ADMINISTRATION OF JUSTICE IN BOMBAY

PHASE I (1668 – 1683)

In the year 1534 Portugal for the first time received the Island of Bombay by cession from the King of Gujarat, Sultan Bahadur. Bombay was controlled by them for more than a century.

When King Charles II of England began his reign, the Emperor Aurungzeb was at the height of his power in India.

In Surat the Company occupied merely the position of one of the big trading houses of the city which was controlled by Aurungzeb.

In the year 1661 Portuguese King Alfonsus VI transferred the Island of Bombay to Charles II as a gift on the marriage of his sister Princess Catherine with the British King. At that point of time Bombay was a poor place and the population of Bombay was just 10,000, Bombay was a just small fishing, neglected Island town.

Later Charles II transferred the Island of Bombay to the East India Company in year 1668 for annual rent of Ten pounds.

CHARTER OF 1668- Charles II gave the charter to the company to administer the Island of Bombay with full powers and jurisdiction requisite for the administration and dispensation of justice in Bombay.

The company was authorized to make the laws on the basis of Laws of England.

Thus with the charter of 1668, the status of East India company started to change. With this charter the trading company started its journey towards becoming a territorial sovereign.

Thus Bombay came under the Surat Presidency; The Governor of Surat factory was the ex-officio Governor of Bombay.

Gerald Aungier the Governor of Surat factory led the plans of judicial system in Bombay, he was the founder of Bombay. With his effort in the year 1670 in Bombay the first judicial system was established.

Bombay was divided into two divisions. First Division – comprised Bombay, Mazagaon and Girgaon and SECOND division- Mahim, Parel, Sion and Worli and in each division a court consisting of five judges was started with English person as the head of each Court and Indians were also appointed as the judges.

These courts quarterly, submitted copies to the Deputy Governor’s office, which were to constitute a superior court.

From 1670 – 1672 the legal system was very elementary and admin of justice was given to traders with no knowledge of law and no salary for the judicial work done by them.
In the year **1672** the legal system was reformed and **George Wilcox** became the judge. The Portuguese laws and customs were abolished and the English law was introduced by a Government. Proclamation on August 1, 1672. The court was to have jurisdiction in all cases, civil, criminal, probate and testamentary.

The court sat once a week and tried all civil cases with the help of Jury.

Provisions were made for the speedy trials and quick decisions by the court.

A fee of 5 percent was charged on each case which the court tried.

For administration of criminal justice Bombay was divided into 4 divisions: -

- Bombay
- Mahim
- Mazagaon
- Sion

In each section, an English person was appointed as a justice of peace. He held preliminary examination of the witnesses against an accused and made a record which he sent to the Court which sat once a month to try criminal cases with the help of Jury.

The judge was to be given a salary of 2000 Rupees a year.

This judicial system was inaugurated by Aungier on Aug 8 1672.

The Company had directed the court to maintain a register of all its proceedings and send an annual report to it. The civil cases were decided in 10 to 12 days. Justice was very cheap, with maximum charges amounting to 20 shillings. Debtors were kept in jail until they paid their debt. Jury would consist of 12 Englishmen

In criminal cases felonies like murder, rape, and witchcraft were punished with death according to the English law.

Although the judges were to be given a salary of 2000 Rupees a year, the company did not pay any salary to the Judge Wilcox and furthermore the company started to reduce the salary of judges, to maintain the subservience of the judiciary to the executive.

In the year 1683 the company judicial system came to an end because of Keigwin’s rebellion on the Bombay Island and in the year 1684 the Keigwin’s rebels surrendered the Island to the company, thus marking the end of the first phase of evolution of judiciary at Bombay.

**Administration of Bombay 1684 to 1690** -
In the year 1684 the East India Company sent Dr. John St. John from England to Bombay. Dr. John was expert in civil law.

Under the charter of 1683, the company established an Admiralty Court in Bombay in 1684 which took control of all civil as well as criminal matters along with admiralty and maritime matters falling within the ambit of 1683, since after the kreigwin’s rebellion, no other court was established.

That time Dr. St. John took some evidence against Governor Child and this made Governor Child upset and Governor did not believe the theory of equality before the law. He felt offended and did not like the judicial independence so in the year 1685, he reduced the powers of this court and limited it to try only maritime and admiralty matters, from civil and criminal cases.

A new court was established in Bombay called as King’s Bench of the common pleas. And Vaux became judge who was not aware about law. The court was to decide civil and criminal cases on the same lines as the court of 1672. Vaux was to be a member of the Bombay Council also.

With this new court, both courts started to fight with each other regarding the jurisdiction of the court cases.

As Dr. St. John was very liberal person and believed in equality before law, the executives who thought judiciary is under them did not like Dr. John, so in the year 1687 Executives Governor dismissed Dr. John from his position as a judge.

After the exit of Dr. John, the Deputy Governor of Bombay took over as the judge of the admiralty court. But the Company objected to the appointment of one and the same person to two offices. Thus in 1688, Vaux became the Judge advocate by over-ruling the charter of 1683 which said that Judge advocate should be learned in civil law and although Vaux never learned any kind of law, he knew how to keep executives happy.

In the year 1690 Bombay was attacked by the Moghul Admiral Siddi.

After this attack the judicial system of Bombay came to an end from the period of 1690 to 1718.

**THIRD PERIOD- 1718-1726**

After the gap of 30 years on 25th March 1718, again company started the court in Bombay which consisted of chief justice and 9 judges, 5 were British and 4 Indian judges. The court was authorised to decide all cases, civil, criminal and testamentary.

The court handled all cases, followed laws of England and tried to pay attention to the caste and customs of each religion also.
The court also worked as registration house also for the sale of immoveable property and charged fees also

The court sat once a week and decided all cases.

