

Course Name- B.A.L.L.B. IVth Sem.

Subject- History

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Topic Indian High Court Act 1861 and
Federal Court

ESTABLISHMENT OF THE INDIAN HIGH COURTS

INDIAN HIGH COURTS ACT, 1861:

Introduction:

In the three Presidency towns of Calcutta, Madras and Bombay there were two existing judicial systems for administering justice i.e. the Supreme Court and the Sadar Diwani and Sadar Nizamat Adalat. This sort of judicial administration was inconvenient for the inhabitants of the Presidencies. In fact, it often clashed and it resulted in conflicting decisions. Ultimately, this problem was resolved by the British Parliament by enacting the Indian High Courts Act, 1861. The Indian High Courts bill was moved by the secretary of State Sir Charles Wood in the House of Commons on 6th June, 1861 and finally the Indian High Courts Act was passed by the British Parliament on 6th August, 1861. It was titled as "An Act for establishing High Courts of Judicature in India". The Act consists of 19 sections only. The Indian High Courts Act, 1861, abolished the Supreme Court and Sadar Adalat's in the Presidencies and the Act also empowered the crown to issue letter's patent under the great seal of the United Kingdom, to erect and establish high court of Judicature at Calcutta, Madras and Bombay. It further provided that the High Courts were to come into existence at such time as her Majesty might deem fit. Thus, on the establishment of the High Court, the Supreme Court, the Sadar Diwani Adalat and Sadar Nizamat Adalat at the concerned presidency were to be abolished and the records and documents of these courts so abolished were to become the records and documents of High Courts concerned.

Constitution High Courts:

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

Qualification of judges of High Court:

A person could be appointed judge of High Court if he was either:

1. A Barrister of not less than five years standing;
2. A member of the Covenanted Civil Service of at least 10 year's standing who had served as Zila judge for at least 3 years in that period;
3. A person having held judicial officer not inferior to that of principal Ameen or judge of a small cause court for at least 5 years;
4. A person who had been a pleader of a Sadar Court or a High Court for at least 10 years

. At least one third of the judges of the High Court, including the Chief justice had to be Barristers and the other one third of the judges had to be members of the covenanted Civil Service. The judges hold their office during the pleasure of her Majesty.

Laws to be applied:

The law which the high court applied was same as applied by the Supreme Court i.e. English law. However, the High court was allowed to use the principles of justice, equity and good conscience on the appellate side. In criminal law, it followed the I.P.C, 1860. So far as procedural laws are concerned the High Court's followed civil and criminal codes.

Jurisdiction of the High Court's:

The jurisdiction of each high court depends on the letters Patent issued by her Majesty. She could give them power to exercise all civil, criminal, intestate, testamentary, admiralty and matrimonial jurisdiction. She could also confer on them original and appellate jurisdiction and all such powers and authority with respect to the

administration of justice in the presidency, as she thought fit. Thus High Courts were given the following original and appellate jurisdiction.

1. Original jurisdiction:

The court had original jurisdiction in the following matters:

- (a) Civil Jurisdiction and
- (b) Criminal Jurisdiction

(a) Civil Jurisdiction:

The Original Civil Jurisdiction of the court was of two types:-

i. Ordinary Civil Jurisdiction:

The Ordinary Civil Jurisdiction extended to the town of Calcutta, Madras and Bombay and such local limit as from time to time could be prescribed by law of a competent legislature in British India. All suits of the value of Rs. 100 or more and which were not cognizable by the small court at Calcutta, Madras and Bombay were cognizable under High Courts. Further, the ordinary civil jurisdiction could be invoked only if:

- The movable property was situated within the town of Calcutta, Madras and Bombay;
- The cause of action wholly or partly arose in Calcutta, Madras and Bombay;
- The defendant was carrying on business or working for gain in Calcutta, Madras and Bombay.

ii. Extra Ordinary Civil Jurisdiction:

Extra Ordinary Civil Jurisdiction provides that the High Court could call a case pending in any lower court subject to its superintendence and could decide that case itself. This jurisdiction

could be exercised in a case where the parties agreed to such exercise or the High Court thought it proper to impart justice

. (b) Criminal Jurisdiction:

It is of two types also:-

i. Ordinary Original Criminal Jurisdiction:

In exercise of its Ordinary Original Criminal Jurisdiction the High Court was empowered to try all persons brought before it in due course of law. This jurisdiction was made available over the native criminals and crimes committed within the local limits of the presidency towns and beyond this limit over the Britishers and Europeans as the Supreme Court used to enjoy the jurisdiction over them before the establishment of the High Court.

ii. Extra Ordinary Original Criminal Jurisdiction:

The High Courts were to have extra Ordinary Original Criminal Jurisdiction which was not enjoyed by the High Court. Under this jurisdiction the High Court hear any criminal case against any person within the cognizance of any court which was subject to the superintendence of the High Court. If such case was referred to the high court by the advocate general or by any magistrate or any other officer specially empowered for that purpose.

