CHAPTER I

THE LAWS IN OPERATION IN INDIA
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Legal system was there in India prior to occupation of Britishers as it was required for a disciplined society. The Moghuls, the Marahattas, the Native Rulers and the licensee foreigners had different set up of judicial system for their subjects. Religion, custom and usage had pivot role in deciding cases. In that back drop, the Britishers commenced their judicial structure differently at their three separate dominions, Calcutta, Madras and Bombay.

ADMINISTRATION OF JUSTICE IN CALCUTTA.

A few Englishmen established Calcutta in the year 1690 and acquired Zamindary over three adjacent villages in the year 1698. Like any other Zamidar they set up Criminal or Fouzdari Court and Cutchery or Adawlut to administer criminal and civil justice respectively and kept those under the control of one English officer designated as ‘Collector’. But Englishmen tried to assert themselves by making the Governor in Council of Calcutta the appellate authority and authority to ratify capital
punishment, the authority which was being enjoyed by Nawab of Murshidabad. Then the administration of justice was not impartial and was exercised not with a view to impart justice but for own interest. This system based on Company's authority as Zamidar continued till 1727 when in common with other Presidencies in India, a Mayor's court was established in Calcutta under the charter of 1726, Calcutta declared Presidency since 1699.

Necessity of Royal Charter of 1726, also called 'Judicial Charter' was much felt since the existing courts, and the system of administration of justice in the Presidencies were not every satisfactory. Also additional judicial powers were wanting for effective judicial administration to settle the properties of Englishmen died in India and above all to give recognition to the judgments and proceedings of court in India by courts in England.¹

¹ M.P. Jain, Outlines of Indian Legal History, Delhi, 1952, P.P.32-37.
ADMINISTRATION OF JUSTICE IN MADRAS

The judicial institution in the town of Madras before 1726 developed in three stages. First stage began with the foundation of Madras in 1639 on acquisition of a piece of land by the British Company, subsequently named as White Town, inhabited by only Europeans and Britishers with administrative control over a village originally named Madraspathnam and renamed as Black Town inhabited only by Indians. There existed two separate and distinct bodies to administer justice, the Agent and Council for the White Town and Choultry Court, the customary court for the Black Town. References were being made very often regarding judicial cases of White Town to England and similar cases were referred to the Raja relating to Black Town. This judicial administration was improved under the charter of 1661, but to the total disregard of Indian custom usages and laws and conferring privilege to the English men granting judicial power along with administrative power to the Governor in Council to be exercised in accordance with the law in force in England lifting the restriction on punishment only by way of imprisonment or fine prescribed under charter
of 1660. However, this charter of 1661 only took effect in the year 1665 because of the difficulty in trial of a murder case of one Mrs. Ascentia Dave as the accused by persons having no legal back ground or training and that led to securing the status of Presidency to Madras that year.

The second stage came in the year 1678 with setting up the court of the Governor in Council designated as High Court, a Superior Court of Judicature with appellate jurisdiction only and reorganised choultry court as lower court.

The third stage ushered in with the creation of Admirality court in the year 1686 under the charter of 1683 of the Company and end of the court of the President and Council. Next came the court of Mayor for the Corporation of Madras but it administered justice not according to any set regular legal system, but merely on the basis of ‘Justice and good Conscience’. The decision, therefore, lacked uniformity and consistency. In the year 1704 the Admirality Court was replaced by the Court of Governor in Council and Mayor’s Court by another Mayor’s Court, a Crown’s Court under the Royal Charter.2

ADMINISTRATION OF JUSTICE IN BOMBAY

The first judicial system in Bombay was established in 1670 with superior court consisting of the Deputy Governor in Council having both original and appellate powers and lower courts for its two divisions with limited punishment power. Till 1672 the system did not function well since no Judge had legal background.

The 1st phase of reformation came when in 1672 abolishing Portuguese laws English law was given effect to. Civil cases were tried by a Judge with the help of jury, after preliminary trial by a Justice of the Peace. Criminal cases were tried by a central court with the help of jury and Justice of Peace. Appeals from these courts were preferred to Deputy Governor in Council of Bombay. Besides these courts, Court of Conscience also was established to dispense Justice to the poor without any cost. This judicial system of 1672 was designed to dispense justice at a very low cost and each case to be disposed of within ten to twelve days.

The second phase came into being exactly on the same lines as the one stated in Madras in 1686 on abolition of previous system and establishment of an Admirality Court in 1684 headed by a professional
lawyer from England and Admiralty Judge who also acted as Chief Justice of Bombay and who dispensed justice in all types of cases.

