

## EARLY LEGAL STEPS OF EAST INDIA COMPANY

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### ABSTRACT

From the earliest times of their existence all societies have had law. This is a self evident truth, which requires no proof. No society whether human or animal, can be conceived of without any norms for its organizations and operation. While the biologists are engaged in understanding the laws of animals' world, social scientists, especially lawyers, have recorded from the very early times the laws that have regulated or guided human activity within the society. In the present context I am not interested in pursuing the discussion on the relationship between law and society. My concern is with legal history of India and particularly the earliest period of British being in the guise of Traders Company. Legal history of Indo-Pak can conveniently be studied under four important periods: Hindu period, Muslim period, British period and after independence. Hindu period extends for nearly 1500 years before and after the beginning of the Christian era. Muslim period begins with the first major invasion by Muslims in 1100 A.D. British period begins with the consolidation of British power in the middle of the eighteenth century and lasts for nearly two hundred years. The modern period began with the withdrawal of the British when on 14<sup>th</sup> August 1947, Pakistan was declared independent. However, in this article the early period of British is shortly dealt with that initially in 1600, how the East India Company affixed its steps by deceiving the Mughal Emperors in the guise of trade and business in India and lastly captured and controlled it in 1857 dramatically and left their cultural, social, political and legal effects in Indian society of which we are still slave.

**Keywords:** Early, Legal, Steps, East India Company

### INTRODUCTION

#### FOUNDATION

About the end of the fifteen century some European nations came to India as trading merchant. In 1498, Vasco de Gama, a Portuguese, discovered the passage to India round the Cape of Good Hope.<sup>1</sup> However, due to complex relationship of Portuguese, Irish and French the situation is critical to be explained here but lastly the First East India Company was incorporated in England under a Charter granted by Queen Elizabeth on 31<sup>st</sup> December, 1600. Its official title was "the Governor and Company of Merchants of London trading into the East India". It was given the exclusive right of trading in all parts of Asia, Africa and America beyond the Cape of Good Hope eastward to the Straits of Magellan. The trading area so defined covered almost every part of the

world except Europe. No other British subject could trade in this area without obtaining a license from the Company.<sup>2</sup> The charter was granted for 14 years and it could be renewed for another 15 years only if it did not prejudicially affect the Crown and its people. The company was managed by Court of Directors. The members of the company in a general meeting, called "the Court", elected annually a Governor and twenty four directors to look after and manage the affairs of the company.<sup>3</sup> A second East India Company, to which the commerce of India was exclusively granted, was incorporated under a Charter of 5<sup>th</sup> September 1698 issued by William III. The two companies were united into one in 1709 under an award of Lord Godolphin. The new united company came to be called "The English East India Company".<sup>4</sup> The

<sup>1</sup> For details see V.B Kulkarni, British Dominion in India and after, Vidya Bhavan, Bombay, 1964.pp 1-17

<sup>2</sup> Ilbert, Government of India, P 10

<sup>3</sup> See J.W. Kaye, History of Administration of East India Company, 1853 p 66

<sup>4</sup> B.S Chaudhary Studies in Judicial History of British India Ch. X

Charter of 1698 which formed the basis of the constitution, powers and functions of the new formed company added only few things to the Charter of 1600. Under the new Charter the total number of members of the company constituted the General Court. The General Court elected annually twenty four directors, called the court of Directors, for the purpose of managing and directing the affairs of the company. In addition to the powers granted under the Charter of 1600, the charter of 1698 also provided that subject to the sovereign rights of the Crown the company shall have the power to govern its factories and forts. To establish the accountability of the company to the Crown, the Company was required to submit annually its accounts to the British Parliament.<sup>5</sup>

#### **POWERS OF THE COMPANY AS PER LAW.**

As per law i.e. the Charter, initially by majority vote the Company could make any reasonable laws, constitutions, orders and ordinances as it found necessary and convenient “for the good government and of all factors, matters, marines, and other officers, employed or to be employed in any of their voyages and for the better advancement and continuance of the said trade and traffic”<sup>6</sup>. For any violation of these laws the Company could also provide for such pains, punishments, and penalties as were deemed necessary. These laws and penalties were subject to the condition that they had to be “reasonable, and not contrary to or repugnant to the laws, status or customs” of England. Ilbert has called these powers of the company “the germ out of which the Anglo-Indian codes were ultimately developed”. A number of Charters granted subsequently (Charters of 1609, 1661, 1668, etc. preserved these powers of the company.<sup>7</sup> In addition to the above mentioned wide general powers, in beginning, the Company acquired from time to time specific powers from the British Sovereign. Among such powers we may mention the Royal Commissions and the Charter of 1661.

