CHAPTER SIX

Administration of Justice, Crime, Punishment and Occupational Caste Groups in Madras

Introduction

Justice is very subjective. It depends upon the outlook of the judge. Judge ought to be free from different prejudice consisting class, caste, religion, and region and race and so on. Unfortunately it was never objective and justice always carries some kind of prejudice. However, justice system also depends upon the mode of administrative government structure. For instance, the mode of government during Ancient and Medieval India was the autocratic government, but during the British government the mode of government was more or less democratic set-up. In autocratic system, the judiciary system totally depends upon the emperor or ruler while in the democratic system judge can also play a very important role in dispensing justice.

The English company was having a more or less democratic set-up based on the British government system. Inquiry system and trial system was a great feature of the East India company judicial policies. In some cases, towards Indians it was also based upon the race system in which they gave lot of importance to the Europeans but it also gave lots of importance to the Indian ignoring caste and class prejudice. As a result, the English Company played a very significant role in the field of law, justice, crime and punishment. The occupational castes had a great chance to empower themselves by getting the secular kind of justice system.
During the 17th and 18th centuries, at Madras under the English Company, the processes of investigations were democratic and labourer had every option to complain against the higher classes. As result of this, the labourer castes were much benefited from the new constitutional legal structure of the British. According to C.K. Mohan Rao, the British Company was politically strong and they brought new constitutional structure of their own in India with what they have had an experience in England to suit their political ends in India. As they felt difficult to ignore the social inheritance of India, due importance was given to the Indian subjects in their political as well judicial administration in India. He further states that The English law was based on the principle of equity and good conscience. In exercise of their discretion they even applied principles of Hindu and Muslims laws and even customary laws in many ways. H.D. Love quotes Salmon’s description of Madras and he also pointed out about the affairs of the judicial affairs. He says that the Governor and the Council directed the company’s affairs, and they inflicted any corporal punishments, short of life and dismemberment upon such Europeans as were in their service, and dispose of all places of profit and trust. There was also a court of mayor and aldermen held twice at town-hall, where the Asiatic inhabitants sue for their debts, and implead one another, but the civil cases among the Europeans were usually decided by a jury in the court of the Judge Advocate, to which belong two or three attorneys, and as many serjeants or bailiffs who execute their processes, and make arrests for debt, &c. There were also justice of peace who hold their sessions in the Black Town, and decide criminal matters

2 Ibid, p.102.
among the Indian inhabitants; and though they do not give judgments in capital cases, yet he has known them proceed against the natives so far as the cuttings off their ears in the pillory, and as much as he remembers, the offence was stealing people's children to make slaves of them. There was also a court of admiralty for maritime affairs, and the Governor sometimes suffers the officers of the land forces to hold Courts-martial, and inflict punishments on the soldiers. As for capital offenders, they were imprisoned, till they can be sent to with rice and water; and thus trivial offenders, and those whom the government have any jealousy of, were sometimes punished; but death itself would be more eligible to most men, for they neither suffer them to be relieved by their friends, or any conversation with them, that there might be no complaints of hardships carried to Europe. 3

Records mentioned that a watchman complained against Berry Timapa, a merchant who had taken forcibly his dwelling house during the time of late president in which he and his forefather had lived for sixty years. The company issued summonses unanimously to all the heads castes of the company's merchants and the company had taken the following decisions;

1. Watchman and his ancestors had been in peaceable possessions of this house at least sixty years.
2. Watchman's father had made the house from the ground upon a spot allotted to him by Timapa's father who was at that time entrusted by the Agent and the Council as principal inhabitant of the place to parcel out the ground in the Black

Town to such persons who were willing to reside and build in it which was all the titled Timapa could any ways pretend to the aforesaid house and ground.

3. Colloway Chitte, one of the Joint Stock Merchants particularly declares that the house he now lived in and enjoyed was built by his father in the same manner on a piece of ground given him by Timapas ancestors and said to be permitted to pretend a title to such built upon ground allotted by his father and most of the best houses in Town will fall to Timapa by the same title.

4. Upon full examination of the matter we did not find that Timapas ancestors had any titles to this ground in dispute but was only entrusted by the Agent and the Council to dispose of it as aforesed.

5. Company found that Timapa by false witnesses several other subtle practices did impose upon the Justice of the Choultry so far as to get their consent to turn the poor fellow out of his habitation and to make a bill of sale for the disposal of it to another person, which he did for fifty pagodas.

6. Resolved that this house in dispute standing in the weaver's street joining the house of Poly Chitte to the westwaed rightfully belonged to the Watchman whose ancestors built it so many years ago the said Watchman acknowledged paying quietly rent to the company according to the established rent rule.

7. Ordered that the Watchman be immediately put into possession of the Said house and Timapa be obliged to repay the fifty pagodas to the person to whom he sold it by a false title.

---

The above narration of the case shows the democratic process of investigation regarding justice to the labourer. There is other example for showing the justice for the labourer.

The records of 1712 mentioned following incident;

"The Secretary acquaints the Board that he has perused the Consultations for several years past, but finds nothing relating to the prisoners mentioned in our last Consultation; however upon enquiry into the matter we find that there are two Weavers inhabitants of Triplicane who are indebted part of the sum that stands out upon the general books, under the head of Comrapa &c. Weavers, which debt was occasioned by money advanced to the Weavers in general by Mr. Higginson and his Council to build them houses in Triplicane for the improvement of the manufacture, part of which money has been paid at times, and these two persons now in custody, being (poor) and not able to discharge their part, were committed by Government of Pitt and have continued prisoners ever since, and being very well satisfied upon enquiry that they are miserably poor, and will never be able to pay, unless they are released and suffered to work at their Trade. Ordered that the Said Weavers by name Tondoway Pundaurum and Comra be forthwith discharged and that it be recommended to our Merchants to keep them employed."^5

History of Judiciary System in Madras

The early centers of British power in India were the three Presidency Towns of Madras, Bombay and Calcutta which were founded by the British and which grew

---

almost from a scratch. The year 1726 constitutes a landmark in the Indian Legal History as it gave new orientation to the judicial system in the three Presidency towns.\(^6\)

The judicial system at the Presidency towns was designed primarily to administer justice to the Englishmen. But, with the passage of time, the Indian population of these settlements increased and, therefore, adjustments had to be made in the judicial system with a view to providing for the administration of justice to these people as well. Despite this fact, however, the judicial machinery in the Presidency Towns remained heavily oriented towards the English legal system.

Madras was the first Presidency Town to be established by the British in India. Here, the judicial institutions grew in three stages before 1726. In the first stage, from 1639 to 1665, administration of justice was in an extremely elementary state. The second period, which runs from 1665 to 1686, saw the establishment of the court of the Governor and Council. The significant event during the third period from 1686 to 1726 was the creation of two courts: the Admirally Court and the Mayor’s Court.\(^7\)

### Growth of Judiciary System in Madras

**FIRST PERIOD: 1639-1665**

Madras was founded in 1639 by Francis Day who acquired a piece of land on the Eastern sea-coast from a Hindu Raja.\(^8\) Here the Company constructed a fortified

---


\(^7\) Ibid, p. 13.

\(^8\) H.D. Love, *Vestiges of Old Madras, 1640-1800*, vol. 1, Asian Educational Services, New Delhi, 1996, p. 17. Sometime after making the grant, the Raja was overthrown by the Nawab of Golconda. In 1672, the British and the Nawab agreed that the Madras Town would “wholly remain forever under the
factory and named it as Fort St. George. The Raja had also granted to the Company full power and authority “to govern and dispose of the government of Madraspatnam” which was a small village lying near the fort. In course of time, many Indians were attracted to the place because of the facilities of trade and commerce available there, and the small village of Madraspatnam grew in size and population and came to be known as the Black Town as most of its inhabitants were Indians. Inside the fort grew the White-Town—a settlement of the British and other Europeans. The whole settlement comprising the Black and the White owns came to be known as Madras.  

Administrative Set-up

Foxcroft, was the first Agent to be created governor of Fort St. George, a title which was transmitted to a long line of distinguished successors. To modern occupants of the gubernatorial chair it is probably unknown that they owe their designation to a Madras murder. Such is the fact; but, to explain the sequence of events, it will be necessary not only to advert to the judicial powers exercised at Fort St. George, but to enumerate the successive charters from which those powers were derived.  

Charter of Elizabeth, 31st December, 1600.—This, the earliest charter of the Company, constituted the ‘Governor and Company of Merchants of London Trading to the East Indies’ a body corporate, and granted it the exclusive right of trading to the

English”, Ibid., 345. In 1687, Golconda was conquered by Aurangzeb but the Status of Madras remained unaffected, ibid, 513.

9 WHEELER, Madras in the Olden times, 31 (1882).-

10 Charters granted to the East India company. Printed for the Company, 1774 Charters relating to the East India Company (John Shaw, Madras, 1887) is a reprint, with additions, of the above.

East Indies for a period of fifteen years. The charter gave the Company power to make laws for its own government and for that of the factors, masters and mariners employed in voyages, provided such laws were not repugnant to the laws of England. It also conferred authority to punish offenders by imprisonment or fine. 12

Charter of James I., 31st May, 1609. – This charter confirmed and extended that of Elizabeth.

Charter of Oliver Cromwell, 1657. – No copy of this charter has yet been traced (Magna Carta)

Charter of Charles II, 3rd April, 1661. – This important charter gave the Company authority over all forts and factories in the East Indies, empowered it to appoint Governors and other officers, and authorized, the Governor and Council of a place to judge all persons living under them in all causes, civil or criminal, according to the laws of England, and to execute judgement. The Company was given power to send out ships or war, men and ammunition, to erect fortifications, to provide men for their defence, to govern the force by martial law, and to make peace or war with any non-christian power.

Charter of Charles II., 9th August, 1683. – This charter authorized the establishment at any factory of a Court of Judicature, consisting of one person learned in the civil laws and two merchants. It was designed primarily as a Court of Admiralty.

