MODULE I

Regulating Act of 1773 and Creation of Supreme Court at Calcutta.

A giant leap in Indian legal history was taken with the creation of the Supreme Court of Judicature at Calcutta under the Regulating Act of 1773.

The company servants made lot of money in India, when they went to UK, they started to live lavishly and even they bought the seats of House of Commons.

The population of UK started to doubt the working of East India Company in India.

The shareholders of the company voted and started to get the big dividends.

From the year 1767, it was the rule that company will pay to the British exchequer, four lakh pounds every year to retain its territorial acquisitions and revenues.

When the company was making losses, it approached the British Government for loan.

After this, House of Commons appointed a select committee and a secret committee to probe the affairs of company before giving the company the loan amount.

The reports suggested that Company should be brought under the British parliament and reports mentioned the evils of company affairs.

After this the Parliament enacted the Regulating Act, 1773 to remove the prevailing evils.

Parliament amended the constitution of company, brought company under the parliament, with this the era of parliamentary enactments started.

Provisions of Regulating Act

The term of the Directors of East India Company was increased from one year to 4 years and a provision was made that every year one-fourth directors were elected in rotation.

The voting power of shareholders was restricted.

The company directors were required to lay before the Treasury all correspondence from India relating to revenue and before a Secretary of state, everything dealing with the civil and military affairs of the Government of in India.

The act appointed a Governor General and Council of 4 at Calcutta

They got all the powers, civil and military regarding all the company acquisitions as well as revenues in the kingdoms of Bihar, Bengal and Orissa.

Warren Hastings was appointed as the first Governor General and other three came from England. All were to hold office for 5 years but king could remove them if Court of directors recommended the removal.
The Governor General got only one vote and casting vote in case of tie.

Governor General did not get the power to overrule the majority vote. Because of this, the other three council members always opposed the policies of Warren Hasting and in the first six years Warren Hasting found it very difficult to introduce new laws or policies.

In the year 1776, one member from the council died and Warren Hasting became powerful because of the casting vote. Only in the year 1786, did the governor general get the right of veto to override the decision of council.

The Regulating act put the Madras and Bombay Presidency under the supervision of Calcutta Presidency in matters of war and peace.

The subordinate presidencies were required to send regularly all details of revenue and other important matters to the Governor General.

Only in emergency situations, subordinate presidencies were allowed to take decisions if required because of necessity. Because of this Madras and Bombay presidency always took the decisions without fearing governor general

**Creation of Supreme Court at Calcutta**

 SECTION 13 OF THE ACT Established THE SUPREME COURT OF India. It created the Supreme Court at Calcutta by the royal charter.

King George III on 26 March 1774 issued the charter establishing the Supreme Court at Calcutta.

The charter appointed Sir Elijah Impey as the chief justice and Robert Chambers, Stephen Caesar Lemaistre and John Hyde as puisne judges who were appointed by the king.

Only the barristers with an experience of min 5 years were eligible to become the judge. The Supreme Court was to be a court of record.

The court received, civil, criminal, admiralty and ecclesiastical jurisdiction.

In criminal cases, the court was to act as a court of Oyer and terminer and gaol delivery for the town of Calcutta and the factories.

The jurisdiction of the court was to extend to all the persons of Bihar, Orissa and Bengal. It extended to the servants of majesty, company servants etc.

Supreme Court was not allowed to hear the cases against the Governor General and council and exception was crime of felony or treason.

The appeals from the Supreme Court were made to the King in council in England.
Governor General and council got the powers to make the laws and rules but with the condition that all the rules and laws must be registered in the Supreme Court and did not become effective until they were registered and published in the Supreme Court.

Any person in India got the power to appeal against such rules within sixty days in the King in council, which then set aside such a rule or changed the law. The appeal was to be made in the Supreme Court of Calcutta within stipulated period.

It was mandatory to send all the rules made by Governor General to a secretary of state in England.

Any person in England got right to appeal against the rules within sixty days after the rules were published in the England.

King in council got the *suo moto* power to change or disallow any rule without appeal within the period of 2 years.

This provision of law and rule registration in the Supreme Court, made it easy to introduce the new laws and rules, which saved the time, as now it was not required to take the permissions from the England head office of the company.

The Supreme Court reviewed the law before it became the law.

The governor general and council, supreme court judges and its officers were not allowed to do any private trade in India, as well as they were forbidden to accept any gifts and presents.

