that were included as non-vote items. They were also entitled to ask supplementary questions during the legislative proceedings.

7. The Secretary of State for India was empowered to increase the number of the Executive Councils of Madras and Bombay from two to four.

8. Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.

9. The Governor General was empowered to nominate one Indian member to his Executive Council.

D. The Government of India Act, 1919

It was an Act of the Parliament of the United Kingdom. It was passed to expand participation of Indians in the government of India. The Act embodied the reforms recommended in the report of the Secretary of State for India, Edwin Montagu, and the Viceroy, Lord Chelmsford. The Act covered ten years, from 1919 to 1929.

The Act provided a dual form of government (a "diarchy") for the major provinces. In each such province, control of some areas of government, the "transferred list", were given to a Government of ministers answerable to the Provincial Council. The 'transferred list' included Agriculture, supervision of local government, Health and Education. The Provincial Councils were enlarged.

At the same time, all other areas of government (the 'reserved list') remained under the control of the Viceroy. The 'reserved list' included Defense (the military), Foreign Affairs, and Communications.

The Imperial Legislative Council was enlarged and reformed. It became a bicameral legislature for all India. The lower house was the Legislative Assembly of 144 members, of which 104 were elected and 40 were nominated and tenure of three years. The upper house was the Council of States consisting of 34 elected and 26 nominated members and tenure of five years.

E. The Government of India Act, 1935

The most significant aspects of the Act were:

The grant of a large measure of autonomy to the provinces of British India (ending the system of diarchy introduced by the Government of India Act 1919)provision for the establishment of a "Federation of India", to be made up of both British India and some or all of the "princely states

"the introduction of direct elections, thus increasing the franchise from seven million to thirty-five million people a partial reorganization of the provinces:

Sindh was separated from Bombay

Bihar and Orissa was split into separate provinces of Bihar and Orissa

Burma was completely separated from India

Aden was also detached from India, and established as a separate Crown colony

Membership of the provincial assemblies was altered so as to include more elected Indian representatives, who were now able to form majorities and be appointed to form governments the establishment of a Federal Court

However, the degree of autonomy introduced at the provincial level was subject to important limitations: the provincial Governors retained important reserve powers, and the British authorities also retained a right to suspend responsible government.

The parts of the Act intended to establish the Federation of India never came into operation, due to opposition from rulers of the princely states. The remaining parts of the Act came into force in 1937, when the first elections under the Act were also held

Indians had increasingly been demanding a greater role in the government of their country since the late 19th century. The Indian contribution to the British war effort during the First World War meant that even the more conservative elements in the British political establishment felt the necessity of constitutional change, resulting in the Government of India Act 1919. That Act introduced a novel system of government known as provincial "diarchy", i.e., certain areas of government (such as education) were placed in the hands of ministers responsible to the provincial legislature, while others (such as public order and finance) were retained in the hands of officials responsible to the British-appointed provincial Governor. While the Act was a reflection of the demand for a greater role in government by Indians, it was also very much a reflection of British fears about what that role might mean in practice for India (and of course for British interests there).

The experiment with diarchy proved unsatisfactory. A particular frustration for Indian politicians was that even for those areas over which they had gained nominal control; the "purse strings" were still in the hands of British officialdom.

The intention had been that a review of India's constitutional arrangements and those princely states that were willing to accede to it. However, division between Congress and Muslim representatives proved to be a major factor in preventing agreement as to much of the important detail of how federation would work in practice.

Against this practice, the new Conservative-dominated National Government in London decided to go ahead with drafting its own proposals (the white paper). A joint parliamentary select committee, chaired by Lord Linlithgow, reviewed the white paper proposals at great length. On the basis of this white paper, the Government of India Bill was framed. At the committee stage and later, to appease the diehards, the "safeguards" were strengthened, and indirect elections were reinstated for the Central Legislative Assembly (the central legislature's lower house). The bill duly passed into law in August 1935.

As a result of this process, although the Government of India Act 1935 was intended to go some way towards meeting Indian demands, both the detail of the bill and the lack of Indian involvement in drafting its contents meant that the Act met with a lukewarm response at best in India, while still proving too radical for a significant element in Britain.

Some Features of the Act:

No preamble: the ambiguity of British commitment to dominion status

While it had become uncommon for British Acts of Parliament to contain a preamble, the absence of one from the Government of India Act 1935 contrasts sharply with the 1919 Act, which set out the broad philosophy of that Act's aims in relation to Indian political development.