Charter of James II., 12th April, 1686.—this charter confirmed those of 1661 and 1683, and empowered the Company to appoint admirals and other sea officers, who

might raise naval forces. The Company was also authorized to coin any kind of money issued by the princes of the country.

An important charter which was issued by the Company in 1687, for establishing a Mayor and Corporation at Madras, will be considered later; and subsequent royal charters granted to the Company will be enumerated in due course.

From this brief abstract it will be seen that the charters of Elizabeth and James I. contemplated merely the framing of by-laws and the maintenance of discipline during voyages. Concerning the terms of Cromwell’s charter we are ignorant, but it is probable that, prior to the issue of the charter of 1661, the Agent and Council possessed no judicial authority over the inhabitants but such as was derived from the native suzerain.

Charter of Charles II., 3rd April, 1661. This important charter gave the Company authority over all forts and factories in the East Indies, empowered it to appoint Governors and other officers, and authorized, the Governor and Council of a place to judge all persons living under them in all causes, civil or criminal, according to the laws of England, and to execute judgment. The Company was given power to send out ships or war, men and ammunition, to erect fortifications, to provide men for their defence, to govern the force by martial law, and to make peace or war with any non-Christian power.

Charter of Charles II., 9th August, 1683. This charter authorized the establishment at any factory of a Court of Judicature, consisting of one person learned in the civil laws and two merchants. It was designed primarily as a Court of Admiralty.

Charter of James II., 12th April, 1686.—this charter confirmed those of 1661 and 1683, and empowered the Company to appoint admirals and other sea officers, who
might raise naval forces. The Company was also authorized to coin any kind of money issued by the princes of the country.

An important charter which was issued by the Company in 1687, for establishing a Mayor and Corporation at Madras, will be considered later; and subsequent royal charters granted to the Company will be enumerated in due course. From this brief abstract it will be seen that the charters of Elizabeth and James I. contemplated merely the framing of by-laws and the maintenance of discipline during voyages. Concerning the terms of Cromwell's charter we are ignorant, but it is probable that, prior to the issue of the charter of 1661, the Agent and Council possessed no judicial authority over the inhabitants but such as was derived from the native suzerain. The mode in which justice was administered is nowhere described, but it can be inferred from sundry allusions in the records.

The Company Dispense Justice the Occupational Caste Groups (Women and a Slave Girl) in the year 1641 to 1665.

The case of 1641, where a native woman was murdered by a man of the same race, has been mentioned on an earlier page. Some sort of trial took place, and the finding was immediately reported to the Naik, who commanded that justice should be done according to English law. The criminal was thereupon hanged. In 1642, when Antonio Mirando slew a British soldier, the Council was unwilling to deal summarily with European subject of a foreign power. The Naik, however, insisted, on his immediate execution, and Mirando was accordingly shot. In 1644, when Sergeant Bradford inadvertently caused the death of a native, the case was referred to the
principal inhabitants, why brought in a verdict, under native law, of accidental death. Offences by British subjects in which Indians were not concerned were dealt with by the Agent in Council. Thus Thomas Paine and Thomas Morris, found guilty of sedition, were punished with the decided number of lashes.¹³

From a very early period, and probably from the first settlement of Madras, justice was administered to the Indian inhabitants by a native Adigar, or Governor of the Town, Sitting at the Choultry or Town-house. Kanappa, a Brahman, was appointed to this post by Ivie but his father held office before him. President Baker ousted Kanappa, and appointed Captain Martin and John Beigh to sit as magistrates during alternate weeks. Sir Edward Winter, who came out armed with the charter of 1661, reverted to the old plan, and appointed Timmanna and Veroan to rule the town. Foxcroft, however, dismissed the two natives, and gave judicial control to William Dawes.

About 1665 a madras slave-girl came by a violent death, and her mistress, Mrs. Ascentia Dawes, was accused of the capital crime. Uncertain of their powers, the Agent and council asked for instruction from England. The Company replied as follows:-

*The Company to Fort St. George.*

*We are very sorrie for that Inhumane Act Perpetrated by Mrs. Dawes in Murthering of her Servant, which at present is under our consideracion, to give you Advice and Orders how to proceed with her and othes (if any) that were assisting to her in the Murther, And how to prosecute such persons in the future that shall*

Committ the like horrid Actions within the Lymitts of our Fort and Towne of Madrass. Our Shipp, on which we send you this our letter, being so sudainely to depart, we know not whether we shall give you directions how to prosecute her. But if we should not before finishing hereof, you may expect all things at Large in relacion thereunto by our next (Let Bk., vol.4, 7th March, 1665).14

After deliberations, the Company resolved that, under the authority given by the charter of 1661, the Agent at Fort St. George should be created Governor, with judicial power to try this and similar cases:

The Company to Fort St. George.15

‘Having received from you an account of that Cruell act laid to the charge of Mrs. Dawes upon one of her Slaves, we thought it our duty that the Law might have its due proceedings in that case upon her. For that end we searched our Charter, wherein we find that the respective Governours and Councells Established by us in any of our fortes, Townes, etc., have power to exequete Judgment in all Causes Civil and Criminal. Neverthelesse, for or and your better satisfaction herein, we thought fit not onely to advise with his Majesties learfned Councell upon the Clause in our Charter which giveth such power, but also to make our addresses unto his Majestie for his special allowance and direction, as you will perceive by his Majesties letters and by a Coppie of the said Clause of our Charter, together with the Sollisitor Genneral his opinion thereupon and directions in the Case, which we have herewith

14Order of the company, quoted by H.D.Love in voi 1, p273.

15 This letter is addressed to 'Our Governour and Agent and Counsell in Fort St. George.'
sent you. And to the end we might the more exactly pursue the words of our Charter,
We have thought fit to Constitute you Governour of our Towne and Forte where the
fact was Committed, as well as Agent, and to appoint you a Councell under our
Seale, which, together with some Instructions and directions how to proceeded in the
Triall of this woman, and of such as were Assistants to her, if any were, we have like
wise here with sent you.'(Let. Bk, vol.4, 10th March, 166 5/6).16

This dispatch reached Madras during Winter' usurpation, but it was designed
for Forxcroft, who must accordingly be regarded as the first of the long line of
Governors of Madras. Mrs. Dawes was not tried until Foxcroft had been reinstated. As
the first trial by jury in Madras, the proceedings therein were worth recording:-

Fort St. George to the Honble. Company.

'In pursuance to your order and His Majesty's Commission to that purpose,
we proceeded to the tryall of Ascentia Dawes about the murther of Chequa alias,
Francisca, and did therein in all points proceed with as much exactness as we could,
according to the instructions you gave. Her Indictment was made according to the
forme you prescribed, a precept issued out, and 24 Persons summoned for a grand
Jury, whoe returned the Indictment billas vera, whereupon a precept was issued to
summon a Jury of 12 Persons for her tryall. There were 36 summoned, and
appearing, the indictment was read, and shee, as they came to be named, being told
shee might except against 20 without shewing any cause, but shee excepted only

16 Order of the company ,quoted by H.D.Love in voi 1,p,274.
against three, vixt., Sfìr Edward Winter, Mr. Robert Fleetwood17 And 12 being
sworne, six English and six Portingalls, and the Indictment read againe, we
proceeded to examination of the witnesses before the Jury, whoe goeing apart, after 
about two houres time sent a note into the Court subscribed by their foreman, 
Wherein they say they finde her guilty of the murther, but not in manner and forme, 
and, therefore, desired directions from the Court. Answer was returned that they
must bring in a verdict guilty or not guilty without exception or Lymitation. After
some small stay they came in with a verdict. Being asked whoe should speake, they
answered their foreman Mr. Reade,18 whoe, contrary to all expectation, gave in the
Verdict not guilty. The Court, supposing it was a mistake, asked him againe, and he
continued to give the same verdict not guilty, and the whole Jury, being asked, said
soe, too, whereupon she was quit; but for your further satisfaction you may please to
be referred to the narration19 of the whole procedure drawne up by the Clarkethat
attended the Court. We found ourselves at a loss in several things for want of
Instructions having noe man understanding the Laws and formalityes of them to
instruct us, as... whether anything more had been to be said to the Jury when they
brought in such an unexpected verdict. We proceeded in those and other particulars
according to the best of our Judgments... But if any like case shall occur, we shall
neede the direction and assistance of a person better skil'd in the Law and

17 Robert Fleetwood was in 1668 Chief at Madapollam, where he died in 1676.

18 Mr. Edward Reade, a son-in-law of Thomas winter, was their of Council in 1663.

19 Not preserved.
formalityes of it than any of your servants here are...(O.C., No. 3171,20 15th April, 1669.)21

On his reinstatement, Governor Foxcroft appointed two justices to the Choultry. Thomas Clake and Nathaniel Foxcroft appear to have stayed there until the latter died on the 26th October, 1670. At Clarke’s resignation shortly afterwards, Messrs. Hynmers and Bridger were appointed:-

Fort St. George to the Honble. Company.

‘Mr. Thomas Clarke hath made it his request to be freed from the trouble of the Chowtrey, to which the Governour hath consented, although he be still retained for Persian, jentue, and Portingall Letters, the translacon whereof and of their answers gives him full imployment. The Governour hath ordered Mr. Joseph Hynmers to take the care of the Chowtrey, and hath hoyned Mr. Bfridger with him. Mr. Hynmers is a person very able and very sedulous in business, and loves to be at it, and gives a quick dispatch to what hee hath under hand. Hee doth also take the care of the coyneing, which is no small trouble to him notwithstanding the helpe hee hath provided by Mr. Gofton22 and mr. Keble, the first whereof is under so deepe a Melancholy thats makes him avoid all company or converse. I have appointed Mr. Hynmers to put him fully upon business about the coinage, if it may be to divert his Melancholy.

