MODULE I

DEFECTS OF THE JUDICIAL SYSTEM OF 1753

The judicial system of 1753 was too much executive ridden. The judges of the mayor’s court were the nominees of the Government and also most of them used to be junior servants of the Company who began their Indian career without any special training. The court could not adopt an impartial attitude since the governor and the council were constantly attached to the court.

Moreover the company’s servants themselves carried on their own private trade and a number of cases thus arose between them and the Indians with whom they entered into various transactions.

There existed a professional brotherhood between the judges and the company’s servants.

The criminal judicature also suffered from a similar weakness. Consisting of the members of the executive, it was an insufficient deterrent to wrongdoing on the part of the company’s servants who tended to abuse their positions with impunity to the detriment of the people.

The governor and council sitting as justices of peace often refused to take cognisance of complaints laid before them on oath when any servant was in any way interested in them. In addition to the judicial powers, the executive also had powers of admin and legislation. The whole Government system was therefore despotic in nature without any adequate safeguard for the people’s life, liberty or property.

Another weakness arose from the lack of adequate knowledge on the part of the judges on the intricacies of English law which they were supposed to administer. Their knowledge of the English law was confined to the legal materials which the company had sent along with the charter, and the remarks made by the company’s lawyers from time to time after perusing their records.

The arrangements made of administering civil justice to the Indians were poor and inefficient. The application of English criminal law to the Indians also resulted in injustice as they had no idea about this law.

A major defect of the English law at the time was its emphasis on capital sentences. It treated a large number of offences as felonies and hence capital. Neither the Hindu law nor the Muslim law was as severe as the English law at the time.

The territorial jurisdiction of both the civil and criminal courts in a presidency town did not extend beyond its limits and factories subordinate to it. Being immune from any judicial process, the Englishmen in the interior of Bengal, beyond Calcutta, felt free to indulge in all
kinds of objectionable activities. This was proving harmful to the Indians in Bengal. With the weakening of the nawab’s authority, the Englishmen became immune from the jurisdiction of the local courts.

In 1772 House of Commons appointed a committee of secrecy to check the affairs of the east India Company. The committee in its 7th report gave adverse report regarding Calcutta Judicial system.

The reported stated that Mayors court behaved as they wish in all the cases without following English law.

As a result of criticism, Supreme Court was established at the Calcutta in the year 1774

The supreme court of Calcutta was Independent court and does not work under company executive and consisted of professional lawyers who knew English law in depth.