The 1919 Act's preamble quoted, and centered on, the statement of the Secretary of State for India, Edwin Montagu (17 July 1917 – 19 March 1922) to the House of Commons on 20 August 1917, which pledged:

The gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral Part of the British Empire .

Indian demands were by now centering on British India achieving constitutional parity with the existing Dominions such as Canada and Australia, which would have meant complete autonomy within the British Commonwealth. A significant element in British political circles doubted that Indians were capable of running their country on this basis, and saw Dominion status as something that might, perhaps, be aimed for after a long period of gradual constitutional development, with sufficient "safeguards".

This tension between and within Indian and British views resulted in the clumsy compromise of the 1935 Act having no preamble of its own, but keeping in place the 1919 Act's preamble even while repealing the remainder of that Act. Unsurprisingly, this was seen in India as yet more mixed messages from the British, suggesting at best a lukewarm attitude and at worst suggesting a "minimum necessary" approach towards satisfying Indian desires.

No Bill of Right

In contrast with most modern constitutions, but in common with Commonwealth constitutional legislation of the time, the Act does not include a "bill of rights" within the new system that it aimed to establish. However, in the case of the proposed Federation of India there was a further complication in incorporating such a set of rights, as the new entity would have included nominally sovereign (and generally autocratic) princely states.

A different approach was considered by some, though, as the draft outline constitution in the Nehru Report included such a bill of rights.

Relationship to a Dominion Constitution

In 1947, a relatively few amendments in the Act made it the functioning interim constitutions of India and Pakistan.

Safeguards

The Act was not only extremely detailed, but it was riddled with 'safeguards' designed to enable the British Government to intervene whenever it saw the need in order to maintain British responsibilities and interests. To achieve this, in the face of a gradually increasing Indianization of the institutions of the Government of India, the Act concentrated the decision for the use and the actual administration of the safeguards in the hands of the British-appointed Viceroy and provincial governors who were subject to the control of the Secretary of State for India.

'In view of the enormous powers and responsibilities which the Governor-General must exercise in his discretion or according to his individual judgment, it is obvious that he (the Viceroy) is expected to be a kind of superman. He must have tact, courage, and ability and be endowed with an infinite capacity for hard work. "We have put into this Bill many safeguards," said Sir Robert Horne… "but all of those safeguards revolve about a single individual, and that is the Viceroy. He is the linch-pin of the whole system…. If the Viceroy fails, nothing can save the system you have set up." This speech reflected the point of view of the die-hard Tories who were horrified by the prospect that some day there might be a Viceroy appointed by a Labour government.'

Reality of Responsible Government under the Act – Is the Cup Half-Full or Half-Empty

A close reading of the Act reveals that the British Government equipped itself with the legal instruments to take back total control at any time they considered this to be desirable. However, doing so without good reason would totally sink their credibility with groups in India whose support the act was aimed at securing. Some contrasting views:

"In the federal government… the semblance of responsible government is presented. But the reality is lacking, for the powers in defense and external affairs necessarily, as matters stand, given to the governor-general limit vitally the scope of ministerial activity, and the measure of representation given to the rulers of the Indian States negatives any possibility of even the

beginnings of democratic control. It will be a matter of the utmost interest to watch the development of a form of government so unique; certainly, if it operates successfully, the highest credit will be due to the political capacity of Indian leaders, who have infinitely more serious difficulties to face than had the colonial statesmen who evolved the system of self-government which has now culminated in Dominion status."

Lord Lothian, in a talk lasting forty-five minutes, came straight out with his view on the Bill:

"I agree with the diehards that it has been surrender. You who are not used to any constitution cannot realize what great power you are going to wield. If you look at the constitution it looks as if all the powers are vested in the Governor-General and the Governor. But is not every power here vested in the King? Everything is done in the name of the King but does the King ever interfere? Once the power passes into the hands of the legislature, the Governor or the Governor-General is never going to interfere. …The Civil Service will be helpful. You too will realize this. Once a policy is laid down they will carry it out loyally and faithfully… We could not help it. We had to fight the diehards here. You could not realize what great courage has been shown by Mr. Baldwin and Sir Samuel Hoare. We did not want to spare the diehards as we had to talk in a different language… These various meetings — and in due course G.D. (Birla), before his return in September, met virtually everyone of importance in Anglo-Indian affairs — confirmed G.D.'s original opinion that the differences between the two countries were largely psychological, the same proposals open to diametrically opposed interpretations. He had not, probably, taken in before his visit how considerable, in the eyes of British conservatives, the concessions had been… If nothing else, successive conversations made clear to G.D. that the agents of the Bill had at least as heavy odds against them at home as they had in India.