20 In the O.C. Series this paper is placed among documents of 1666.
22 John Gofton was a writer, lately arrived from England.
'Mr. Bridger is of a considerate, sober and sedate spirit, of experience, knowledge and understanding, and agreeing with Mr. Hynmers with all friendliness, they will together make a fit mixture to carry on cases and affaires in the Chowtrey with better content and satisfaction to the People than they might have had in either of them alone; and with just and equal satisfaction to the People will continue the honor of our nation, which was upheld and no ways stained by their Predecessor now Deceased, although some black mouth did endevour falsely to asperce him to your Workships, to which your Agent will say little (though he might much), last you should interpret that his relation to him should make him partial; but were any of you here to understand the general esteem he had amongst the Portugeses, Jentues and all others, by which he obtained a good report amongst all men, and from all English with whom he conversed in this and your other Factories, I dare be bold to prophesy that, had it pleased God to have lengthened his life to arrive in England, you would have found good cause to abate of any hard thoughts his envious detractors had prepossessed you with of him...23 (O.C., No. 3575, 6th Sept., 1671.)24

Nawab Neknam Khan had for years been urging the acceptance of an 'Aveldore'25 or native governor of the town. Foxcroft sturdily resisted the demand as an infraction of authorized privileges; and relations became strained. The Company imagined that the native population of Madras desired a Havildar, and the Council wrote to disillusionize them:-

23 Nathaniel Foxcroft's tombstone, now in the paving outside St. Mary's Church records that he a 'alwaye exhibited all the honor due from a dear and dutifull son to his parents, and by his universal obliging and ingenious conversation obtained a good report, and left a good name with all men.'


25 Aveldore, havildar, from Pers. Hawaldar, one holding an office of trust.
Fort St. George to the Honble. Company.

'We humbly conceive you mistook our meaning when you say the Natives desire to have an Aveldore and a Government amongst themselves. They are well satisfied under your present Government, and dread nothing more than to have an Aveldore set over them, from whom they expect, according to the manner of the Moores, nothing but Tyranny and oppression at the Will and pleasure of Governors who are ready to give large sums to have a government given them, and then, without remedy, to squeeze the People at their pleasure to raise the money and Rent they contract to give when a Government was committed to them.

'It is true that we writ that the Portingalls desired judges of their owne Nation might be set over them to judge them according to their owne Lawes, as sometimes they have had here; whereunto, though we should be glad to consent to avoid a multitude of troublesome suits and Quarrells with which they trouble your judges in the Chowntrey, much more than they are troubled with all other suits that come before them, yet, because it seems to intrench upon your jurisdiction, we could not, without your advice and order, consent thereto ...(O.C.,No.3575, 6th Sept., 1671.)

Judicial System

Very meagre information was available regarding the early judicial system in the settlement. Justice was dispensed to the inhabitants of the White Town by the Agent and the Council. The scope of their judicial power was very vague and indefinite and,

therefore, they hesitated in handling serious criminal cases and very often referred such cases to the Company's authorities in England for advice. As communication between India and England in those days took a long time, administration of justice became very dilatory and unsatisfactory. The only available account of a case disposed of during this period is that of two Englishmen who were found guilty of sedition and were punished with the lash.\textsuperscript{27}

Though the Raja had left the responsibility to administer the Black Town to the English, they did not evince much interest in this respect at this time. No regular judicial tribunal was established and the old, traditional, indigenous system, which had been operating in the Village of Madraspatnam before the advent of the British, was allowed to continue. Thus, a Choultry Court with Adigar\textsuperscript{28} as the judge decided small civil and criminal cases. Adigar Kanappa who had inherited the office from his father abused his power at the Choultry in various ways, the most serious of which was that he connived at stealing of children for being sold as slaves. He was, therefore, dismissed from office in 1652, and two English servants of the Company were appointed to sit at the Choultry\textsuperscript{29}. The Choultry Court was merely a court of petty cases. No other court was created for trial of those civil and criminal cases which fell beyond the competence of the Choultry Court. Not much information is available about the method used for the purpose. Some vague ideas can, however, be formed from

\footnotesize{\textsuperscript{27} LOVE,ibid,p, 273}

\footnotesize{\textsuperscript{28} Adigar was the village headman. The term adigar is derived from the term ‘adhikari’ meaning one who has authority (village Munsiff).}

\footnotesize{\textsuperscript{29} FOSTER, English Factories. (1637-41),P, 315: LOVE,ibid,pp, 128, 130, 131, 231, 232.}
sundry references to some cases in the records of the period. In 1641, an Indian was accused of murdering the woman with whom he had been cohabiting. After some sort of a very informal inquiry, he was found guilty of the offence. No formal trial was held; a few questions were asked; his house was searched from where clothes and jewels of the deceased woman were recovered and this was found sufficient to condemn him, The Agent communicated the finds to the Raja who ordered the justice be done according to the English law and so the accused was hanged. In 1642, a British soldier was killed by a Portuguese. The Council was unwilling to deal summarily with a subject of a European power. The Raja, however, ordered that the accused be executed and, therefore, the man was shot dead. In 1644, Sargeant Bradford killed a native by accident. Instead of trying Bardford themselves, the Agent and Council referred the matter to the principal inhabitants of the Black Town who brought in a verdict of death by accident.30 This procedure appears to have been adopted presumably because the crime had been committed against an Indian.

No established procedure- These accounts reveal several things. First, there was no fixed form of trial procedure and, usually, the methods resorted to for the purposes were informal. Trials of serious crimes committed by the Indians, or by others against them, appear to have been conducted on an ad hoc basis and the procedure for the same varied from case to case according to the expediency obtaining in the circumstances of each case. Secondly, the Agent evinced some interest when a serious crime was committed in the Black Town. In capital cases committed by persons other than the

30 LOVE, ibid, pp, 42, 272-3; Foster, ibid, p, 315
British, reference was usually made to the Raja who invariably ordered that the accused be punished according to the English law. It is possible that this practice arose because the Agent and Council lacked power to inflict death sentence under the Charter of 1600, and so they could inflict such a sentence only under the authority of the local sovereign. It may also be that the British administrators did not want to cause any annoyance to the raja, and executing an Indian without his prior consent might have created some misunderstanding between him and the British. This situation however did not last very long.

This period is, therefore, conspicuous by the absence of any systematic and regular administration of justice. The judicial methods were elementary. The system, if it can be called a system at all, consisted of two bodies to administer justice, the Agent and Council for the White Town and the Choultry Court for the Black Town. The former was not efficient as it was a very hesitating sort of court and was not sure of its power. The Choultry Court could decide only petty cases; for trial of serious cases arising in the Black town there was no established procedure or forum.

3. **SECOND PERIOD: 1665-1686**

**Extensive power and delay in Justice**

The Charter of 1661 which had conferred extensive judicial power on the Governor and Council of a settlement, did not become immediately operative in Madras. Thus, there occurred no change in the judicial set up and status quo was

---

31 It does not appear that the Company conferred power upon the Agent and Council under the Commission of 1623. Even if it had, the power could cover only the Company's British servants and not the Indian inhabitants of Madras;
maintained in this place for sometime. A criminal case in 1665, however, proved to be the turning point in this respect. One Mrs. Acentia Dawes was brought for trial before the Agent and the Council on a charge of murdering her slave girl. As was their usual practice, the Agent and the Council, being uncertain of their powers in such cases, referred the matter for advice to the Company's authorities in England. The Company decided to make the Charter of 1661 effective in Madras, and, to this end, raised the Agent to the status of the Governor.\textsuperscript{32} This step was necessary because the Charter vested judicial power in the Governor, and not in the Agent, and the Council. One of the effects of applying the Charter of 1661 was that the judicial power of the Governor and the Council became extended not only to the Englishmen but to all living in the settlement. The Agency of Madras thus became the Presidency in 1665. Soon, thereafter, the Governor and the Council tried Mrs. Dawes with the help of jury. Both grand and petty juries were used. The petty jury consisted of six Englishmen and six Portuguese. This was the first jury trial held in Madras. After hearing the witnesses, the jury retired to consider its verdict. The foreman sent a note to the court saying that the jury found her guilty of the murder, “but not in manner and form” and so desired directions from the court. The Governor and Council returned the answer that the jury must bring in a verdict of ‘guilty’ or ‘not guilty’ without any exception or limitation. Quite unexpectedly the jury returned the verdict of ‘not guilty’ and Mrs. Dawes was acquitted. None of the Governor and the Council was qualified and competent to reverse the verdict of ‘not guilty’ and Mrs. Dawes was acquitted. None of the Governor and the Council was a lawyer by education, training and practice, and so these people

\textsuperscript{32} Letter Book, vol. 4, March 10, 1665.
felt difficulty in meeting the legal complications which arose in the trial. They did not know what to do when the jury brought in such an expected verdict. They expressed their predicament to the Company in a letter in which they said that in the particular trial they had acted according to their best judgement but “if any like case shall occur, we shall need the direction and assistance of a person better skilled in the law and formalities of it than any of your servants here are”. This vividly brings out the difficulties which non-lawyer judges encountered in administering justice without any legal assistance. But, in spite of this appeal, the Company did not send any lawyer to Madras. Justice continued to be dispensed by the Governor and the Council according to their wisdom and commonsense. Needless to say, the quality of justice could not be of a high order in these circumstances. The Charter of 1661 had stipulated the administration of English law but, as none of the judges had even an elementary knowledge of this law, this clause in the charter remained a dead letter for all practical purposes.

Justice did not gain much by the establishment of the court of the Governor and the Council, as it did not function regularly or efficiently or earnestly. In criminal cases, the accused persons had to wait for long before they were put on trial. The main reason for the delay was that the Governor and the Council, like their predecessors, the Agent and the Council, being conscious of their lack of legal knowledge, hesitated to decide criminal cases without consulting the Company’s authorities in England, and in those days consultation between Fort St. George and London involved the inordinate delay.