**Royal Commissions.** Within a short time of its creation the Company raised that the powers in its

hands were insufficient to control the lawlessness and disobedience in respect of its functioning and operations. Therefore, the company sought the help of the Crown to punish people for capital offences. This the Crown did by issuing commissions. By such commissions the Crown authorized the commander in Chief of each voyage separately to punish for serious offences. The first such commission was issued in 1601. On 14<sup>th</sup> December 1615 the crown gave a general power to the company to issue such commissions to its captains. The power of the company in this regard was subject to the limitation that in capital offences of murder and mutiny, the trial should be by a jury of twelve servants of the company. Subsequently, when the company established its business at different places, on 4<sup>th</sup> February, 1623 King James II granted to the company the power of issuing commission to any of its chief officers authorizing them to punish persons, subject to a jury trial in case of capital punishment<sup>8</sup>.

**Charter of 1661.** The Charter issued on 3<sup>rd</sup> April 1661 by Charles II has a special significance in the Indian legal history. By this Charter the company was empowered to appoint a Government and Council at its factories. In addition to other powers, the government and council were authorized to judge all persons belonging to or living under the company in all cases, whether civil or criminal according to the laws of England and to execute judgment accordingly. In places, which had no Governor and Council, the Chief Factor and Council were empowered to send offenders for punishment either to a place where there was a Governor and Council or to England. Thus the Charter of 1661 authorized the company to try and punish all persons living under it, including the Indians, opened the doors for the introduction and application of English law in India, and conferred judicial powers on the executive, the Governor and Council.<sup>9</sup>

<sup>5</sup> Ilbert, Government of India p 17

<sup>6</sup> A chronicle of British Indian Legal History by Hamid Abdul page 3

<sup>7</sup> VD Kulshreshtha's Landmarks in Indian Legal and Constitutional History page 37

<sup>8</sup> Outlines of Indian Legal and Constitutional History by M.P.Singh

<sup>9</sup> See Keith, Constitutional History of First British Empire pp. 26-32

### LEGAL STEPS AT SURAT

The Company established its first factory in India at Surat in 1612 during the time of Mughal Emperor Jahangir. To gain the favour and protection of the Emperor, King James, I sent Sir Thomas Roe to him in 1615 as his Ambassador. The Emperor issued a Law/Farman granting certain facilities to the English people to carry on their activities in a hired house at Surat, to live according to the laws, religion and customs of England and to be judged by their own laws in their disputes. But a dispute arising between an Indian and an English was to be decided by the Local Indian Courts in their own matters by the laws of England and in matters with Indians by the native laws of this country.<sup>10</sup>

The native courts at Surat also did not enjoy good reputation. They suffered from many evils. According to Dr. U.C Sarkar during this time the administration of justice by the Mughal emperor also was very unsatisfactory particularly in cases which were not adjudicated by the emperors themselves. There was not set pattern of crimes and punishments and corruption among the judges was rampant. Many cases of indiscriminate punishment and letting off criminals on acceptance of bribe by the judges are cited by Malabari in his book “Bomby in the Making” and by Kaye in his book “Administration of the East Indian Company”. Many English people, therefore, took law into their own hands and did not care for these courts. The Surat’s early legal set up of the Company remained in Prominence until 1617. Due to the Transfer of the seat of the President and Council to Bombay in that year, Surat lost all its importance for the company.<sup>11</sup>

### LEGAL STEPS IN MADRAS

Madras was founded by Francis Day in 1639 on a piece of land granted to him by a Hindu Raja. A fort named as Fort St. George was established there. The Raja also authorized the Company to govern and dispose off the Government of Madraspatnam a small village adjacent to the fort. Inside the fort lived the English and outside in Madraspatnam lived the native people and

accordingly the two were known as the White Town and the Black Town respectively. The two towns together later came to be known as Madras.<sup>12</sup> The earlier legal steps taken in Madras up to 1726 may be divided into three stages.