**LEGISLATIVE POWERS UNDER THE ACT OF 1773 A.D.**

- The Governor General and council was authorized to make and issue rules, ordinances and regulations for the good of civil government of company’s settlements at fort william and other subordinate factories and places.

**AIM OF LEGISLATIVE POWERS**

- To safeguard the interests of the British people.
- To safeguard the imperial policy in India.

**CONCLUSION**

- The act wanted to deprive the company of its political power and to vest the same in the parliament.
- Under the guise of director’s control over the company’s affairs the British parliament established its effective control over the affairs of the company which paved the way for the complete takeover by enacting the government of India act 1858 AD.
CRITICISM OF THE ACT

- There were conflicts between the governor and his council members.

- By empowering the Governor General of the presidency of Calcutta to have control over two presidencies of Bombay and Madras, the regulating act sowed the seeds of constant conflict between them.

- It was difficult to gather from the provisions of the act as to what would be the legal position of the company in India—i.e. whether it has to serve under the British crown or the Mughal emperor.

- There were also disputes between the executive and the judiciary over certain issues.

- The jurisdiction of the Supreme Court was extended to all the British subjects. But nowhere in the act it was defined who would be the British subjects.

- The regulating act was not clear regarding the law which was to be determined by the Supreme Court—whether the law of the plaintiff or that of the defendant or whether the law of the Hindus or the Muslims.

The Conflict between the Supreme Court and the Governor-General and Council can be seen through the following cases.

TRIAL OF RAJA NAND KUMAR CASE (1775): THE JUDICIAL MURDER

EVENTS BEFORE THE TRIAL

- The trial of raja Nand Kumar was the first decisive event during the early stage of the growing bitterness between the Supreme Court and the council.

- Its significance lies in the fact that the judges of the supreme court introduced English laws and procedure into India, laws which were unknown to the Indians.

- Raja nand kumar was once a governor of Hughli under the Sirajuddaulah and later due to the loyalty for the British he was nicknamed “black colonel”.

- But his relations with Warren Hastings soon became estranged and he gave a letter of complaints to the council.

- The council by majority dismissed raja nand kumar and found that the charges levelled by him against the governor-general Warren Hastings are true.

FACTS OF THE CASE

- After some time the raja was arrested for hatching a conspiracy at the instance of the governor-general, Warren Hastings declared their intention before the judges of the supreme court to prosecute nand kumar.
This event led the people to think that with a retaliatory motive this step was being taken against the nand kumar to ruin and disgrace him.

The trial of nand kumar for conspiracy continued together with another trial of his for forgery.

The trial of nand kumar started on 8\textsuperscript{th} June 1775 and continued for the period of 8 days without any adjournment. The defense council first of all advanced a \textit{plea} as to the jurisdiction of the supreme court. The judges considered that the plea was unsupportable and the defense was allowed due to two reasons.

According to the law of the present times, if the plea as to the jurisdiction was decided against the defendant he would be precluded from pleading not guilty to the indictment.

The supreme court examined the witnesses till the late night as the judges were ignorant of the Indian habits and usages and also the documentary accounts were in Indian languages, they had to work extra hard.

Another peculiar feature of the trial was that the judges cross-examined the defense witnesses even in minute details and thus they carried out the work of the prosecuting council on the plea that the king’s counsel was incapable of doing it efficiently. This was very surprising and created serious doubts and suspicions about the impartiality of the judges.

The judges gave the verdict of guilty and the jury also declared the verdict of guilty. Rejecting all defense pleas the chief justice passed the sentence of death on nand kumar under an act of British parliament, which was passed in 1729 AD.

The defense council decided to take the appeal to the king’s in-council and petitioned the court to stay the execution of the sentence so long as the council’s decision was not known. The court rejected the petition.

**TWO IMPORTANT QUESTIONS RAISED IN THE TRIAL**

- Whether the nand kumar was under the jurisdiction of the court?

- Whether the English act of 1729 which made forgery a capital offence and under which the raja was executed, was extended to India?

- Objections regarding to the first question, the indians were tried by their own men in their own local criminal courts. In this case as the offence was committed before the advent of the supreme court, nand kumar could be tried only by the faujdari adalats and not by the supreme council.
ials BY
VAIJAYANTI BANERJEE

- Regarding the second question on the applicability of the act of 1729 chambers were of the view that that the English laws were made to suit their own requirements and that these laws should not be applied to India. The other judges were of the view that the English statute of 1729 was being practiced by the courts prior to the formation of the supreme court and whenever the king introduced a law under the conquered dominion, all such laws as were being practiced in England, becomes the laws of the dominion also.