33 LOVE, pp. 274, 275.

34 The administration of justice was not fully professionalized in Madras until the creation of the Supreme Court in 1802.
There is a case on record, dated January 31, 1678, in which for 31 months in a pitiable condition without trial as his case had been referred to London. In yet another case, a Portuguese inhabitant charged with the murder of his servant, "a black christian", was confined to prison and consultations were going to between the Company and the Madras Council which had asked the Company "to send out a sufficient power to proceed against him". These cases reveal very deplorable state of affairs in the area of law and justice. "Want of a due course for the administration of justice" gave rise to many complaints and reform of the judicature thus became a great public necessity. A reference to the Charter of 1661 would show that it was not the lack of adequate judicial power, but hesitation bordering on apathy to use that power, which was responsible for this sorry state of affairs.

Streynsham Master who was the Governor of Madras from 1667 to 1681 took the first act which was to reorganize the Choultry Court by increasing the number of Justices from two to three, and providing that not less than should sit for the trial of causes and registration of bills of sale of land and other property. The following extracts illustrate the composition and duties and of the Court;

1. That the printed Directions made by the court of Committee in London the 18th December, 1667 for the Christian and sober comportment of all company's servants hang up in the Chappel and Dinning Room to be observed accordingly.36

35 LOVE, op, cit., 407.
36 Record of Fort St., Geroge, Diary and consultation book, 1678-1679, p.6.
2. That the council do meet to consult of the company’s affairs every Monday and Thursday and after the business shall require and this entry was to be taken by all council as a due summons, yet the secretary was hereby ordered himself in person, or by one of the factors or writers under him to summon all the members of the council every Monday and Thursday about 8 o’clock in the morning and every time any one of the council shall be absent, the secretary was hereby required to enter at the beginning of such Consultation these words. The whole council being duly summoned.  

3. For all monets to be paid out cash, that the second or Book keeper with the agent leave, do draw bills directed to the agent, or who shall keep the cash upon which bills he was to express the party’s name to whom and account upon which the money was to be paid which bills the second was first to sign, leaving room for the Agent, as was practised at Surat, and the said bills were to be read and passed in the council every council day after any such were drawn and the secretary to note the same accordingly.  

4. That the general books of accounts be balanced the last day of April yearly and kept accordingly to the method used at surat a pair of which books letter method were delivered to method Joseph Hynmers for the directions therein.  

5. That the account of salary of the company servants that served them in their mercantile affairs, be kept and entered in the general books by the book

---

38 Ibid, p.6.
keeper or second, accordingly to the company printed rules, and not entered in a pair of books apart by the purser.\textsuperscript{40}

6. The warehousekeeper should keep records.\textsuperscript{41}

7. That the Choultry justice, Customer, or fourth in council do take care to receive and collect all the rents and revenues of the town of Madrasspatnam (Except that of mint) and kept two distinct books of the same, one of the account of all petty land customers received of the Indians and others, upon goods imported, at the company.\textsuperscript{42}

8. That the customers, mint master (when there was one in that office) and pay master or any two of them, do every Tuesday and Friday sat in the Choultry to do the common justice of the Town, as usual, and do take care that the Scrivan of the Choultry do duly Register all sentences in Portuguese as formerly, and that there be an exact register kept of all alienations, or sales of slaves, houses, garden, boates, ships and so on. The company due for the same to be received by the customers and the bills or certificates such sales to be signed by the persons in the offices aforesaid, or any two of them.\textsuperscript{43}

Streynsham Master who was the Governor of Madras from 1667 to 1681 took steps to put life, vigour and efficiency into the Court of the Governor and Council. So that it could function more regularly and properly in terms of the Charter of 1661. In March, 1678, the Governor and Council resolved that they would sit as a court on two

\textsuperscript{40} Ibid,p,7.

\textsuperscript{41} Ibid,p,7.

\textsuperscript{42} Ibid,p,7.

\textsuperscript{43} Ibid,p,7.
days in a week to administer justice in all cases, civil and criminal, according to the
laws of England with the help of jury of 12 men. This court was designated as the
High Court of Judicature and was formally inaugurated on March 27, 1678, at a public
function. Along with this, the Choultry Court was also reorganized. Henceforth, it
was to consist of the Company’s servants (mint master, customer., of peace, civil action
up to 50 pagodas, and cases of a higher value with the consent of the parties. All other
cases, and appeals from the Choultry Court, were to be heard by the Court of the
Governor and the Council with the help of jury. A hierarchy of courts was thus
established in Madras with their respective jurisdictions demarcated. The Choultry
Court was to take cognizance of small matters; The Governor and Council were to have
original jurisdiction in matters beyond the purview of, and appellate jurisdiction in
cases decided by, the Choultry Court. After these steps had been taken, the two
prisoners mentioned above were brought to trial before the High Court. The
Englishman was found guilty of manslaughter in self-defence and, accordingly, his
goods and chattels were foreteited to the King. The Portuguese was found guilty of
murder and was sent to England in pursuance of a petition on his behalf by the
Portuguese inhabitants of Madras.

Streynsham Master gave order to follow the such rule in the justice of the
administration which are following;

1. That the Governor and his Council do sit in the Chappel in the fort upon every
   Wednesday and Saturday to hear and judge all causes.

---

45 Supra, 13.
46 ‘Pagoda’ was a gold coin valuing three rupees.
2. That the Justice and Justices of the Choultry, and our Constable Bayly, or Officer under them, shall execute all orders, writs and summons from the Governor and the Council for returning of Jury's Executions after judgment, apprehension of criminals and such like...

3. That all Trials in the said court be by Jury's of 12 Men and that the Jury's be returned by the Justices of the Choultry...

4. That there is a Clarke of the Court and the same to be also Clarke of the Peace.
   Clement King is nominated and appointed.

5. That there be an Officer of the Court, and the same to assist the Justices, Philip ashton has nominated and appointed.

6. That there be a Marshall to take-charge of the prisoners. Robert Bayly is nominated and appointed...

7. 'Excepting, and it is hereby ordered, that all causes of small misdemeanour, matters of the peace, and actions of Debt of the value of 50 pagodas New and under, shall be examined and decided by the Justices of the Choultry as formerly, and also all other Cause of a higher or greater value by consent of the parties; in all which cases (if any parties find themselves aggrieved) Appeals are or shall be allowed to the Court of the Governor and the Council, there to have a Trial by a Jury, and according to the verdict shall have judgment and Execution awarded.\textsuperscript{47}

\textsuperscript{47} Diary and consultation book,1678-1679,p,58-59.
4. THIRD PERIOD: 1686-1726

Admiralty Court

The monopoly of trade granted to the company by the Charter of 1600 was being infringed on a large scale by 'interlopers' – independent, merchants, indulging in unauthorized trade and traffic against the tenor of the grant, and thus, the Company was being put to great loss. Further, the crime of piracy was also rampant on the high seas. To deal effectively with these evils, need was felt to establish courts having jurisdiction to try maritime cases. Consequently, on August 9, 1683, Charles II granted a Charter to the Company authorizing it to establish one or more courts at such place or places as it might direct. The court was to consist of a person 'learned in the civil law' and two merchants appointed by the Company. It has to have power to hear and determine all cases, mercantile and maritime in nature, concerning persons within the charter limits of the Company; all cases of trespasses, injuries and wrongs, done or committed on the high seas, or within the charter limits; cases of forfeitures and seizures of ships or goods which came for the purpose of trade within the Company's monopoly area against the tenor of the Charter of 1600. The court was to decide cases according to the rules of equity and good conscience and the laws and customs of merchants. It could settle its own procedure subject to the directions of the Crown, if any.

The same provisions were repeated in a fresh Charter issued by James II on April 12, 1686. The reason for the Charter to prescribe a 'civil' rather than a 'common' lawyer as the head of the Admiralty court was that the Admiralty law was of an international character as it was founded on the Civil law and law of nations rather then

---

48 Page 6.
the Common law of England, “for ships are no respecters of frontiers”. 49 Further, in 1683, the English Common law was practically devoid of rules governing mercantile cases. Lord Mansfield worked the subject out of century later. 50 The mercantile law in 1683 could be regarded as an amalgam of mercantile customs, the base of which was Roman Law. Similarly, maritime law was based on admiralty principles which involved a knowledge of Roman Law. The Charter desired the appointment of a civil lawyer as Roman Law formed the basis of mercantile as well as maritime law. The Chief Judge of the Admiralty Court was known as the Judge-Advocate.

Under the above provisions, a Court of Admiralty was started in Madras on July 10, 1686. It consisted of three civil servants who were members of the Governor’s Council. Occasionally, the Governor and the Council held trials to enforce ‘law martial’ under the authority of the above mentioned Charter. Thus, martial law was declared in Madras on the 17th November, 1687, and the Governor and Council held trial of several fugitives from the Ship ‘James’ who had committed piracies. 51 In 1687, the Company sent from England Sir John Biggs, a professional lawyer learned in the Civil Law, to act as the Judge-Advocate. With the arrival of a professional lawyer, on the scene, the Admiralty Court started to function properly and in right earnest. The Governor and the Council thereafter relinquished the judicial functions which they had been exercising hitherto under the Charter of 1661 and ceased to sit as a court. The Admiralty Court in practice came to function as a general court of the land and it was not confined merely

49 SLESSER, The Administration of Law, 37

50 He was the Chief Justice of the King’s Bench from 1756 to 1788. He incorporated the law merchant into common law. See, CROSS & HARD, The English Legal System, 252, (1971).