False Equivalences

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Under the Act, British citizens resident in the UK and British companies registered in the UK must be treated on the same basis as Indian citizens and Indian registered companies unless UK law denies reciprocal treatment. The unfairness of this arrangement is clear when one considers the dominant position of British capital in much of the Indian modern sector and the complete dominance, maintained through unfair commercial practices, of UK shipping interests in India's international and coastal shipping traffic and the utter insignificance of Indian capital in Britain and the non-existence of Indian involvement in shipping to or within the UK. There are very detailed provisions requiring the Viceroy to intervene if, in his unappeasable view, any India law or regulation is intended to, or will in fact, discriminate against UK resident British subjects, British registered companies and, particularly, British shipping interests.

"The Joint Committee considered a suggestion that trade with foreign countries should be made by the Minister of Commerce, but it decided that all negotiations with foreign countries should

be conducted by the Foreign Office or Department of External Affairs as they are in the United Kingdom. In concluding agreements of this character, the Foreign Secretary always consults the Board of Trade and it was assumed that the Governor-General would in like manner consult the Minister of Commerce in India. This may be true, but the analogy itself is false. In the United Kingdom, both departments are subject to the same legislative control, whereas in India one is responsible to the federal legislature and the other to the Imperial Parliament."

British Political Needs vs. Indian Constitutional Needs – the Ongoing Dysfunction

From the moment of the Montagu statement of 1917, it was vital that the reform process stay ahead of the curve if the British were to hold the strategic initiative. However, imperialist sentiment, and a lack of realism, in British political circles made this impossible. Thus the grudging conditional concessions of power in the Acts of 1919 and 1935 caused more resentment and signally failed to win the Raj the backing of influential groups in India which it desperately needed. In 1919 the Act of 1935 or even the Simon Commission plan would have been well received. There is evidence that Montagu would have backed something of this sort but his cabinet colleagues would not have considered it. By 1935, a constitution establishing a Dominion of India, comprising the British Indian provinces might have been acceptable in India though it would not have passed the British Parliament.

'Considering the balance of power in the Conservative party at the time, the passing of a Bill more liberal than that which was enacted in 1935 is inconceivable.'

Provincial Part of the Act

The provincial part of the Act, which went into effect automatically, basically followed the recommendations of the Simon Commission. Provincial diarchy was abolished; that is, all provincial portfolios were to be placed in charge of ministers enjoying the support of the provincial legislatures. The British-appointed provincial governors, who were responsible to the British Government via the Viceroy and Secretary of State for India, were to accept the recommendations of the ministers unless, in their view, they negatively affected his areas of statutory "special responsibilities" such as the prevention of any grave menace to the peace or tranquility of a province and the safeguarding of the legitimate interests of minorities. In the event of political breakdown, the governor, under the supervision of the Viceroy, could take over total control of the provincial government. This, in fact, allowed the governors a more untrammeled control than any British official had enjoyed in the history of the Raj. After the resignation of the congress provincial ministries in 1939, the governors did directly rule the ex-Congress provinces throughout the war.

It was generally recognized, that the provincial part of the Act, conferred a great deal of power and patronage on provincial politicians as long as both British officials and Indian politicians played by the rules. However, the paternalistic threat of the intervention by the British governor rankled.

Federal Part of the Act

Unlike the provincial portion of the Act, the Federal portion was to go into effect only when half the States by weight agreed to federate. This never happened and the establishment of the Federation was indefinitely postponed after the outbreak of the Second World War.

Terms of the Act

The Act provided for Diarchy at the Centre. The British Government, in the person of the Secretary of State for India, through the Governor-General of India – Viceroy of India, would continue to control India's financial obligations, defense, foreign affairs and the British Indian Army and would make the key appointments to the Reserve Bank of India (exchange rates) and Railway Board and the Act stipulated that no finance bill could be placed in the Central Legislature without the consent of the Governor General. The funding for the British responsibilities and foreign obligations (e.g. loan repayments, pensions), at least 80 percent of the federal expenditures, would be non-votable and be taken off the top before any claims could be considered for (for example) social or economic development programs. The Viceroy, under the supervision of the Secretary of State for India, was provided with overriding and certifying powers that could, theoretically, have allowed him to rule autocratically.