2. Revenue Jurisdiction:

The High Court was given jurisdiction to hear revenue cases also which were precluded from the jurisdiction of the Supreme Court by the Act of Settlement, 1781.

3. Admiralty Jurisdiction:

The admiralty and vice-admiralty jurisdiction was also given to the high court

. 4. Testamentary and miscellaneous jurisdiction:

The High Courts were given similar testamentary, intestate and probate jurisdiction as was enjoyed by the Supreme Court. It also worked as the court of wards for the administration of the estate and persons (lunatics, idiots and minors).

5. Appellate Jurisdiction:

The appellate jurisdiction of the High Court was of two types:-

(a) Civil Jurisdiction: The High Court could hear appeals in all cases authorised by any law or regulation.

(b) Criminal Jurisdiction: The High Court had criminal jurisdiction in all cases decided by the subordinate courts to it. It could also entertain revisions against the decision of the lower court and reference from them.

Appeals from High Court:

An appeal to Privy Council lay from judgement of High Court in civil cases when the amount involved is Rs. 10,000 or more or if the High Court certified that the case is fit one for appeal. And in case of criminal cases from its original jurisdiction or if the High Court certified that the case is fit one for appeal.

The High Court Act, 1911

The High Court Act, 1911 was passed whereby the maximum number of Judges in each High Court was raised from 16 to 20. The act also empowered His Majesty to establish additional High Courts and give power to the Governor General to appoint additional judge for a period of two years.

High Courts under the Government of India Act 1915

The Government of India Act, 1915 was passed by the British Parliament on July 27, 1915 for consolidating and re-enacting all the provisions relating to the Indian High Court Act enacted earlier.

The act of 1915 provided that each High Court was to consist of a Chief Justice and as many Judges as appointed by His Majesty not exceeding twenty. The Governor General- in- Council was empowered to appoint additional Judges for a period not exceeding two years. The qualification for appointment of a person as a Judge of the High Court were as follows -

1. He should be a Barrister or an advocate of Great Britain of not less than 5 years
2. A member of Indian Civil Service for not less than 10 years including experience of 3 years as District Judge
3. A person who has held judicial office, not inferior to that of a Small Cause Court for a period of not less than 5 years
4. A person who has been pleader of a High Court for not less than 10 years

The act specifically provided that in all cases at least one-third Judges of the High Court including the Chief Justice but excluding the Additional Judges, had to be Barrister or Advocates and at least one-third of them were required to be a member of the Indian Civil Services.

All the High Courts were to be the Court of Record. The High Court could make rules and prescribe form for regulating the procedure of its subordinate courts.

The High Court was to apply personal law of customary law of the natives in deciding their cases relating to inheritance and succession of lands, rents and goods or contract provided both the parties were subject to the same personal or customary law.

The act provided that the Governor General, Governors, Lieutenant Governors, Chief Commissioner and the members of Government's Executive Council were immune from the original jurisdiction of the

High Court for anything ordered or done in their official capacity nor could they be arrested or tried in any proceedings in the High Court except for the offence of treason or felony.

High Court under the Government of India Act, 1935

The Government of India Act, 1935 repealed all the earlier Acts. Under this Act, every High Court to be a Court of Record. It was to consist of a Chief Justice and such other Judges as were appointed by His Majesty from time to time. The Judges were to hold office until the age of sixty years. They could however, be from office earlier on the ground of misbehaviour or infirmity of mind or body on the Recommendation of the Privy Council. The Act abolished the earlier system of appointing one-third Judges from among the Barristers and Advocates and one-third from the Indian Civil Services. The qualification for appointment as a High Court Judge remained more or less the same as under the Act of 1915. Now even an Indian, who had served as a Judge of the High Court for not less than three years, was eligible to hold office of the Chief Justice. An Indian member of the Bar could also be appointed as Chief Justice of a High Court provided he fulfilled the requisite qualifications.

The act further provided that the salaries and pensions of the Judges of the High Court were to be fixed by His Majesty and could not be changed to the disadvantage of any of such Judge.

The jurisdiction of the High Courts under the Government of India Act, 1935 remained the same as those of the High Court's immediately before the commencement of the Act. Thus they did not have original jurisdiction in revenue matters.

All the laws in force in British India immediately before the commencement of the Act of 1935 were to continue until they were annulled or repealed or amended by the competent legislative authority.

The High Court was empowered under the Act to get a case transferred to itself from any of its subordinate courts, on application by the parties. They had power of superintendence over all the courts subject to their appellate jurisdiction.

Appeal from the decision of the High Court could be taken to the Federal Court established under the Government of India Act, 1935. An appeal from the judgment, decree or final order of the High Court could be filed in the Federal Court only if the High Court certified that the case involved a substantial question of interpretation of the Act or any order of the Council. Under certain circumstances, an appeal could be taken to the Federal Court even without such certificate of fitness provided the value of subject matter of the civil case in dispute was not less than 50000 rupees.

The Government of India Act, 1935 also empowered His Majesty to issue Letters Patent constituting or reconstituting High Court for any Province or part of in.