British Judges enjoyed more powers and respect than the Indian judges. The Indians acted more like assessors than full-fledged judges.

The courts work with speed, gave justice quickly and it was very cheap for everyone to go to court. Unlike the court of 1672, the court of 1718 did not use jury.

Courts followed customs of Hindus as well as Muslims when trying cases and also considered international law and British law.

It was common practice to give lashes as punishment to criminals.

Robbers were whipped and branded with red hot iron.

Everyone feared to do crime, justice was deterrent.

At that point of time one interesting case is that the officials falsely charged innocent person and robbed his property by proving him guilty in court by producing fake papers and witnesses who were tortured. The case is known as Rama Kamati case. This trial proved that justice was rough and ready and there was miscarriage of justice.

This kind of a judicial system continued to function till it was superseded by a new judicial system under the Charter of 1726.

**Administration of Justice at Calcutta - 1660 To 1726**

In the year 1668, the grandson of Aurangzeb, Azimush-shan, and the Subahdar of Bengal gave Zamindari of villages, Calcutta, Sutanati and Govindpur for annual revenue of 1195 Rupees to the East India Company. The foundations of Calcutta were laid on 24th August 1690 under the leadership of Job Charnock.

In December 1699, Calcutta became Presidency Town and a president or Governor and Council was appointed to administer the settlement. The acquisition of zamindari was very important to the Company which secured a legal and constitutional status within the framework of the Mughal administrative machinery.

As a zamindar the company got all the powers which the other zamindars of Bengal received at that time.

In Moghul Empire, zamindars got no significant judicial powers, but collected the revenue and maintained law and order in the zamindari area or villages.
For judicial purpose at that time Kazis court were established in each district or Sarkar, parganah and villages. They handled civil and criminal matters.

Normally village Panchayat solved all problems excepting serious crimes, In Hindus, elders or Brahmins solved the problems

The judicial system was simple, as everyone knew each other and transactions of each other.

Moghul Kings never paid any attention to judicial system and the judicial dept wasn’t very well organized under the Mughals

When the Mughal admin structure started disintegrating and the Nawab’s authority weakened in Bengal, degeneration in the ranks of the kazis set in.

The post of Kazi was sold many times; the highest bidder became the Kazi

Justice was purchased, corruption was rampant

Kazi never got salary, so kazi court fined the criminal and earned money, after this demanded money from the complainant for giving him justice.

The zamindars came to administer justice in all cases, civil, criminal and revenue. The appeals went to the Nawab’s court in theory but in reality not many appeals were actually taken. The zamindar could even award capital sentence but only with the confirmation of the Nawab’s Government. The zamindar charged high fees for deciding civil cases in their courts.

The judgements by the zamindars were mostly discretionary; there was no definite body of law which they administered.

**Nawab’s Courts** at Murshidabad was not in a great state either. Theoretically it was the highest criminal court as the Nawab was the head of the Nizamat and responsible for maintenance of law and order and admin of criminal justice. While earlier the nawab used to preside over the court, later the Nawab deputy known as the **Darogah-adalat-al-alia**, began to exercise all of the Nawab’s judicial functions. The highest civilian court was that of the diwani and thus responsible for collection of land revenue. While earlier the diwan used to preside over the court for civil cases, later his deputy known as the **Darogah-i-adalat diwani**, began to execute these functions and decide civil and revenue cases. However there was no rigid demarcation of jurisdiction among the various courts. Thus there was a confusion of jurisdiction between the courts of the Nawab’s deputy and the Diwan’s deputy.

The Kazi administered justice in claims of inheritance and succession and in causes concerning marriage:

**Mufti**, a learned jurist, helped the kazi in discharging judicial functions.

The **faujdar**’s function was to suppress serious crimes,
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**kotwal** took care of the petty criminal cases,

The **mohtassib** took cognisance of drunkenness, selling of liquors and examination of false weights and measures.

Thus while the appearance of a working judicial system was maintained, in actual practice the administration of justice was in a very poor shape in Bengal.

**JUDICIAL SYSTEM AT CALCUTTA**

The zamindari functions of the company within Calcutta were given to an English officer, the collector or the zamindar, who was a member of the Governor’s Council. He discharged judicial powers in all cases, civil, criminal and revenue. Criminal cases were decided quickly and without a jury. The usual methods of punishment were whipping, fines, imprisonment, banishment and death. Death sentence was inflicted by whipping to death.

The zamindar’s court was confined not only to the Indians but also tried cases of petty crimes and misdemeanours committed by the Englishmen. However serious crimes of Englishmen were tried by the Governor and Council under the authority of the Charter of 1661.

The zamindar also tried civil cases arising among the Indians. The judge acted in a quick manner. Appeals lay to the governor and council.

The collector of zamindar took charge of the revenue cases also, since they were responsible for collection of land revenue.

Some important features of the judicial system at Calcutta:-

- While in case of other zamindars, a capital sentence was executed only after confirmation with the Nawab, and appeals in civil cases lay to the courts at murshidabad, but the British within their own zamindari, took permission for awarding death sentences, from the governor and council without making any reference to the Nawab.
- Also appeals from the collector’s court in all cases went to the governor and council and not to the nawab’s courts.

Thus from the very beginning, the company’s representatives were very authoritative and the company sought to act as a territorial sovereign as far as Calcutta was concerned and tried to reduce the nawab’s authority from the governance and administration of Calcutta.

Thus here too the judicial system was very elementary and was quite partial. This system continued till the Charter of 1726 was brought out. While till now the judicial system was based on the company’s authority, with the Charter of 1726, it derived its authority from the royal charter.