**First Stage (1639 to 1665).** To begin with, Madras was an agency subordinate to Surat. Its’ Chief Officer was called Agent who administered the affairs of the Company with the help of a Council. The judicial system that existed at this stage was conspicuous by the absent of any systematic and regular administration of justice. The only system that existed was The Agent and his council for the White Town and The Choultry court for the Black Town. The jurisdiction and powers of the former were not clearly laid down. It could not decide serious offences and generally sent them to the Company’s authorities in England. No decision could be given in for years due to the lack of effective and expeditious means of communication. The Choultry Court was a native court presided over by the village headman known as Agidar. In 1652 Company’s two servants were appointed to sit in this court, after the dismissal of the then Adigar on the ground of dishonesty. This court could decide only petty civil and criminal matters. What happened in cases of serious nature is hardly known. Apparently there was no specific and regular procedure to deal with such matter in the Black Town and the procedure and punishment differed from case to case. Generally the matter used to be referred to the native Raja, who either gave specific direction in the case or authorized the English authorities to decide the matter according to the English law. Charter of 1661 was granted by Charles II and radical changes were brought, as under it, the company could appoint Governors and other officers in India”. Companies’ authority was excluded over the natives i.e. non employees of the company. Justice was to be imported according to the English law.<sup>13</sup>

**Second stage 1665 to 1686.** Although the Charter of 1661 provided that the Governor and Council could decide every matter according to the laws of England but nothing was done until 1665, when the

<sup>10</sup> Roberts, P.E. History of British India.3<sup>rd</sup> Ed. Oxford 1952 p.24

<sup>11</sup> Humayun Kabir. The Indian History Bombay, 1947 at p 34

<sup>12</sup> Henry Davidson Love, Vestiges of Old Madras, published in four Volumes

<sup>13</sup> A history of the Madras High Court by V.C Gopalratnum

Dawes case arose. Mrs. Amentia Dawes was brought on a charge of murder before the Agent and council. As per practice, the Agent and Council could only refer the matter to England. To get rid of this procedure the company thought it proper that the Governor and Council should be appointed under the Charter of 1661 so that such cases may be decided then and there. Accordingly, in 1665 the company raised the status of Madras to a Presidency and appointed a Governor and Council who could also work as Court. The case of Mrs. Dawes was decided by this Court. Perhaps because of the absence of any legal expert in the Court the lady got acquitted. Many requests were made by the Governor and the Council to the company to send a legal expert, but none was heard. In 1678, the Governor and council resolved that they would sit as Court for two days in a week to decide the cases in all civil and criminal matters with the help of a jury of twelve men. The court was called as the High Court of Judicature. This court decided important cases both in civil and criminal matters and also heard appeals against the decisions of the country court.<sup>14</sup>

**Third stage 1686 to 1726.** As noted above proper administration of justice was absent in the presidency and the same was the case with other establishments. Crimes were increasing and occurred more frequently on ships transporting goods from one place to another. To face this difficulty and to avoid the evils arising from, it was found necessary that a court having the jurisdiction to decide the maritime cases should be established. Therefore, on 9<sup>th</sup> August, 1683, Charles II granted a Charter to the Company making a provision for the establishment of the Admiralty Courts. Admiralty Court was to consist of three members, one of whom was to be learned in the civil law, and the other two were merchants, appointed by the company. The court had to hear all cases, mercantile and maritime concerning all persons coming within the limits of the charter, the cases of the trespass, injuries, principles of equity justice and good conscience and the customs of the merchants, subject to the directions of the crown, the court could determine its procedure. The proposed Court was established in Madras on 10<sup>th</sup>

