CHAPTER - 3

3.1 Arrival of East India Company in India.

In 1660 the Island of Bombay, changed hands as a dowery from the King of Portugal, to Charles II, the then King of England. Today Mumbai, is a metropolitan city but it was then a little fishing village, except for the early morning catch (fishing) life was uneventful. The needs of fisher folk were few and simple and life presented no complex problems. Life was simple until the Island was made over on 27th March 1669 to the "Company of merchants of London trading in to the East Indies" which later emerged as a East India Company by a Royal charter, which empowered the company to make laws for the good governance of the Island and its inhabitants.

3.2 Establishment of benches of Justices, 1670.

In the year 1670 two benches of Justices were established for trial of minor offences and disputes. The Deputy Governor and council were to sit as a superior court for hearing of appeals or the trial of any cases beyond the jurisdiction of the justices or relating to the public, Government and civil policy of the Island and the company's interest and estate thereon. In the superior court all trials were by jury.
These courts were replaced by the Court of Judicature in 1672. On 8th August 1672 the court was inaugurated by the then Governor of Bombay, General Aungier.

In his speech on that occasion General Aungier said, "The inhabitants of this Island consists of several nations and religions to wit English, Portuguess and other Christians, Moores, and Jentues, but you when sit in this sit of justice and judgement must look upon them with one single eye as I do, without distinction of nation or religion, for they are all his Majesties and the Hon companies subjects as the English are and have all equal title and right to justice and you must do them all justice, even the meanest person of the Island and in particular the poor, the orphan, the widow and strenger, in all matter of contraversy of common right, and meum and tumn. And this only against other but even against myself and those who are in office under my against the Hon. company themselves when law, reason and equity shall require you so to do, for this is your duty and there in will you be justified and in so doing God will be with you to strengthen you, his Majestey and company will comend you and reward you, and I in my place, shall be ready to assist, countenance, honour and protect you to the utmost of the power and authority entrusted to me; and so I pray God give his blessing to you."

On 10th February 1728 the Mayer's court was established by George I. This court consist of the Mayer and nine eldermen. It was the court of record empowered to hear all civil suits and actions. It also exercised testamentry jurisdiction. From this court an appeal lay to Governor in Council, and from the Council to the King in Council, in causes involving sum above 1000 pagodas.

The charter of 1726 also constituted the court of Oyer and Terminer composed of the president and two or more of the five senior members of his council who as justices of the peace had to hold quarter sessions four times a year with jurisdiction over all offences except high treason.

In 1753 a fresh charter was granted by King George II. This charter limited the Mayer's jurisdiction and suit between Indians were directed not to be entertained except by consent of parties. By the same charter a court of request was established for the determination of suits involving small pecuniary amounts. Thus civil justice was administered by the Mayer's court and the court of request, while criminal cases were tried by the justices in petty and quarter sessions.
3.3 Establishment of Recorder’s Court 1798.

In 1798 these courts were replaced by the Recorder’s court. This court consisted of the Mayor, three eldermen and Recorder who was the judicial authority of the court. The Recorder, had to be a Barrister of not less than five years standing. This court was invested both civil and criminal jurisdiction and was also empowered to hear ecclesiastical and admiralty cases. Appeal from its decision lay to the King in Council. This Recorder, was the King’s judge unlike the judges of the earlier courts who were the servants of East India Company. The Recorder, as well as the English Barristers, who practised before them set up high traditions. It was really from their time that the battle for independance of the judiciary commenced.

The two of the Recorders, who strongly resisted executive interferance with their work were Sir James Macintosh and Sir Edward West. The periods of Recorder’s court is also notable for the official asajciation of Indians with the administration of law. Hindu Pandits and Muslim Moulvis sat with the Recorder, to advise him on the personal law of Hindus and Mohamedens.

3.4 Establishment of Supreme Court at Bombay 1824

The Recorder’s court functioned for 26 years until 1824 when the Supreme Court, was established in Bombay, under the charter granted by George IV on 8th December 1823. This court consisted of Chief Justice and two judges, being barristers of England or Ireland of not less than five years standing. It was invested with full power and authority to exercise and perform all civil, criminal, equity, admiralty and ecclesiastical jurisdictions. Sir Edward West, who was the Recorder, immediately before the Supreme Court, was constituted, was its first Chief Justice. He carried on struggle for judicial independance. On establishment of Supreme Court a crisis developed.

Sir John Malcolm, the then Governor of Bombay, issued orders that a writ of the Supreme Court, should not be executed and communicated these orders to the Supreme Court. The judges resenting such interferance had the Goverment
communication read out in open court then declared in the presence of the Bar and the public.

"The court would not allow any individual, be his rank ever so distinguished or his powers ever so predominant, to address it in any other way respecting its judicial and public functions within these wall, we know equal and superior, but God and the King."