51 Love, op. cit, 494
to maritime and admiralty cases proper as was envisaged by its Charter. It exercised a much wider jurisdiction and dispensed justice in all cases: civil, criminal, maritime and mercantile. The year 1687 may thus be said to be doubly important for two reasons: Firstly, a professional lawyer came on the scene to administer justice; and, secondly the executive gave up judicial functions in favour of the Admiralty Court. The Court used jury in criminal cases but not in civil cases. This becomes clear from an account of a case brought in the court. In 1694, the Company brought a suit against Elihu Yale, the ex-Governor of Madras, claiming Rs. 50,000 which he was alleged to have extorted from certain merchants. Yale requested for a jury trial. The Court overruled the plea on the ground that the trial by jury was wholly impracticable for lack of a sufficient number of Europeans capable of discharging the duty of jurors.  

Sir Biggs died in 1689. As no other qualified person was available in the settlement to take his place, the Governor and Council appointed the Governor as the Judge-Advocate with two members of the Council, as the judges of the Admiralty Court, associating with the two merchants, an Armenian and a Hindu, to assist the Court in regard to the disputes arising from their respective communities. This composition of the Court, it would be seen, was not warranted by the Charter of 1686 which envisaged a 'civil' lawyer as a judge and two merchants.  

In 1693, a new Judge-Advocate, John Dolben, was sent from England, but his tenure was brief as he was dismissed in 1694 on the charge of taking bribes. William Fraser, a civil servant, was then appointed as the Judge-Advocate. In 1696, the Company directed that the

---

52 FAWCETT, First Century of British Justice in India, p.212.

53 Page 16.
members of the Council should in succession serve as the Judge-Advocate.\textsuperscript{54} Such an arrangement was not warranted by the terms of the Charter under which only a civil lawyer could be the Judge-Advocate, but it was made because the Company was reluctant to send a lawyer. The Company had always been reluctant to send lawyers to its nascent settlements, and its reluctance became all the more accentuated by the unsavoury episode, which occurred at Bombay. From 1698 onwards, under instructions from the Company, the Governor and Council started hearing appeals from the Admiralty Court in cases involving less than 100 pagodas. After 1704, the Admiralty Court ceased to sit on a regular basis but was convened occasionally as and when the necessity for the same was felt. Once it was convened in 1782 to try a person for committing murder on the high seas. It was again called in 1788. At none of these occasions, it may noted, the provision of the Charter requiring a 'civil lawyer to preside over the Court was fulfilled, as there was no such person available in the settlement.\textsuperscript{55}

**Mayor's Court**

The year 1688 saw the setting up of yet another court in Madras known as the mayor's Court. This Court was a part of the Madras corporation which was established

\textsuperscript{54} This direction was not followed in practice. After Fraser, one Styleman, a free merchant, was appointed. When he resigned, a crisis arose in the court because none was ready to accept the post of the Judge-Advocate and it was going begging. Ultimately, it was thrust upon the helpless registrar of the Court whose name was Marshall. The Government in appreciation elevated him to the Council for supporting the credit of the Court. He left for England in 1704, and it was then decided that the office should remain vaca, LOVE, op. cit., I, 559; LOVE, op. cit., II, 30.

\textsuperscript{55} LOVE op. cit., I,96; LOVE, op. cit., II, 30, 497; LOVE, op. cit., III, 267, 308, 381.
under a Charter, dated Dec. 30, 1687, issued by the Company itself. It was customary in England in those days to confer judicial powers on municipal corporations and a Mayor’s Court was functioning in London as part of the London Corporation. The company issued the Charter under its own authority instead of the Crown because it thought that employment of persons immediately under a royal commission made them arrogant and haughty as the wind of extraordinary honour entered their minds. The Company wanted the corporation to be subject to the control of the Governor and Council. In issuing the Charter, the Company depended on its powers of making laws under the Charter of 1600, and of governing its settlements conferred by the charter of 1683.

Several factors led the Company to create a corporation at Madras. Madras had become a populous town by now. The Dutch had applied the system of municipal government to a few places in the East with great advantage. Therefore, the Company also thought of applying a similar system to Madras in the hope that it might lead to its further growth. Further, in 1686, the Madras Government had levied a house-tax to raise money for defraying the cost of repairing the city wall, the native inhabitants of the town did not relish the levy. They protested and resorted to strike methods against the levy which could be collected only with great difficulty. It was then though that a composite body of a few Englishmen and a few Indians representing the principal communities in the settlement might make taxation somewhat palatable to the native population so that some funds could be collected for starting civic welfare activities in the town.\footnote{WHEELER, Madras in the Olden Time, 73, 81, 106, 109; FAWCETT, op. cit., 203; ILBERT Government of India, 22-3 (Iled).}
In the Charter, the Company declared that it was to desire to encourage merchants and traders of all nations and all religions and, therefore, the Corporation should consist of a mixture of the best and honest people of all sorts residing within the limits of the Corporation, and the Court of the aldermen of the Corporation, especially, should be made of the heads and chief of all respective castes. The Company also stated in the Charter that it desired to confer power on the Corporation “for the speedier determinations of small controversies of little moment frequently happening among the unarmed inhabitants”.

Corporation of Madras

The Corporation came into existence on September 29, 1688. It was to consist of a Mayor, 12 Aldermen and from 60 to 120 Burgesses. The Charter itself appointed the first Mayor, who was a member of the Governor’s Council, and all Aldermen, three of whom belonged to the Council. The tenure of office of the Mayor was to be one year and he was to be elected every year by the Aldermen and the Burgesses from amongst the Aldermen, but the outgoing Mayor could be re-elected as many times as the electorate though proper. The Mayor could be removed by the Aldermen and Burgesses in case he did not demean himself well in his office. Only an Englishman could hold the Mayor’s office. The Aldermen were to hold office for life or residence within Madras. If an Alderman did not demean himself well in his office, he could be removed by the Mayor, Alderman and Burgesses. A vacancy amongst the Alderman was to be filled by the Mayor, Alderman and Burgesses. A vacancy amongst the Aldermen was to be filled by the Mayor, Alderman and Burgesses from amongst the Burgesses. At least
three Aldermen were required to be covenanted British servants of the Company while the remaining nine could belong to any nationality. The breakup of the first 12 Aldermen appointed by the Charter itself was as follows: Englishmen, 3; Hindus, 3; Frenchmen, 1; Portuguese, 2; Jews and Armenians, 3. The Charter also appointed 29 Burgesses; other Burgesses were to be selected by the Mayor and the Aldermen. Amongst the first 60 Burgesses appointed, 30 were heads of the various castes in the town. In this way, the Corporation was so organized as to give representation to all the major communities in the settlement. A reserve power was vested in the Governor and the Council to remove any Mayor, Recorder, Alderman or Burgess and to appoint anyone in the vacancy so caused.

The Mayor and the three senior Alderman were to be justices of the peace. The Mayor and Aldermen were to form a court of record, known as the Mayor’s Court, which was authorized to try all civil and criminal cases. It could punish offences by fine, imprisonment and corporal punishment. In civil cases valuing over three pagodas, and in criminal cases when the offender was sentenced to lose life or limb, appeals from the Mayor’s Court lay to the Admiralty Court. As the judges of the Mayor’s Court had no legal knowledge, provision was made for the appointment of a Recorder of the Court. An English born covenanted servant of the company, “being skilful in the laws” was to be appointed by the Mayor and Alderman as the Recorder of the Court. His place was to be next to the Mayor and he was to assist the Court in trying and judging.

57 On ceasing to be Company’s servant, he was to cease ipso facto to be an Alderman. On September 24, 1689, Alderman Richard being ‘put out’ of the Company’s service, ceased to be an Alderman by order of the Mayor’s Court: Minutes, 8.

58 From the Minutes of Proceedings in the Mayor’s court, 1716-1719 (Madras government Press), it appears that the various castes continued to be represented amongst the Aldermen and Burgesses even as late as 1719.
causes of "considerable value and intricacy" and whenever he was present in the Court he was to have a vote like an Alderman.\textsuperscript{59} The Charter itself appointed the first Recorder who was none else than Judge Advocate Sir Biggs. The quorum of the Court was fixed at three— the Mayor and two Aldermen. It used jury for deciding criminal cases, but not for civil cases.\textsuperscript{60} It granted probates of wills and letters of administration of property of the deceased persons.

For sometime after the Court's establishment, it remained doubtful whether it had power to award a death sentence. In 1712, the Governor and the Council decided that it could award death sentence to the natives only. Thereafter, it did award death sentences to Indians in many cases, but never to an Englishman.\textsuperscript{61} The Mayor's Court dispensed justice not according to any fixed law, but as its Charter laid down. "in a summary way according to justice and good conscience" and the laws made by the Company. As a result, its decisions lacked uniformity and consistency. A typical example of justice done by the Court is to be found in the records thus three Indians charged with murder and felony were brought before the Court for trial. After the indictment was read, the Mayor invited from the Bench that any one "has free liberty to say anything they know either for or against the prisoners". The prisoners pleaded not guilty. The Bench put questions to the prisoners turn by turn and thus acted more like prosecutors.

\textsuperscript{59} FAWCETT, op. cit. 202.

\textsuperscript{60} From the Minutes of the Court, supra, note 1, it appears that by 1718 to system of jury had gone out of vogue in criminal trials.

\textsuperscript{61} Love, op. cit., II, 174-5.
Witnesses were also examined by the Bench. No lawyer appeared from any side: no jury was used for the trial. A severe and novel sentence was awarded. The prisoners were to be taken in a sledge to the place where they committed the crime; there-their beards and whiskers were to be cut off as a mark of ignominy; from there they were to be drawn to the place of execution where the right hand of each was to be cut off while yet alive, and then each was to be hanged by the neck till dead. The whole trial was over in one day. 62 At another place, a curious entry is found in the minutes of the Court. Benjamin filed a case against Richard for 2, 500 pagodas. The court ordered that the action be referred to authorities in England, “it being not be decided but by law which this court cannot decide”. 63 Thus, justice was rough, severe, and not according to any fixed system of law, but according to judges’ discretion. Nothing better could be expected from non-lawyers. There is some evidence to show that the court was not above influence. Alexander Hamilton a traveler, has alleged that “a few pagodas rightly placed could turn the scales of justice”. 64 There were a few attorney and solicitors to plead before the Mayor’s Court but these persons were neither men of character and integrity nor had much legal knowledge.