Objectives of the British Government

The federal part of the Act was designed to meet the aims of the Conservative Party. Over the very long term, the Conservative leadership expected the Act to lead to a nominally dominion status India, conservative in outlook, dominated by an alliance of Hindu princes and right-wing Hindus which would be well disposed to place itself under the guidance and protection of the United Kingdom. In the medium term, the Act was expected to (in rough order of importance):

win the support of moderate nationalists since its formal aim was to lead eventually to a Dominion of India which, as defined under the Statute of Westminster 1931 virtually equaled independence;

Retain British of control of the Indian Army, Indian finances, and India's foreign relations for another generation;

Win Muslim support by conceding most of Jinnah's Fourteen Points;

Convince the Princes to join the Federation by giving the Princes conditions for entry never likely to be equaled. It was expected that enough would join to allow the establishment of the Federation. The terms offered to the Princes included:

Each Prince would select his state's representative in the Federal Legislature. There would be no pressure for Princes to democratize their administrations or allow elections for state representatives in the Federal Legislature.

The Princes would enjoy heavy weight age. The Princely States represented about a quarter of the population of India and produced well under a quarter of its wealth. Under the Act:

The Upper House of the Federal Legislature, the Council of State, would consist of 260 members: 156 (60%) elected from the British India and 104 (40%) nominated by the rulers of the princely states.

The Lower House, the Federal Assembly, would consist of 375 members: 250 (67%) elected by the Legislative Assemblies of the British Indian provinces; 125 (33%) nominated by the rulers of the princely states.

Ensuring that the Congress could never rule alone or gain enough seats to bring down the government

This was done by over-representing the Princes, by giving every possible minority the right to separately vote for candidates belonging to their respective communities (see separate electorate), and by making the executive theoretically, but not practically, removable by the legislature.

Gambles Taken by the British Government

Viability of the proposed Federation . It was hoped that the gerrymandered federation, encompassing units of such hugely different sizes, sophistication and varying in forms of government from autocratic Princely States to democratic provinces, could provide the basis for a viable state. However, this was not a realistic possibility (see e.g. The Making of India's Paper Federation, 1927-35 in Moore 1988would have rapidly broken down with the British left to pick up the pieces without any viable alternative.

Princes seeing and Acting in Their Own Long-Range Best Interests - That the Princes would see that their best hope for a future would lie in rapidly joining and becoming a united block without which no group could hope, mathematically, to wield power. However, the princes did not join, and thus exercising the veto provided by the Act prevented the Federation from coming into existence. Among the reasons for the Princes staying out were the following:

They did not have the foresight to realize that this was their only chance for a future.

Congress had begun, and would continue, agitating for democratic reforms within the Princely States. Since the one common concern of the 600 or so Princes was their desire to continue to rule their states without interference, this was indeed a mortal threat. It was on the cards that this

would lead eventually to more democratic state regimes and the election of states' representatives in the Federal Legislature. In all likelihood, these representatives would be largely Congressmen. Had the Federation been established, the election of states' representatives in the Federal Legislature would amount to a Congress coup from the inside. Thus, contrary to their official position that the British would look favorably on the democratization of the Princely States, their plan required that the States remain autocratic. This reflects a deep contradiction on British views of India and its future.

'At a banquet in the princely state of Benares Hailey observed that although the new federal constitution would protect their position in the central government, the internal evolution of the states themselves remained uncertain. Most people seemed to expect them to develop representative institutions. Whether those alien grafts from Westminster would succeed in British India, however, itself remained in doubt. Autocracy was "a principle which is firmly seated in the Indian States," he pointed out; "round it burn the sacred fires of an age-long tradition," and it should be given a fair chance first. Autocratic rule, "Informed by wisdom, exercised in moderation, and vitalized by a spirit of service to the interests of the subject, may well prove that it can make an appeal in India as strong as that of representative and responsible institutions." This spirited defense brings to mind Nehru's classic paradox of how the representatives of the advanced, dynamic West allied themselves with the most reactionary forces of the backward, stagnant East.'

Under the Act,

'There are a number of restrictions on the freedom of discussion in the federal legislature. For example the act forbids ... any discussion of, or the asking of questions about, a matter connected with an Indian State, other than a matter with respect to which the federal legislature has power to make laws for that state, unless the Governor-General in his discretion is satisfied that the matter affects federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked.'