**SOME PECULIAR FEATURES OF THE TRIAL.**

- Charge against NAND Kumar was made, after he had levelled the charges against Warren Hastings.
- Impey was a close friend of Warren Hastings.
- The judges cross-examined the witnesses themselves.
- His petition to the king’s council was rejected by the Supreme Court.
- Neither the Hindu nor the Muslim law regarded forgery as a capital crime.
- The raja committed the offence nearly five years ago i.e., before the establishment of the supreme court.
- The raja was sentenced to death under the English statute of 1729 on a charge of forgery but this act was not applicable to India because English law introduced in India in 1726 and not in 1753

**CONCLUSION**

- Hence the trial of NAND Kumar was very controversial and it not only shocked the Indians but also the Britishers living in India.
- It was considered most unfortunate and unjust.
- The role of the chief justice Impey became a target of great criticism.
- On returning to England Warren Hastings and Impey were impeached by the House of Commons.

**KAMALUDDIN CASE (1775)**

**FACTS AND DECISIONS**

- This case represents the first open difference of opinion between the court and the government over the question of the Court’s control of Diwani functions.
Background----kamaluddin was an ostensible holder of a salt farm at Hijili, on behalf of kanta babu, who was the real farmer. In 1775 Kamaluddin was committed on the ground of arrears of revenue due from him the claim of which he disputed.

On this basis revenue council at Calcutta issued a writ for kamaluddin’s committal without bail.

Kamaluddin obtained habeas corpus from the Supreme Court, which set him free.

The judges further stated that kamaluddin should not be imprisoned again until his under-renter had been called upon to pay the arrears and had proved to insolvent.

CONFLICTS

The members of the council stated that the supreme court cannot deal with the cases of revenue as was being highlighted in the regulating act of 1773 .

The council therefore ordered the provincial council to re-arrest kamaluddin and pay no attention to the Supreme Court order. But the governor-general warren hasting refused to support the council members.

CONCLUSION

The case of kamaluddin was an eye opener disclosing defective provisions of the regulating act due to which not only the supreme court and the supreme council came into the dispute but also the gulf between the governor-general warren hastings and three members of the council ,who constituted the majority, gradually became wider and wider.

THE PATNA CASE (1777-1779 A.D)

This case revealed the weakness and defects existing in the methods of administering justice by the company’s judicial system in the moffusil.

ISSUES INVOLVED

About the jurisdiction of the Supreme Court and the right of the Supreme Court to try actions against the judicial officers of the company for an act done in their official capacity.

Whether the provincial diwani adalats which consisted of the members of the provincial council legally constituted the courts of justice.

The judgment of the Supreme Court not only provoked the members of the council but also create panic among the local population of Calcutta.
FACTS

- Shahabaz beg khan, an afghan military adventurer came to India from Kabul. He settled at Patna, married nadirah begum and earned a large amount of money.
- When he died there was a dispute of property between his wife and his nephew Bahadur beg.
- Bahadur beg took the case to the provincial council at Patna praying that the Muslim law officers of the council mufti and qazi may be directed to ascertain the petitioner’s right over the property of the deceased.
- The provincial council instead of deciding the case passed it over to the Muslim law officers.
- The Muslim law officers carried out the directions of the provincial council very harshly while dealing with the widow. The widow being afraid fled from her house with some of the title deeds and her female slaves and took shelter in a dargah.
- The Muslims law officers divided the property into four parts. three parts were given to the nephew and the fourth part was given to the widow. The widow declined to accept the judgment and to hand over her title deeds. She also refused to return to the family from dirghah.
- After tolerating harassment for few months the widow appealed to the sadar diwani adalat against the decision of the provincial council, but the former took no notice of her appeal.
- The widow filed the suit in the Supreme Court. The supreme court ordered the arrest and posed a fine on nephew, qazi and mufti against whom the widow filed a petition. Then Begum filed a case in the Supreme Court against the Bahadur Beg, kazi and muftis for the assault, battery, false imprisonment, breaking and entering her house and taking away her property and claimed damages amounting to Rs.6 lakh.

Then Supreme Court issued the bailable arrest warrant against the Bahadur Beg, kazis and muftis.

The court awarded damages of Rs.3 lakh to the Begum for personal injuries. As defendants failed to pay the damages they were sent to the Jail.