July 1686. The first members of the Court were civil servants who were also members of the Governors Council. In the Year 1687, a lawyer member with the designation of Judge Advocate was appointed to this Court. The lawyer was sir John Biggs. On the arrival of the Judge Advocate, Governor and Council found that there was no need of the Governor thus withdraw in favour of the Court of Admiralty which henceforth decided all types of cases whether civil, criminal, maritime or mercantile. Criminal cases were decided with the help of Jury. In 1689 Sir Biggs died and the post of the Judge Advocate fell vacant and in the absence of any lawyer member, the Governor himself assumed the charge of the Judge Advocate.<sup>15</sup>

This composition of the Court was against the nature of the original charter which required a civil lawyer as the Judge Advocate. Hence in 1692, a new Judge Advocate was appointed who was dismissed in 1694 on a charge of bribery. In 1696, the Company directed that the members of the Council would successively work as Judge Advocate. But none of them was a civil lawyer, hence the court lost its importance.<sup>16</sup> After 1704, the court ceased to work regularly. In the meantime other courts were established to decide the disputes. i.e. Establishment of Corporation and the Mayors Court. Under Charter of 30<sup>th</sup> December 1687, the East India Company proposed to establish a corporation in Madras. The purpose of the corporation was to provide representative local government, to impose local taxes and to have the powers for the speedier determination of small controversies of little importance frequently happening among the unarmed inhabitants.

The first corporation in Madras was established on 9<sup>th</sup> September, 1688. It had one Mayor, 12 Aldermen and from 60 to 120 burgesses. The Mayor was to be elected annually. The Corporation was subject to the authority of the Governor and Council who could remove any of the members of the corporation including the Mayor. In the same way the Mayors court consisted of the Mayor and all the Aldermen. The quorum for the court was three, 1 Mayor and 2 Alderman. A lawyer member, called recorder, was appointed by the Mayor and Aldermen for helping them in deciding the cases of considerable value and intricacy. The Jurisdiction

<sup>14</sup> Fort St. George Record, Public Consultations, Vol.II.

<sup>15</sup> Cambridge History of India, Vol. V,p.102.

<sup>16</sup> Henry Davidson Love, Vestiges of Old Madras, published in four volumes

of the Court extended to all civil and criminal matters. It had power to inflict any punishment on any Indian as well as Englishmen subject to the condition that no Englishman could be punished to death. In criminal cases the Court had to take the help of jury. Appeals against the judgment of this Court both in civil and criminal matters, went to the Admiralty court. In civil matters, an appeal could be filed only when value exceeded 3 pagodas (equal to nine rupees) and in criminal cases when the loss of life or limb was involved. The law to be applied by this Court was not specifically laid down. The only provision made in the Charter was that the court would decide the disputes in a summary way according to justice and conscience and according to the laws made by the company.<sup>17</sup> The court, although provided a forum for deciding the disputes of the people, it could not enjoy the independence needed by the judiciary. It always depended on the Governor and Council because they could remove the Mayor and any Alderman. Moreover, the Mayor and the Alderman were also the members of the Council and therefore, they could not do full justice in the matters related to the company and its executive. Apart from this, after the establishment of the Mayors Court the Choultry court, which used to impart justice to the natives, lost its importance. Its jurisdiction was limited only to petty criminal cases. It could impose only minor punishments of fine, imprisonment and whipping. In civil matters it could hear the cases upto to the value of 2 pagodas only. So the mayors' court, the choultry courts and the court of Admiralty were functioning in Madras. The admiralty court ceased to function after 1704 and its jurisdiction was exercised by the Governor and Council. They also heard the Mayor Court's appeals till 1727 when a Mayor's Court was established under 1726 Royal charter.<sup>18</sup>

#### LEGAL STEPS TAKEN IN BOMBAY

The island of Bombay was under the occupation of Portuguese since 1534. In 1661, the Portuguese king gave this island to King Charles II of England as a dowry in the marriage of his sister. The King Charles II gave island to the East India Company

in 1668 at an annual rent of Rs. 100/-. In the same year Charles II issued a Charter, which conferred executive authority on the company for the general administration of island including the administration of justice and making of laws. The company could make necessary laws, ordinances, regulations, etc, for its good governance and could impose fines and penalties including the death sentence on those who disobeyed the laws of the company. But note it that these powers could be exercised reasonably and consistent with the laws of England. For the administration of justice, the company could establish courts which had to follow the procedure of English Courts. In the beginning Bombay was put under the authority of a Deputy Governor and Council. The Deputy Governor and Council were subject to the presidency at Surat. The first Deputy Governor of Bombay was Gerald Aungier. He was a good administrator and took much interest in establishing a good judicial system on the island.<sup>19</sup> Like Madras, the legal steps taken in Bombay upto 1726, may also be divided into three stages.