There was an anomaly in appointing Sir Biggs as the recorder of the Mayor’s court, because he also sat as the judge-advocate in the admiralty court which heard appeals from the Mayor’s Court. However, the reasons responsible for this appointment were that no other lawyer was available in the settlement. Also, Sir Biggs had acted

62 Minutes. Dtd. June 12. 1718. 56-62
63 Minutes, Did Aug. 16. 1689.5
64 A new account of the east indies quoted in love,. II p,87
earlier as a Recorder in England before his coming to India. The anomaly was removed when Sir Biggs died and no recorder was appointed thereafter.

The government had a great deal of influence over the Mayor’s Court. The mayor and several aldermen were members of the Council, and were thus a part of the executive machinery of the settlement. Also, the Governor and the Council could remove any of the members of the Corporation and appoint some one else instead. In spite of this, the relationship between the Mayor’s Court and the Governor at times became rough, the reason being that personal animosities existed among the members of the Government; relations between the Governor and the Members of the Council were not always cordial and this tended to affect the relations between the Governor and the court. Thus, when differences arose between Governor Elinu Yale, a man of despotic temperament, and his Council, relations between him and the mayor’s court also became strained as the Mayor and some of others were members of the Council, too. After the death of Sir Biggs, the Admiralty court was suspended temporarily. The mayor’s court claimed that as the appellate court was suspended, its own decisions became final. Yale did not concede this claim. On two occasions, he forcibly released two native inhabitants from the prison. At this, Mayor’s Court accused the Governor of undue interference in administration of justice, and gave him notice that would be answerable for any damage that might accrue to any person by this act of unwarrantedly forcing men to keep off the hands of justice. The difficulty was

---

65 He was recorder at the borough of Portsmouth whose charter was used as the model for the Madras charter. His experience as recorder might have encouraged the company to appoint him as such. Madras: WHEELER, op. cit. 107

66 Love. II. 80.

67 Love. II. 80.
resolved when in 1690, temporary arrangements were made for the revival of the admiralty court. When after 1704, the admiralty court ceased to sit regularly, appeals from the Mayor's court came to be heard by the Governor and the Council. The incidents during Yale's governorship do not, however, prove the independence of the judiciary from the executive; that could not really be so when several Aldermen were members of the Council; it was only a reflection of strained personal relations existing among persons in authority at a time.

**Choultry Court**

After the Mayor's court came on the scene, the Choultry Court, an important institution earlier, lost its importance and functioned as a court of petty jurisdiction trying only small offences and civil cases up to two pagodas. In criminal cases, it inflicted punishments of fine, imprisonment, pillory, and whipping and even of slavery. A native merchant found guilty of carrying on the trade of stealing children was given the alternative of paying a fine of 200 pagodas, or staying in the pillory and paying a fine of 80 pagodas. His two lieutenants became slaves to the Company.

Two Aldermen was first assigned to sit at the Choultry to dispense justice, but their duties in the Mayor's Court became so arduous that it became impossible for them to sit in the Choultry Court. Consequently, special Choultry justices were once more nominated.⁶⁸

Thus during 1686 to 1726, there functioned in Madras the Choultry Court, the Mayor's Court, and for sometime, the Admiralty court. The Mayor's court was merely

---

⁶⁸ KEITH, Constitutional history of India, 47 (1936); Love op cit I 495, 496, 501
a Company's court having been established by the company's Charter. So long as the admiralty court functioned, the Governor and council as such exercised no judicial powers. While there was separation between the admiralty court and the executive, the same was not true of the Mayor's court as some of the Aldermen used to be members of the Council. When, however, the Admiralty court became irregular after 1704, the Governor and the Council became active as an appellate court to hear appeals from the decisions of the mayor's court. An interesting feature of the period is that justice was mostly administered by non-lawyers: the admiralty court which had some professional elements had only a brief span of active life.

**Crimes and Punishments**

The Governor of Madras, Sir William Langhorne has passed several laws regarding solving the daily problem occurring in the Madras which are following;

In obedience to my Hon’ble : Employers orders, and out of that care I ought to take of you People committed to my Charge.

1. It was enordered and declared that for prevention of disorders and for Preservation Honoble: Compas: Servant: & soldiers of ye Garrison from distempers and Diseases frequently caused thereby and by the unwholesome Liquor called. Parrier Arrack.  

2. That from the day forward no Person whatsoever dwelling with in the Privileged Town who did sell any of sort of Arrack made here or hereabouts

---

*Diary and consultation Book, Record of Ft. St. George, 1672-1678, p. 131.*
shall be permitted to sell or give Entertain to any of the Hon'ble: Comps: Soldiers or Servants.  

3. All Person keeping public houses of Entertainment be prohibited after Day from drawing Liquor for any Person after the Usual ringing of yo Bell at eight of the Clock at Night, but shall desire all persons then in their houses to retire to their own Lodging, and suffer them to tarry there no longer. And if any person shall be found Contemners of these orders, they shall not for the future be permitted to keep houses of Entertainment.

4. And for further Prevention of all disorders &Excesses & Impoverishing the Souldiers of Ye Garrison& others in the Honoble: Comps: Service by Encouraging them to the unthrifty way of spending their wages in such disorderly manner upon Credit faster yn : it comes in to Ye Ruine both of their Purses and their healths, and undervaluing of the Punctual and bounteus Pay of Yo Honoble: Compas: Wch: to all sober and Discreet persons, is not only sufficent for Maintainance but With : any Industry and beginning of their owne enough to gett a forehand in ye World.

5. It is likewise enordered & declared hereby that no victualler Punch house or other house of Entertainment : shall be permitted to make stoppage at ye Pay day of their Wages, or any part thereof, saving only for their Dyet and

70 Ibid,p,131.
71 Ibid,p,131.
72 Ibid,p,131.
accordingly order: is given to Ye Purser to this Effect, whereof all Persons Concerned are to take Notice. 73

William Langhorn also made rule for several paddy farmers and for Watchmen and Washers. He passed order in following lines;

“in paddy Banckshall Ye former allowance was; Custome for ye Gentu Pagodo for every heape of Paddy one Measr. For Paddanaigue on every greate Ox Loade o Paddy ¾ Meansr. For small Ox Loade ½ Measr; for one Right hand side Girle for every heape of Paddy 2 handful/ for ye Measr. Every pagodo1/2 Measr. At this rate was ye former Allowance. And if any offers to take more than this allowance or make any other allowance then this; their Penalty shall be 12: Pag05: to ye Honoble: Compa: and they shall be punished at ye Chowtry beside[s]

The former allowance in Ye Chowtry for severall sorts of Grain and for Qyel seeds, was for ye Gentu Pagodo one handful every Sacc; ffor Peddanaigye watchman 2: handful every Sacc; for one Right handside Girle one handful every Sacc; for ye measnr; one handful Every Sacc. And if any offer to take any more then this be punished at the Chowtry besides.

The Allowance Cowdung and Wood was for every baskitt of Cowdung 2: Cakes for ye Gentu Pagoda; for Peddanaigye ye watchman for every Basket of Cowdunge 5 Cakes; and if any one offers to take more then this allowance or make any other then this allowance their Penalty shall be 12: Pag05 : to ye Honoble: Compa : & they shall be punished at the Chowtry besides.

73 Ibid,p,131.
The Allowance off Seafish was for every great Net 5 fish to ye Honoble: Compa: & to Peddanaigue ye Watchman 10: fish and on them fish yt they Catch with: ye hooke: 1; fish for ye Compa: & one for peddanaigue ye Watchaman to Ye Washer man Barber Grave maker and several other workemen they are to give they please and if any one officer to take more than this allowance or make any other allowance there Penalty shall be 12: Pag05: to ye Honoble: compa: and they shall be punished at ye Chowtry besides.74

Sir William Langhorn again made several laws for simple Civilian and for the occupational Castes groups which are following;

1. If any yt: is one ye watch or Guard shall presume to lay off and not ask for leave he shall if it be an officer for every such offence pay half A Riall of Eight & a priveat soldier shall stand one whole dayes Sentnallin Armes.

2. That officer yt shall conceale any sentinall yt doth sleep in ye time of his duty shall be turned out of office & remayne a private Soulder.

3. The same Punishment to those yt give the word to any but to them that it doth belonge.

4. If any or two more Persons shall dare go into the feild to decide a quarrell between them by ye Sword or fire Armes thereby contemning y Course of Justice they shall for ye same offence endure two Months Imprisonment only with: rice & water but if ye Party Challenged shall make knowne Ye Challenge unto his Officer & appeale to him fo Justice ye doome shall be inflicted on the Challenger only ye like penalty shall be inflicted on all Irreguler Persons who

74 Ibid., p.132.
shall make opposition or Resistance against those that shall be commanded to bring Ym: into ye fort.

5. Whosoever after having Received merited Punishment shall disame themselves and deny to Exicute Ye Duty of A Souldier any longer as divers formerly have done such one shall be drawne to ye head of Ye Troops & have his Armes taken away from him by A Cooley & in Exchange have delivered him A spade or Ye like instrument with : which : he shall worke for his Victualls and his wages being suspended he shall be sent home in ye first shipp as A delinquent if the Commanders decision admitts not of his Submission & Sorrow for his fault.

6. If any in ye Garrison shall resist or affront his officer upon Ye Corps de Guard or Sleep being Sentinell thereby to endanger all our wellfaires he shall for soe greate an offence be punished yb standing three whole dayes according to former customes Sentinella in Armes for ye first time from Ye Dare but offending againe for every such offence shall Ride Ye Horse three dayes each day three hours and be confined A month with no other allowance than Water and Rice.