IMPORTANT POINTS RAISED BEFORE THE SUPREME COURT

- In what sense Bahadur beg and native law officers were subject to the jurisdiction of the Supreme Court.
- Second point was related to the liability of the judicial officers who acted under the delegated authority of the provincial council.
As far as first case is concerned, the charter act of 1774 was not clear in laying down
the jurisdiction of the supreme court. It was also not provided that the court shall have
jurisdiction over the zamindars and over any person by virtue of his interest in or
authority over lands or rent within Bengal, Bihar and Orissa.

Both the parties were Muslims to which the Muslim law of inheritance should be
applied.

There was no written agreement between the parties to submit the case to the Supreme
Court.

As far as second issue is concerned the provincial council has no right to delegate to
its law officers the hearing of the suit and to give decision upon the basis of a mere
report.

**EFFECT OF THIS CASE ON THE COMPANY GOVERNMENT**

- The fact of the case and decision of the Supreme Court exposed the weakness of the
  company’s administrative machinery in India.
- It pointed out the deteriorating state of the administration of justice in the country.
- It also proved that the moffusil courts under the company’s control failed to impart
  justice to the Indians.
- Another important reaction of the case was that the local zamindars refused to accept
  the work of revenue collection for the company. They became afraid of the
  jurisdiction of the supreme court.
- The case was directly responsible for many provisions of the act of settlement which
  was passed in 1781 a.d so as to remove the evils of the Regulating act.

The other famous case is **Cossijurah case** – In this case Supreme Court forces came against
the Forces of government regarding court case. The case involves the contempt proceedings
against the Governor General and council who sent forces to stop the Supreme Court forces.
This case is landmark case as Supreme Court and Executive, government came to fight with
each other.

**THE COSSIJURAH CASE (1779-1780 A.D)**

**FACTS**

- The conflict between the Supreme Court and the supreme council reached its zenith
during this case. While the Supreme Court ordered the sheriff to carry out its orders,
the supreme council ordered its troops to defend the implementation of its orders.
The Supreme Court also claimed its jurisdiction over all the native population which was strongly opposed by the council.

Raja sundernaraian was the zamindar of cossijurah and was under a heavy debt to kashinath babu. Though the latter tried to extract the money through the board of revenue, his efforts proved in vain. He therefore filed a case in the Supreme Court.

The Supreme Court issued a writ of capias for the arrest of the raja.

The council came to know of the developments. After seeking legal advice from the advocate general, the council issued a notification informing all the landholders that they need not pay any attention to the process of the supreme court, unless they were either the servants of the company or had accepted the court’s jurisdiction by their own consent.

The raja was specially informed about the council and therefore his people drove away the sheriff of the Supreme Court when that official came with the writ to arrest the raja of cossijurah.

CONFLICTS

The supreme court issued another writ to seize the raja’s property in order to compel his appearance before the supreme court.

This time sheriff with a force of 60-70 men marched to cossijurah. They imprisoned the raja.

In the meantime the governor-general ordered colonel ahmuty, to detach a sufficient force to intercept and arrest the sheriff with his party and release the raja from arrest. This was done efficiently.

Kashinath babu brought an action of trespass against the governor-general and the members of the council individually. The latter became annoyed and declared that persons in Bengal, out of Calcutta, need not submit to the court and assured that the council would safeguard their interests even by the use of armed of the armed forces.

The Supreme Court issued writs against all members of the council except governor-general and. But the army officials refused to allow the supreme court officials to serve the writ to the members of the council.

The judges became furious and took the action against the attorney general of the company. He was committed to the prison and no bail was accepted.

The councilors conveyed to the judges that if they were held accountable to the Supreme Court on the suit of an Indian, the respect for the government in the minds of the Indians would decrease and the administration would be weakened.
• The councillors very strongly stuck to their stand and refused to submit to the authority of the Supreme Court.

• At this critical stage the plaintiff withdrew the case against the Governor General, members of the council and the raja.

OBSERVATION OF SOME VITAL ISSUES

• That whether the zamindars were subjected to the jurisdiction of the Supreme Court.

• Who was the competent authority to decide the issue?

• As far as the first question is concerned, it is in the political interest of the company to keep the zamindars ignorant of their rights and status. There are many instances to prove that the zamindars and the hereditary rajas and ranis were at times were harassed by the company’s official’s.

• Also the judges of the Supreme Court could not get an opportunity to enquire into the status of the zamindars.

• Regarding the next question the judges of the Supreme Court held that the court was the competent authority to determine the legal status of the zamindars and the council had no such power.