The third phase came after an eclipse of about 30 years in the year 1718 on establishment of a new court consisting of English Chief Justice and five English Judges and four Indian Judges with original and appeal jurisdiction over all types of cases. Indian Judges were of less importance since quorum of the court was to be three English Judges, Indian Members not counted towards quorum and when English Judges were called by individual names the Indian Judges were called collectively as Black Justices. Indian Judges were included by the precedent of Mayor's court of 1687 at Madras to enlighten English Judges on the manners and customs of natives. This court administered justice in rough, ready and commonsense, there having no code, no law reports, no books of law, no lawyer, no argument. Punishment was awarded 'during pleasure' and sometimes no mere suspicion and doubt as opposed to proof. A better Court the Mayor's Court replaced this inferior type of court under the Royal Charter of 1726.3

UNIFORMITY OF LAW IN INDIA

The different judicial systems followed in different English territories in India needed uniformity after Britishers made their strong hold on their dominions, they intending to leave back the earlier judicial structure they have been following to certain extent.

By the Royal Charter granted in 1726, the 13th year of the King George I, all the common and statute law at that time extant in England was introduced into the Indian Presidencies.4 The Regulating Act, the 13th Geo.III c.63, passed in 17735 empowered the Governor-General in Council to make and issue such Rules, Ordinances, and Regulations for the good order and civil Government of the United Company’s settlement at Fort William in Bengal, and all places subordinate thereto, as should be deemed just and reasonable subject to vetting by the Supreme Court of Judicature to be established under the

5. Ibid, Section 36 and 37.
said statute. The 3rd and 4th William IV c.85 by Section 43 empowered the Governor-General in Council to legislate for India for repealing, amending or altering former and future laws and regulations and by making laws and regulations for all persons whether British or native, foreign or others and for all courts of justice, whether established by His Majesty's Chapters or otherwise. While not affecting the right of the Parliament to legislate for India such laws and regulations would have the force of Acts of the Parliament.

The revival of the Hindu law and the continuance of the Mohammedan law were responsible for the emergence of a few new texts on the subjects of Hindu and Mohammedan law during the Company's regime. English common law principles were followed in cases of contract in the Supreme Court at Calcutta. There were Court Pundits in the Supreme Court at Calcutta to express their views on questions of Hindu Law.6 The English law prohibiting usury applied in India only to British subjects7 and not to native lenders.8

8. Ibid, Issenchunder Chatterjee Vs. F.W.Biddle (1851).
The Hindu law as enunciated in the shastras was applied in cases of mortgages by the Hindus.\(^9\) Trade usage of the Hindu community had the force of law,\(^10\) local customs of merchants were considered the basis of decisions.\(^11\) The English statute of limitations (21 Geo.III C.70. S 17) did not apply to Hindu parties in the Supreme Court at Calcutta.\(^12\) The peculiarities of the Mohammedan law including the law of contract was obeyed.\(^13\) In absence of Hindu or Mohammedan law or a regulation or Act governing a particular contract, the English common law principles were followed also in the Sadar Courts.\(^14\) Where the regulations,\(^15\) Acts or general usages\(^16\) governed the matter those were so

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   Raja Burrodi count Ray Vs. Bisnosoondery (1836) Mor.91

10. Ibid, Mohan Lall Tagore Vs. Naroojee Cahoojee (1815)
   Fast’s Notes, Case 16.


12. Ibid, Greedhur Babu Vs. Sree Luchesunder Dass, Hyde’s Notes 1781 Sr. R.52 Mor 350.

13. Ibid, Mt. Rabea Khatoon Vs. Budroosina (1841) 7 S.d.

   Sel. Rep. 196 (bailment)

   Sum. Cases 96.

applied. On the subject of contract, Hindu law was expressly applied in cases of bonds,\textsuperscript{17} loans,\textsuperscript{18} conditional acquittance of debt, surety,\textsuperscript{19} unjust enrichment\textsuperscript{20} and other allied heads. The legal rates of interest under the Hindu law varied according to the caste or class of the borrower. The Hindu law of limitation as enunciated in the Hindu shastras was applied in the cases of contract of the Hindus.

\begin{itemize}
\item[18.] Ibid, Manichund Purbhoo Vs Deo Karinta Teoligras (1824) Sel. Rep. 9.
\item[19.] Ibid, Chuttoobhuj Ramanooj Doss Vs Mohunt Humerian Doss (1841) 7 S.D.A. Rep.15.
\item[20.] Ibid, Gopee Churun Burral Vs Mt. Lukhee Tishmuree Dibia (1821), 3 S.D.A Rep.93.
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