7. It is like wise ordered yt both ye officers and souldiers in ye Fort shall on every Sabboth day & one every day when they Exercise weare English Apparell in Respect ye Garb is most becomeing as Souldiers and Correspondent to their Profession on Penalty of forfiting on month’s allowance on Ye Officers part and half a months Allowance on a private Solder’s Part.

8. Whosoever he be yt shall Attempt to gett over ye Walls of this Fort upon any pretence whatsoever shall for so heinous and Grevious an offence be kept in
irons till ye shipps arrivall and then his wages being suspended to be sent home for England their to receive condigne Punishment.

9. It any Private Souldier shall interpose himself whilst his officer is correcting any other for his Misdemeanours either by unfitting words or actions thereby to stay the Chastisement due unto ye delinquent shall for ye first fault, stand a whole day as usually accustomed in armes; but being found so to offend againe, for every time from the date after, shall ride the horse three howers. The like punishment to those that will not obey their officers when they command them to pass upon their duty.

10. That when ye Governor & e: shall have gone on board or abroad on horsebacke ir in pallenkeen, it is thought fitt in respect of ye small number people yt not a man shall stir out of yefort untill ye governour returns home upon penalty of half a rioll of Eight for ye Merchant and Officer and A dayes sentinall in Armes to the private Souldier.

11. We doe expressly forbid all Swearing Cursing Banning or Blasspheming ye Sacred name of Allmighty God, and whose shall be found faulty therin shall pay four fanuaes each time witch course working no Reformation in him shall be sent for his Country by ye first Shipp.

12. We more over forbid any factor Writer or Souldier or any whome soever under our Command to keep a women for his beastly lust and Carnal use and if from henceforth any such shall be knowne to be in ye towne ye Woman to be turned out of Town and whipped and ye Man to receive condigne Punishment for entertaining and keeping her company.
13. No Souldier is to dispute or contradict any ordor or command yt he shall receive from ye Superior Officers upon forfeiture of all his wages unless it can be proved yt the said order is Absolutely distructive to ye Civil goverment and saifty of ye Companys servants and officers in this place.

14. No Person of what quality so every within ye Fort being in call shall after Nine of ye Clock at night pass ye Guard or Sentinel without giving accompt to them about what he is goeing wich refusing to doe shall be kept upon ye Guard till Morning to answer his contempt before the Governour and Council.

15. For ye better maintaining of good ordor in this Garrison if ye Capt ye Leift: or any other officer shall here or certainly be informed if any under their Command gives his fellow the lye whereby to breed occasion for Quarrel being a word of great contempt and indignity to ye profession of A souldier wee order such a one to be made fast to a Gunn and their to receive tenn blowes with a small Rattan or Cane well layed on aby an officer or either by him he gave the lye unto but if the lye be on ye Corps de Guard to receive Twenty blowes and if ye officer shall Connive at or not throughly execute the said Punishment upon such an offender he shall have a whole month’s wages deducted of his account for each time he so neglected this order and for not executting the said penalty for such an offence Nor shall any officer for any offence give any souldier then more then 4 or 5 strokke for ye present witch : it will not suffice he is to be Disarmed and committed to abide by such due chastisement as the Chief Officer with the advice of ye other officers in due examination shall see cause.

16. That ye Governor be acquainted with ye offence for which the punishment of the
horse, and such like grater Punishments are Appointed before they are put in execution.

17. Whoseover of ye Company’s. Servants or Souldiers shall be absent from prayers on ye Sabbeth day or on ye Morning on Wensday when not imployed upon duty shall for every such default on ye Compas servants part forfeite halfe a dayes Centinall in Armes according to former Customes.

18. No Person out of ye Honoble : Compas : Pay to keepe house of entertainment nor any unmaryed Person None to be permitted to stay in any entertaining houses after Eight of ye Clock Bell in ye Evening Lodgers excepted .

19. No Entertainment on ye Lords day to nay but their owne dyeters No gaming at Cards or Dice, allowable at any entertaining house

20. No one Person to be allowed above half a pinte of arrack or Brand: one qs of wine and fa grater number prorata . Penalty upon the house keeper one Pag upon ye guestts twelve fanams each.

21. It is ordered and appointed yt all ye fines or penaltyts yt are imposed & shall either he received for all ye offences Afore shall be kept in a box Appointed of yt purpose for ye sue of poore Cheifly English to be distributed according as ye Govr and Councell shall direct.

22. It any Souldier or Sculdiers belonging to this our Garrison shall either in their drink or otherwise offer any offense to any of ye natives or Town Inhabitance either by tricking Fighting quarrellings or drawing of swords or the like unseemly misbehaviour towards any of ye Country People we ordor yt all such Irregurall persons shall be brought to ye Fort and there confined & examined &
shall there receive such Punishments as may be equivalent to his or their Offense either by standing centinall in Armour or being made fast, to ye Breech of A gunn shall receive so many stripes as hi Officers shall think fitt to appoint not exceeding Nl.10: unless ye Govr be first made acquainted with it or shall ride ye horse so many hours & so often as ye Govr shall think meet to determine.

23. Whosoever shall take anything perforce from any markit folks pretending to have it at what price they please shall pay double ye valuel.

Sir William Langhorn also made several laws for the common civilians which are following;

In obedience to my Honoble Employers Orders, and out of that Care I ought to take of the People Committed to my Charge.

"It is enordered & declared that for Prevention of disorders and for the preservation of ye Honoble. Compas Servants and Souldiers of ye Garrison from Distempers & diseases frequently Caused thereby an by the unwholesome Liquor called Parried Arrack.

That from ys day forward no Person whossoever dwelling with in the Previlegeds of the Towne, who doth sell any of that sort of Arrack made here or here abouts shall be permitted to sell ro give Entertainment to any of the Honoble. Companyes Souldiers or Servents.

And that all Persons keeping publick house of Entertainment be prohibited after ys day from drawing liquor form any Perrson after ye Usuall Ringing of ye Bell at

75 Ibid, pp. 132-133.
Eight of ye Clock at Night. But shall desire all Persons then in their houses to retire to their own Lodgings, and suffer ym to tarry there no longer. And if any person shall be found Contemners of these ordors, they shall not for ye future be permitted to keep houses of entertainment.

And for further prevention of all disorders & Excesses and Impoverishing of ye Souldiers of Ye Garrison & other in ye Honoble. Compas. Servece, by Encourageing them to ye unthrifty way of spending their Wages in such disorderly manner upon Creditt faster yn. It comes In to ye Ruine both of their purses, and their healths, and undervaluing of ye Punctiall & Bounteous pay of ye Honoble. Comp wch: to all Sober & Discreet persons, is not only Sufficient for Maintainance but with any Industry and begining of their owne enough to gett aforehand In world.

It is likewise ordered and Declared hereby yt: no Victualler Punch house or other house of Entertainment shall be permitted to make Stoppage at ye pay Day of their Wages or any part thereof saving only for their Dyett and accordingly order is given to ye Purser to this Effect, whereoff all Persons Concerned are to take notice.

Dated In Fort St. George
the 2i: February : 1671/2" 

Sir William Langhom again made several laws for the paddy farmers and occupational caste groups which are following;

“In Paddy Bancksall the former Allowance was Custome for the Gentu Pagoda; for every heape of paddy one Measr for peddanaigue the watchman on every greate Ox Loade of paddy ¾ Measr: for Small Ox Loade ½ Measr: for on right hand side girle for

76 Ibid.,p,135.
every heape of Paddy 2 handfull ffor the Measrer: every Pagodo 1/2 Measr: at this rate
was ye former allowance And if any offers to take more then this Allowance or make
any other allowance then this: their Penalty sall be 12; Pag05: to ye honoble: compa:
& they shall be punished at ye Chowtry besides.

The former Allowance in ye Chowtry for several sorts of Gram & for Oyle
Seeds was for ye Gentur Pagodo one handfull every sac: for Peddanaigue ye
Watchman 2: handfull every sec: ffor one right hand side Girle one handfull every
Sacc: for ye Measurer one ½ and full every sac: and if any offer to take any more then
this allowance their penalty shall be 12: Pag05: to ye Honoble: Compa: and they shall
be punished at the Chowtry besides.

The allowance of Cowdung & wood was for every basket of Cowdung 2 Cakes
for ye Gentu Pagoda: For Peddinagg the Watchman of every basket of Cowdunge 5
Cakes: and if any offers to take more then this allowance or make any other then this
allowance their Penalty shall be 12; Pag05: to the Honoble: Compa: and they shall be
Punished at the Chowtry besides.

The allowance of Sea fish was every great nett 5 ffish to ye Honoble. Com;any
& to Peddanaigue ye Watchman 10: fish & one ym fish that they Catch with a hooke :
1: fish for ye company and one for Peddinagg the Watch man to ye Washerman Barbar
Grave maker & severall other workmen they are to give what they Please And if any
one Offers to take more then this allowance or make any other allowance There
Penalty shall be 12: Pag05: to the Honoble: Compa: & they shall be punished at ye
Chowtry besides."

Again sir William Langhorn made several laws for the workmen or the
Occupational Caste groups which are following;

1. If any that is on the Watch or Guard shall presume to by off and not ask for
leave he shall if he be an Officer for every such Offence pay half a Riall of
Eight, an a private Souldier shall stand on whole days sentinell in Armes.

2. That Officer yt Shall conceale any Sentinel Yt doth sleep in the time of Duty
shall be turned out of his Office and Remayne a privatte Souldier.

3. The same punishment to those yt give ye word to any but to them yt it Doth
belonge.

4. If any two or more persons shall dare go in to the field to decide a Quarrell
between them by ye Sword or fire Armes thereby contemning the Course of
Justice they shall for ye same offence endure two Months Imprisonment only
with : Rice & Water but if the party challenged shall make knowne the
Challenge unto the Officer & appeale to him for Justice the doome shall be
inflicted on ye Challenger only ye like Penalty shall be inflicted one all
Irregular Persons who shall make apposition or Resistence against those yt shall
be commande to bring them into ye fort.