Within short time there after one of the two judges died. Undeterred Sir John Peter Grant, the only judge left, then issued a fresh writ which was likewise not obeyed. Sir John Peter Grant, then took the extreme steps of closing the Supreme Court and its offices. The function of the court remained suspended for as long as five months, until a new Chief Justice was appointed. Sir John Peter, then resigned and went to England. A measure of popular recation to the courageous stand taken by Sir John Peter Grant, is to be found in a warm farewell accorded to him on his departure by the citizens of Bombay.

The jurisdiction of the Supreme Court, was confined to the town and Island of Bombay. About the same time the Supreme Court, was established in the town of Bombay. Civil and criminal courts called Diwani Adalat and Fouzadri Adalats were established in the territories under the control of East India Company, out side the town and Island of Bombay. Regulation II 1827 for the constituation of Zilla or District Courts and Suddur Diwani Adalat. The Suddur Adalat was invested with civil jurisdiction over all the territories in the presidency of Bombay, except the city of Bombay, and was empowered to hear and determine appeals against decrees and orders passed in the Zilla courts.

Regulation IV of 1827 prescribed forms of proceedings in civil court, and provided that the law to be observed for the trial of suit shall be Acts of parliament and Regulation of Government, when applicable and in the absence of such Acts and Regalations, the usages of the country in which such the suit arose and if none such appeared, the law of the defendant and in absence of such usage, justice, equity and good conscience alone. The Regulation empowred the courts to appoint Hindu and Mohamen officers to expound Hindu and Mohamen laws. An interesting features of this Regulation was the provision that the court over which a Euopeon officer presided might avail itself of the assistance of respectable Indians by referring the suit
or any point or points in the suit to panchayat of such persons, who were to carry on their enquiry apart from the court and report the result.
3.5 Establishment of Suddur Diwani and Fouzadari Adalat 1827

Regulation XIII of 1827 was enacted for constituting courts of criminal justice. This Regulation provided for the constitution of Zilla Criminal Courts and Suddur Fouzadari Adalat. The supreme criminal jurisdiction over the territories in the presidency of Bombay, except the town of Bombay and Island of Bombay was vested in the Suddur Fouzadari Adalat, which was empowered to hear appeals against the decisions of Zilla Courts. This Regulation, was also empowered the courts to seek assistance of respectable Indians in the trial of cases by employing them as members of a panchayat or as assessors or more nearly as a jury.

The judges of the Supreme Court, were appointed from the English Bar, while the judges of the Suddur Adalats, were selected from member of Bombay Civil services. The Supreme Court, generally applied English civil and criminal law and its proceedings were also governed by the English law of procedure except in suits, in which the defendant was a Hindu or a Mohamedon, in which case the law of the defendant was applied. The court in mofussil did not however, follow English law and procedure. They applied rules of Hindu or Mohamedan law or the Regulation framed by the Government and where none of these were applicable, they followed the local usages or proceeded according to what they regarded as principles of equity, justice and good conscience.

3.6 Establishment of High Courts at Bombay Bengal and Madras 1862

In 1852-53 evidence was tendered before a parliamentary committee, which sat to consider East Indian affairs, that it was desirable in the interest of better administration of justice that the Supreme and Suddur Courts should be consolidated in to one court in each of the three presidencies with the object of combining the legal training of English lawyers with the intimate knowledge of Indian customs, habits and laws possessed by judges in the country. The process of amalgamation was facilitated by the assumption of India by the British crown in 1856. In 1861 the British parliament enacted the Indian High Courts Act, which came in to force on 6th August 1861. This Act empowered the Queen to establish a High Court in each of the three presidencies of Bombay, Bengal and Madras. It abolished the Supreme Court and
Suddur Diwani and Fouzadari Adalats and vested their original and appellate jurisdiction in the High Court. The Act, also provided that judges of the Supreme Court and permanent judges of the Suddur Adalats were to be the first judges of the High Court.

The Act provides that each High Court was to consist of the Chief Justice and as many as judges not exceeding 5 as the crown thought fit to appoint. In accordance with the provisions of this Act on 18th June 1862 Letters Patent were issued establishing in the presidency of Bombay a High court under the name High Court of Judicature Bombay. The Letters Patent designated Sir Mathew Richard Sausse, as the first Chief Justice and also named other five judges. On 14th August 1862 the judges named by Letters Patent solemnly declared in the presence of Bar and public that hence forth they would sit as judges of the High Court and with that declaration High Court of Judicature at Bombay began to function.