**First Stage 1668 to 1683.** During this period the legal steps taken with regard to the judiciary were that the two judicial systems were established. The first of them was established in 1670. According to this Bombay was divided into two divisions. Each division had a court consisting of five judges. The Custom officer of the Division was the president of the court. Some of the judges in these courts were Indians. The jurisdiction of this court extended to petty criminal cases, thefts involving the stolen property and similar other cases. The civil cases which came before this Court were also of petty nature. It had no jurisdiction to decide cases involving more than 200 xeraphins. Appeals against the judgments of this Court could be filed in the Court of the Deputy Governor and council. The Deputy Governor and council worked as a superior court having both original and appellate jurisdiction, in all civil and criminal cases. In civil cases, it had the jurisdiction to entertain matters of the value exceeding 200 xeraphins. All the serious offences, which could not be entertained by the

<sup>17</sup> A Peep into the past History of Madras Law Courts, May, 1959 Lawyer 156

<sup>18</sup> V.N.Srinivasa Rao, "Peeping into the Past History of Madras Law Courts" May 1959, Lawyer, at p. 160

<sup>19</sup> Outlines of Indian Legal and Constitutional History M.FP. Singh p 8

Divisional Court, were tried by this Court with the help of jury. The appellate jurisdiction of this Court was confined to appeals against the decisions of the Divisional Court.<sup>20</sup>

The judicial system established in 1670, was quite elementary and primitive. No distinction was made between the executive and the judiciary. Nor was there any provision for a lawyer member in the courts. Many requests were made by the Deputy Governor to the Company for providing a man learned in law, but it did not care. Ultimately it authorized the Deputy Governor to select any lawyer member of its choice available in India. The Deputy Governor selected Mr. George Wilcox to be a lawyer member in the judicial administration. Soon after the selection of Wilcox, the judicial system of 1670 was abolished and a new system was established in 1672.<sup>21</sup>

#### **Portuguese law replaced by English Law**

On 1<sup>st</sup> August 1672, a governmental proclamation was made. By this proclamation the existing Portuguese law in the island was replaced by the English law. From then onwards, the English law became the law of the island in all matters. Under this proclamation a new judicial system was also established under which three types of courts were created. Court of Judicature, a Court with Wilcox as its judge, was established to hear all civil and criminal cases. The Court also had jurisdiction in matters of probate and testaments. For civil matters the court sat once a week. All the cases were decided with the help of jury. The Court fee at the rate of 5% was also imposed in civil cases. For deciding criminal cases, the court used to sit once in a month. For the purpose of criminal administration of justice, Bombay was divided into four sections. For each section one justice of peace was appointed who worked as a sitting magistrate. The justices of peace sat in the Court as assessors at the time of the Trial. Another Court of Conscience was established presided over by Wilcox. There was no provision for any court fee. This court did not have any jury. It could be said that the judge decided the matter to the best of his judgment. The Deputy Governor and council

functioned as court of appeal. They heard appeals against the judgments of the Court of judicature in all matters. The judicial system which was so established under the plan of 1672 worked well. It was quick, inexpensive and diffident. Its main defect was that the judges did not enjoy independence required for good administration of justice. They were not paid properly and were always under the subjection of the executive and could be harassed by the officers of the company. This system worked till 1683 when a rebellion brought it to an end by capturing the island. The island remained under the rebellions for about a year. It was recaptured by the company in 1684. After its recapture the company established a new judicial system in it.<sup>22</sup>

**Second Stage 1684 to 1693.** Under the new system of judicial administration, a court of admiralty was established in Bombay on the lines of the court of admiralty established in Madras under the Charter of 1683. Basically the court had jurisdiction in admiralty and maritime matters. But due to the absence of any other court, even civil and criminal matters went to this court. After some time, dispute arose between the Governor and council and the Judge Advocate of the court of admiralty about their respective jurisdictions. Consequently this court was deprived of civil and criminal jurisdiction in 1685.