They were not a cohesive group and probably realized that they would never act as one .Each Prince seemed consumed by the desire to gain the best deal for himself were his state to join the Federation: the most money, the most autonomy.

That enough was being offered at the Centre to win the support of moderate nationalist Hindu and Muslim support**.** In fact, so little was offered that all significant groups in British India rejected and denounced the proposed Federation. A major contributing factor was the continuing distrust of British intentions for which there was considerable basis in fact. In this vital area the Act failed Irwin's test:

'I don't believe that… it is impossible to present the problem in such a form as would make the shop window look respectable from an Indian point of view, which is really what they care

about, while keeping your hand pretty firmly on the things that matter.' (Irwin to Stonehaven, 12 November 1928)

That the wider electorate would turn against the Congress. In fact, the 1937 elections showed overwhelming support for Congress among the Hindu electorate.

> That by giving Indian politicians a great deal of power at the provincial level, while denying them responsibility at the Centre, it was hoped that Congress, the only national party, would disintegrate into a series of provincial fiefdoms**.** In fact, the congress High Command was able to control the provincial ministries and to force their resignation in 1939. The Act showed the strength and cohesion of Congress and probably strengthened it. This does not imply that Congress was not made up of and found its support in various sometimes competing interests and groups. Rather, it recognizes the ability of Congress, unlike the British Raj, to maintain the cooperation and support of most of these groups even if, for example in the forced resignation of Congress provincial ministries in 1939 and the rejection of the Cripps Offer in 1942, this required a negative policy that was harmful, in the long run, to the prospects for an independent India that would be both united and democratic.

Indian Reaction to the Proposed Federation

No significant group in India accepted the Federal portion of the Act. A typical response was:

'After all, there are five aspects of every Government worth the name: (a) The right of external and internal defense and all measures for that purpose; (b) The right to control our external relations; (c) The right to control our currency and exchange; (d) The right to control our fiscal policy; (e) the day-to-day administration of the land…. (Under the Act) You shall have nothing to do with external affairs. You shall have nothing to do with defense. You shall have nothing to do, or, for all practical purposes in future, you shall have nothing to do with your currency and exchange, for indeed the Reserve Bank Bill just passed has a further reservation in the Constitution that no legislation may be undertaken with a view to substantially alter the provisions of that Act except with the consent of the Governor-General…. there is no real power conferred in the Centre.' (Speech by Mr Bhulabhai DESAI on the Report of the Joint Parliamentary Committee on Indian Constitutional Reform, 4 February 1935.

However, the Liberals, and even elements in the Congress were tepidly willing to give it a go:

"Linlithgow asked Sapru whether he thought there was a satisfactory alternative to the scheme of the 1935 Act. Sapru replied that they should stand fast on the Act and the federal plan embodied in it. It was not ideal but at this stage it was the only thing. A few days after Sapru's visit Birla came to see the Viceroy. He thought that Congress was moving towards acceptance of Federation. Gandhi was not over-worried, said Birla, by the reservation of defense and external affairs to the centre, but was concentrating on the method of choosing the States' representatives. Birla wanted the Viceroy to help Gandhi by persuading a number of Princes to move towards

democratic election of representatives. Birla then said that the only chance for Federation lay in agreement between Government and Congress and the best hope of this lay in discussion between the Viceroy and Gandhi."

The Working of the Act:

The British government sent out Lord Linlithgow as the new viceroy with the remit of bringing the Act into effect. Linlithgow was intelligent, extremely hard working, honest, serious and determined to make a success out of the Act. However, he was also unimaginative, stolid, legalistic and found it very difficult to "get on terms" with people outside his immediate circle.

In 1937, after the holding of provincial elections, Provincial Autonomy commenced. From that point until the declaration of war in 1939, Linlithgow tirelessly tried to get enough of the Princes to accede to launch the Federation. In this he received only the weakest backing from the Home Government and in the end the Princes rejected the Federation *en masse*. In September 1939, Linlithgow simply declared that India was at war with Germany. Though Linlithgow's behavior was constitutionally correct it was also offensive too much of Indian opinion that the Viceroy had not consulted the elected representatives of the Indian people before taking such a momentous decision. This led directly to the resignation of the Congress provincial ministries.

From 1939, Linlithgow concentrated on supporting the war effort.

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