For a long time the judges of the High Court were as a rule all Europeans. It was in June 1864 that the first Indian, Rao Bahadur Janardan Wasudeoji, who was the principal Suddur Amin, i.e. a first class subordinate judge in Khandesh, was appointed a judge in short leave vacancy of about two months. He again acted for about four months in 1865. Mr Nanabhai Haridas, who was previously a Govt. pleader was the first Indian to be appointed a permanent judge in 1883. The number of Indian judges increased to two in 1895 and remained stationary for several years. The Chief Justices were however all English Barrister. The first Indian to serve as Chief Justice was Mr. Justice Badruddin Tyabji, who acted as a Chief Justice for about a month in leave vacancy in 1903. After independence Mr. M. C. Chagla, was appointed as the first permanent Chief Justice of this court. Likewise the Bar on the original side was dominated by English Barristers until the early part of the century.

The British assumed administration over Nagpur, province in 1853 but the former Bhosle Kings remained the rulers for detection and punishment of crimes. In 1861 the province lapsed to the East India Company as there was no heir to the Bhosle throne. The year in which the High Court at Bombay received its charter also saw the birth of another court only 520 miles away at Nagpur. It was the Court of Judicial Commissioner, of the Central Provinces and was the highest court of areas.
To began with, the court had only one judge the Judicial Commissioner himself. The first Judicial Commissioner, was a full fledged colonel, Colonel Spence. He was the principal administrator of the area and so had considerable touring to do. Invitably, therefore the court of Judicial Commissioner, was also peripatetic. On tour, he sometimes held his court in tent.

In November 1963 Mr. John [later Sir John] Starchey, took over as Judicial Commissioner. He was a Barrister at law from his regime till 1936 when the Judicial Commissioner's court was abolished. It functioned with all the solemn ritual and regularity of a High Court. It is said that Sir. John, inspite of his acquaintance with local and personal laws he read with great thoroughness the record of the cases before him and his decisions were substantially just.

The seventy five years that the Judicial Commissioner's court functioned were years of steady progress. Its judgements began to be officially published from 1886 in the Central Province law reports which later were known as the Nagpur Law Reports.

On 24 th October 1936 the Berars were added to the then Central Provinces which thereafter became known as The Central Provinces and Berar, i.e. C P and Berar; with similar changes in nomenclature of the Judicial Commissioner's court.

The judicial commissioner court ceased to function in 1936. On 19th January 1936 the High Court of Judicature at Bombay was constituted under a Letters Patent. Its first Chief Justice was Sir Gilbert Stone. The High Court thus constituted functioned till 1948 when, with the advent of independence and the framing of Indian Constitution, its nomenclature was changed to the High Court of Madhya Pradesh at Nagpur. This High Court again under went a major transformation in 1956 as a result of first re-organisation of States. Eight districts of former Madhya Pardesh were incorporated in the State of Bombay and are today referred to as the Vidarbha Area of Maharashtra State. Several new laws were made for that territory. Nagpur which ceased to be seat of the High Court of new Madhya Pradesh was given bench of the Bombay High Court with minimum of three judges at Nagpur. The arrangement was made permanent by the Central Act No.11 of 1960.
Of some of the things of abiding value which the British brought in to this country, the system devised by them for the administration of law and justice must be regarded as their greatest contribution. The British not only gave unity to the administration of law and justice throughout the country but also gave the High Courts fine tradition which English judges and Barrister continually preserved and nourished such must be, and indeed is the verdict of history.
3.7 Judicial System after Independence.

After independence it did not changed the character of this court, through it altered its composition. One English Judge Sir Eric Western, continued to be a Judge of this court till January 1950, when he became a Chief Justice of Punjab High Court.

In 1948-49 several Indian States, as they were then called merged with then province of Bombay. The jurisdiction of the High Court was extended to these new territories, in which several new States were established. On 26th January, 1950 Constitution of India came into force. The constitution has enlarged the powers and jurisdiction of the High Court. It has assigned to the judiciary a new role of securing to each citizen the enjoyment of his fundamental rights and ensuring that no unreasonable restrictions are placed on those rights.

On reorganisation of the States with effects from 1st November 1956, the territorists of Bombay State and with it the jurisdiction of the High Court were considerable extended. The merger of new territories was an additional source of strength to the High Court. Benches of the High Court were established at Nagpur and Rajkot to deal with matter arising from Vidarbha and Saurashtra regions respectively. The formation of separate State of Gujrat in 1960 resulted in the severance of ties not only with the Saurashtra region, but also with the Gujrat district over which this court had exercised jurisdiction for about a century.

On 26th January, 1950 Constitution of India came into force. Chapter IV, V and VI of Constitution of India provides independent judiciary from the parliament and executives. It provides establishment of Supreme Court and High Court. Appointment of Judges of Supreme Court and High Courts. Their qualifications for appointment and impeachment.

The Constitution of India provides civil and criminal jurisdiction of Supreme Court and High Court powers of Superintendents over subordinate courts.

The present Judicial System in India consists of Supreme Court (Apex Court) High Courts at State levels in different states. In addition there are some special courts also. As this study covers lower courts its organisational set up is discussed in next chapter.