To deal with the civil and criminal matters, a court was established on the lines of the court of jurisdiction created under the plan of 1672, but the jurisdiction of this court and of the court of Admiralty was not clearly demarcated. Therefore, the dispute of jurisdiction, between these two continued to arise. Bitterness between the judge Advocate and the Governor increased to the extent that after the retirement of the first Judge Advocate, no other lawyer member was ever appointed to the court of Admiralty. In the absence of the lawyer member the court could not function on the expected lines.<sup>23</sup>

On 1690 one Sidi Yakhub, Admiral of the Mughal Emperor, attacked the island of Bombay and

<sup>20</sup> B.M.Malabari, Bombay in the Making ch. V pp 146-182

<sup>21</sup> Fawcett, First Century of British Justice in India, PP.18-28

<sup>22</sup> Henry, Dodwell, The Nobobs of Madras, p.149

<sup>23</sup> Anderson's English in Western India, p.257

captured it. It remained under his conception till 1718. Nothing is known about the judicial system which existed on the island during Siddi's occupation. In 1718, when the administration of the island again came into the hands of the company a new judicial system was established for it.

**Third Stage 1718-1726.** On March 25, 1718, a court with Chief Justice and 9 judges was established. Out of the 9 judges, the five were English and four were Indians. The court thus represented the major Indian communities through the four judges, who were known as black justices. The Court had jurisdiction in all criminal and civil matters. In the administration of justice, the court applied the principles of equity, justices and good conscience, and the rules made by the company from time to time. Application of law, however, had to be in conformity with and not contrary to the laws of England. Apart from deciding civil and criminal matters, the court also had the jurisdiction in the matters of probates, and testaments. It also functioned as registration office.<sup>24</sup>

The above court used to sit once a week to decide all cases. There was no specified law which the court had to apply and, therefore, it gave a summary and ready justice in all cases which came before it. No rules of procedure or evidence were prescribed for the court. Civil cases which came before the court were small in number and petty in nature, not involving any intricate issues. Many of these cases used to be decided according to the personal laws of the parties or the customs prevailing among the communities to whom the disputes related.<sup>25</sup>

Criminal cases which came before the above court were of varied nature. They extended from minor offences to capital offences. The Court could give judgment and punishment in every minor or major offence. In enforcing punishments generally the rules of English law were observed, yet the punishments were and sometimes there was no relationship between the punishment and the offence. A curious punishment which no body will support today was the punishment of detention in jail. No time limit of imprisonment was prescribed,

whipping was a common punishment. The presumption of innocence of the accused and benefit of doubt to him also did not get recognition in this court. The jury system which existed earlier was also given up and the court decided all cases without jury.<sup>26</sup>

The system established in 1718 was an improvement upon the earlier system at least to the extent that the participation of Indian judges was allowed in the administration of justice. This helped the court in winning the confidence and respect of the local people. The internal position of the company did not, however, allowed the court to function properly. A little bit separation of executive from the judiciary had been introduced by the Court of 1718, yet the executive, i.e. the Governor and Council always interfered with the independence of the Judiciary. Apart from that many of the English judges in the Court were the members of the Governor's Council as well as of the Court. The Judges were also the prosecutors. In many cases the Government of the company itself was involved. In those cases the judges could not impart impartial justice. Examples are available where these judges prepared and procured evidence against the persons who were brought before the Court for justice. Another anomaly was that being members of the Court as well as of the Governor's Council, these judges heard appeals as Governor and Council against their own decisions. In this way the judicial system was wanting in so many respects. The cannons of natural justice and the principles of law were violated by the defects which have been just mentioned.<sup>27</sup>

### **STEPS TAKEN IN CALCUTTA**

Job Charnock, a servant of the company, laid the foundation of the British legal set up in Calcutta, on 24<sup>th</sup> August, 1690. It began with the establishment of a factory at Sutanati on the banks of river Hugli. A fort was built which was named as Fort William. Eight years after, in 1698, the company secured the zaminadari of three villages, namely Calutta, Sutanati and Govindpur from the Subedar of Bengal, Prince Azimushaher, one of the grandsons of Aurangzeb. As Zamindar the

<sup>24</sup> Keith, Arther Berridale, A Constitutional History of India p.88

<sup>25</sup> Roberts P.E. History of British India Oxford 1952 p 24

<sup>26</sup> Vachha,P.B., Famous Judges, Lawyers and Cases of Bombay, p.10.