5. Whosoever after having received merited punishment shall disarme themselves
& deny to exicute ye Duty of A Soulldier any longer as Divers formerly have
done such One shall be drawne to the head of ye Troopes and have his Armes
taken away from him by a Cooley and in Exchange have delivered him a spade
or the likeInstrument with witch he shall worke for his Victualls and his wages
being suspended he shall be sent home in ye first Shipp as A delinquent if ye
Commanders discretion admits not of his Submission and sorrow for his fault.

6. If any in ye Garrison shall resist or affront his Officer upon the Corps de Guard or Sleep being Sentinall thereby to endanger all our wellfaires he shall for soe great an Offence be punished by standing three whole days according to former customes Sentinell in Armes for ye first time from ye Date but offending again for every such offence shall Ride ye horse Three days each day Three howers and be confined A month with: no other allowance than water and Rice.

7. It is likewise ordered yt both ye Officers and Souldiers in ye ffort shall on every Sabbath day and on every day when they exercise weare English Apparell in respect ye Garb is most becoming as Souldiers and Correspondent to their Profession on Penalty of forfeiting one month's Allowance on the Officers part & half a months allowance on Private Souldiers part.

8. Whosoever he by yt shall attempt to get over ye walls of ye ffort upon any Pretence whatsoever shall for so heinous, greivous an offence be kept in Irons till ye shipps arrivall and then his wages being suspended to be sent home for England their to receive condigne Punishment.

9. If any private Souldier shall interpos himself while his Officer is Corecting any other for his Misdemoanours either by unfitting words or actions thereby to stay the Chastisment due unto ye Delinquent shall for ye first fault stand a whole day as usually accustomed in Armes but being found so to offend againe for every time from the date after shall Ride ye horse three howers ye like Punishment to those that will not obey theire Officers when they command them to pass upon their Duty.
10. That when ye Governor shall goe one board or abroad on horse Back or in Pallenkeen It is thought ffit in Repect of small number of people yt not a man shall stir out of ye ffort untill ye Governr returns home upon penalty of half A rioll of Eight for the merchantt & Officer and A dayes sentinall in Armes to ye Private Souldier.

11. We doe expressly forbid all Swearing, Cursing Banning or Blaspheming ye Sacred name of almighty God & whoso shall be found faulty there in shall pay foure fannames each tiem witch : Course working no reformation in him shall be sent for his Country by the First Shipp.

12. Wee more over forbid any Factor Writer or Souldier or any whome soever under our Command to keep any woman for his beastly lust and Carnal Use & if from henceforth any such shall be knowne to be in ye towne the woman to be turned out of Town & whipped and ye man to recieve condigne punishsment for entertaining and keeping her com;any.

13. No Souldier is to disputer or contradict any order or comand yt he shall receive form his Superior Officers upon forfiture of all his wages Unless it can be proved that the said order is Absolutely destructive to ye Civil Goverment & safety of ye Company’s Servants & Officers in this place.

14. No person of wt Quality soever within ye Fort being witch in Call shall after Nine of ye clock at Night pass ye Guard or sentinall with out giving Accompt to them about what he is goeing witch refuseing to doe shall be kept upon the Guard till Morning to answer his contept before ye Governr: & Councell.

15. For the better maintaining of good order in this Garrison if the Cappt: ye
Leiftenant or any other Officer shall hear or certainly be informed in any under their Command gives his fellow the Ley whereby to breed occasion of Quarrell being a word of great Contempt & indignity to the profession of A souldier we order such a one to be made faste to a Gunn & there to receive Tenn blowes with a small rattan or Cane well layd on by an Officer or eithr by him he gave the ley unto but if the ley be given on the Corps de Guard to receive Twenty blowes and if ye Officer shall connive at or not thoroughly execute the said punishment upon such an offender he shall have a whole months wages deducted of his Accompt for each time he so neglected this Ordo & for not executing ye said penalty for such an offence Nor shall any Officer for any Offence give any souldier more then 4 or 5 strokes for ye present witch if will not suffice he is to be disarmed and Committed to abide by such due chastisment as ye Chief officer with the advice of the other Officers in due examination shall see Cause.

16. That the governour be acquainted with the offence for Witch ye Punishment of the horse and such like grater Punishment are Appointed before they are put in execution.

17. Whosoever of the Company's Servants or Souldiers shall absent from prayers on the Sabboth day or on ye Morning on wednesday when not Employed upon duty shall for every such default on the Compas: servants part forfeite halfe A ryall of Eight & on ye souldiers part to stand halfe a dayes Centinall in Armes according to former Customes.

18. No person out of the Honoble: compas: payo keep house of Entertainment nor
any unmarried Persons None to be permitted to stay in any entertaining houses, after, ye Eight of Clock bell in ye Evening Lodgers Excepted.

19. No Entertainment on the Lords day to nay but their owne Dyeters. No gaming at Cards or Dice Allowable in any entertaining house.

20. No one person to be allowed above half a pint of Rack (Arrack) or Brandy (Brandy) one qt: of wine and a greater number proratea penaltys upon ye house keeper on Pageo; upon the guests twelve fans each.

21. It is orderd & Appointed yt all the fines or penaltys yt are imposed and shall be received for all ye Offences Aforesaid shall be kept in a box Appointed for ye purpose for the use of ye Poore Cheifly English to be distributed according as ye Governour and Councell shall direct.

22. If any Souldier or souldiers belonging to this our Garrison shall either in there drink or otherwese offer any offence to any of ye natives or Towne Inhabitance either by striking fighting Quarrelling or drawing or Swords or ye like unseemly mis behaviour towards any of ye Country People we ordor that all such Irrigular persons shall be brought to ye Fort and their confined and examined and shall there receive such punishments as may be equivalent to his or their offences either by standing Centinall in Armor or being made fast to ye Breech of a Gunn shall receive so many stripes as his Offices shall think fitt to appoint not Exceeding N degree 10 unless ye Governr be first made acquainted with it or shall Ride ye horse so many hours and so often as ye Governour shall think meet to determine.

23. Whosoever shall take any thing perforce from any Markit folks pretendign to
have it at what price they please shall pay double ye vallue.  

However, in Madras, during the period under survey, the process of administering justice was very slow and tardy. Criminals as well as debtors were confined to the prison for long periods so much so that at times even their offences were forgotten. As a result of an inquiry in 1712, it was found that several persons had been confined to the prison for theft and other offences. It also transpired that Governor Pitt (1698-1709) had committed two weavers to prison for their inability to repay the money borrowed from the Company. They were so poor that they could never pay while in prison. There were discharged to work and pay off the loan: other prisoners were sent to Sumatra to be employed there in hard labour. Capital sentences were usually awarded by hanging, though the Indians were at times executed or whipped to death. The Governor and Council enjoyed the power to reprieve a death sentence. The punishment of banishment was executed either by sending the offender out of the settlement, or deporting him to Sumatra or St. Helena to work under the company. In a number of cases of serious offences, like murder, manslaughter, misappropriation, etc... the Englishmen were sent to England. Imprisonment was quite a dreadful punishment as the conditions in the prison were intolerable and inhuman; prisoners were kept on rice and water and at times imprisonment was long and indefinite. Forfeiture of limbs, fine, forfeiture of property, pillory, branding and whipping were some other forms of punishment which were awarded to the offenders. Piracy was a capital offence punishable with death. At times, the Europeans accused of piracy were

79 Love II. 1734: Wheeler op cit 56; KEITH op cit 47. The punishment of fine, imprisonment, pillory and the cutting off ear had been authorized in England in 1563 by 5 Eliz. C. 14. Pillory was abolished in England only in 1837
sentenced to be branded with letter ‘P’ on the forehead and were then banished.\textsuperscript{80} The scope of the offence was very flexible and indefinite and any one could be declared a pirate with a view to inflicting a capital punishment on him.\textsuperscript{81} At times, interlopers were tried as pirates by the Admiralty court; robbery also was punished with death.\textsuperscript{82} Witchcraft was punished with a heavy fine and pillory. Forgery was punished with imprisonment and banishment. In one case, a native found guilty of passing base coins was sentenced to stand in pillory for two hours, to have his both ears cut off and then be whipped out of the company’s limits. Punishment for stealing was slavery. A Hindu accused of stealing some clothes from a washerman was sent to St. Helena as a slave. In one case of perjury, the Mayor’s court passed the sentence of losing the ears, standing in pillory and whipping out of the company’s bounds. Brahmins were not sent to death in observance of the Hindu sentiments: they were instead banished from the settlements. In a case, an Indian convicted of murder was sentenced to be hanged and his body in chains was displayed at a prominent place. In another case, the ring leader of a gang of robbers was hanged and his head was severed from his body and displaced at a public place so that others might be deterred from committing robberies.

The English company brought new Legal system in India which was very beneficial to the occupational caste groups and their society. However, there was no measure of standard of punishment nor was there any principle behind its mode and quality. Often the punishment awarded bore no relation to the offence committed and

\textsuperscript{80} Love I 494

\textsuperscript{81} Love I 494. The butler of governor Elihu Yale left his service. The servant was hanged on the charge of piracy.

\textsuperscript{82} LOVE, vol., 1, p. 493.
depended on the personal whims, idiosyncrasies and prejudices of the Judges. Usually, the punishments were barbarous and inhuman, and were awarded with the idea of making them deterrent and preventive. The offender was made an example so that others might be deterred from committing the same crime again. The lash was the popular medium of punishment for minor offences which was applied in public; it knew no distinction of sex and fell heavily on both males and females. Pillory also appears to be vogue at this time. A technical principle of the English Ecclesiastical law, known as the benefit of clergy, was available to the Englishmen as a defence and was commonly invoked in cases of manslaughter; in such a case, the accused was branded on the hand and discharged.
A Plan of Fort St. George, in September 1749.