<sup>27</sup> Humayun Kabir, The Indian History Bombay, 1947 p 34

company obtained all the privileges available to the zamindars.<sup>28</sup>The zamindars enjoyed almost unlimited rights and privileges. If the ruler got the revenue in time, he did not care about the acts of zamindars within their zamindari. Although the Mughal rulers had established a hierarchy of Courts and also a good administration of justice, yet after Aurangzeb, it began to tremble and lost its importance and prestige. The Nawab had no proper control over them. He became idle and left his judicial work to his subordinates. Similarly, at the lower levels the persons to whom the administration of justice was assigned did not perform it properly unless they were paid some gratification. In these circumstances it could be assumed that the zamindars, who were responsible for the collection of the revenue, exercised all those powers which they thought were necessary in their interest. They could inflict any punishment on any person without any fear of action. No action could be taken against them even if they condemn a person to death. In civil matters they decided as they wished without regard to the claims of the parties. This was the state of affairs when the company became the zamindar in Bengal.<sup>29</sup>

**Judicial system under the Company and steps taken.** Company as Zamindar appointed an officer with the designation of Collector to collect the land revenue from the tenants. He was also given civil, criminal and revenue powers to decide disputes arising within his jurisdiction. There was no specific direction to the Collector about how the law was to be applied in deciding disputes which came before him. Therefore, he generally decided matters according to his own discretion or according to the customs and usages applicable in the locality. Appeals against the Judgment of the Collector went to the Governor and Council. If the Collector gave any death sentence, it was to be confirmed by the Governor and Council. Serious criminal and civil matters relating to Englishmen did not come within the jurisdiction of the collector and were decided by the Governor and Council.<sup>30</sup>

Although the company was merely a zamindar under the Mughal Nawab just like any other zamindars at that time, two important differences were made. First, while the appeals against the judgments of other zamindars went to the Courts of the Nawab, the appeals from the Collector went to the Governor and Council. Second, in the case of other zamindars the death sentence was confirmed by the Nawab, while in the case of company, that job was performed by the Governor and Council without reference to the Nawab. From these differences it appears that the company began to exercise its independence at Fort William from the very beginning. The judicial system established by the company in Calcutta was very elementary. No specific provision was made about the procedure the courts had to follow and the canons of law and justice they had to observe. This arrangement could hardly be called judicial system. It was merely a matter of administrative convenience.<sup>31</sup>

#### CONCLUSION

As per above discussion, it can easily be concluded that for having a wholesome picture of the Pakistani legal system as to what it is and what it ought to be, we must have a total picture of its evolution from the earliest time to the present. Then and then only we can effectively use legal history for understanding the current legal phenomenon and for giving it appropriate direction for the future. Of course tracing of such a history of laws and legal institutions of Pakistan is a daunting task but it is worth understanding. I think it necessary for the creation of an effective and efficient legal system for the country which brings justice within the easy reach of everyone of us. Whatever, legal system has been given to us by the British is part of our legal system just as English language is now one of our many languages. Just as we did not discard English but rather gave it a prominent place among our languages after our independence from the British rule, we may continue to give prominent place to the legal system given to us by the British and particularly judge it, conform it and shape it under our own Islamic legal system, as provided and enshrined in

<sup>28</sup> Reid C.L. Inner History of East India Company, Chandigarh 1947.

<sup>29</sup> W.K. Firminger, Affairs of the East India Company, Report V, Vol. I,

<sup>30</sup> Holwell, Indian Tracts, P.120

<sup>31</sup> Mittal J.K. Indian Legal History 1976 p.30



Holy Quran and Sunnah. In this article, I have just tried to study that how English in earliest had administered legally the Bombay, Calcutta and Madras through its trading company by giving them name as presidencies.

May Allah bless me

