

# FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Dr. SADHNA TRIVEDI

# Lecture-36



## **Establishment of High Courts, 1861**

### **Introduction:**

In the three Presidency towns of Calcutta, Madras and Bombay there were two existing judicial systems for administering justice i.e. the Supreme Court and the Sadar Diwani and Sadar Nizamat Adalat. This sort of judicial administration was inconvenient for the inhabitants of the Presidencies. In fact, it often clashed and it resulted in conflicting decisions. Ultimately, this problem was resolved by the British Parliament by enacting the Indian High Courts Act, 1861. The Indian High Courts bill was moved by the secretary of State Sir Charles Wood in the House of Commons on 6th June, 1861 and finally the Indian High Courts Act was passed by the British Parliament on 6th August, 1861. It was titled as "An Act for establishing High Courts of Judicature in India". The Act consists of 19 sections only. The Indian High Courts Act, 1861, abolished the Supreme Court and Sadar Adalat's in the Presidencies and the Act also empowered the crown to issue letter's patent under the great seal of the United Kingdom, to erect and establish high court of Judicature at Calcutta, Madras and Bombay. It further provided that the High Courts were to come into existence at such time as her Majesty might deem fit. Thus, on the establishment of the High Court, the Supreme Court, the Sadar Diwani Adalat and Sadar Nizamat Adalat at the concerned presidency were to be abolished and the records and documents of these courts so abolished were to become the records and documents of High Courts concerned.

### **Constitution High Courts:**

The High Court's was to consist of a Chief Justice and other puisne judges not exceeding 15 in number as her Majesty might from time to time think fit to appoint.

### **Qualification of judges of High Court:**

A person could be appointed judge of High Court if he was either:

1. A Barrister of not less than five years standing;
2. A member of the Covenanted Civil Service of at least 10 year's standing who had served as Zila judge for at least 3 years in that period;

3. A person having held judicial officer not inferior to that of principal Ameen or judge of a small cause court for at least 5 years;

4. A person who had been a pleader of a Sadar Court or a High Court for at least 10 years.

At least one third of the judges of the High Court, including the Chief justice had to be Barristers and the other one third of the judges had to be members of the covenanted Civil Service. The judges hold their office during the pleasure of her Majesty.

### **Laws to be applied:**

The law which the high court applied was same as applied by the Supreme Court i.e. English law. However, the High court was allowed to use the principles of justice, equity and good conscience on the appellate side. In criminal law, it followed the I.P.C, 1860. So far as procedural laws are concerned the High Court's followed civil and criminal codes.

### **Jurisdiction of the High Court's:**

The jurisdiction of each high court depends on the letters Patent issued by her Majesty. She could give them power to exercise all civil, criminal, intestate, testamentary, admiralty and matrimonial jurisdiction. She could also confer on them original and appellate jurisdiction and all such powers and authority with respect to the administration of justice in the presidency, as she thought fit. Thus High Courts were given the following original and appellate jurisdiction.

1. Original jurisdiction:

The court had original jurisdiction in the following matters:

- (a) Civil Jurisdiction and
- (b) Criminal Jurisdiction

(a) Civil Jurisdiction: The Original Civil Jurisdiction of the court was of two types:-

i. Ordinary Civil Jurisdiction: The Ordinary Civil Jurisdiction extended to the town of Calcutta, Madras and Bombay and such local limit as from time to time could be prescribed by law of a competent legislature in British India. All suits of the value of Rs. 100 or more

and which were not cognizable by the small court at Calcutta, Madras and Bombay were cognizable under High Courts. Further, the ordinary civil jurisdiction could be invoked only if:

- The movable property was situated within the town of— Calcutta, Madras and Bombay; The cause of action wholly or partly arose in Calcutta,— Madras and Bombay;
- The defendant was carrying on business or working for— gain in Calcutta, Madras and Bombay.
- The cause of action wholly or partly arose in Calcutta, Madras and Bombay;

**ii. Extra Ordinary Civil Jurisdiction:** Extra Ordinary Civil Jurisdiction provides that the High Court could call a case pending in any lower court subject to its superintendence and could decide that case itself. This jurisdiction could be exercised in a case where the parties agreed to such exercise or the High Court thought it proper to impart justice.

**(b) Criminal Jurisdiction:** It is of two types also:-

**i. Ordinary Original Criminal Jurisdiction:** In exercise of its Ordinary Original Criminal Jurisdiction the High Court was empowered to try all persons brought before it in due course of law. This jurisdiction was made available over the native criminals and crimes committed within the local limits of the presidency towns and beyond this limit over the Britishers and Europeans as the Supreme Court used to enjoy the jurisdiction over them before the establishment of the High Court.

**ii. Extra Ordinary Original Criminal Jurisdiction:** The High Courts were to have extra Ordinary Original Criminal Jurisdiction which was not enjoyed by the High Court. Under this jurisdiction the High Court hear any criminal case against any person within the cognizance of any court which was subject to the superintendence of the High Court. If such case was referred to the high court by the advocate general or by any magistrate or any other officer specially empowered for that purpose.

**2. Revenue Jurisdiction:** The High Court was given jurisdiction to here revenue cases also which were precluded from the jurisdiction of the Supreme Court by the Act of Settlement, 1781.

**3. Admiralty Jurisdiction:** The admiralty and vice-admiralty jurisdiction was also given to the high court.

**4. Testamentary and miscellaneous jurisdiction:** The High Courts were given similar testamentary, intestate and probate jurisdiction as was enjoyed by the Supreme Court. It also worked as the court of wards for the administration of the estate and persons (lunatics, idiots and minors).

**5. Appellate Jurisdiction:** The appellate jurisdiction of the High Court was of two types:-

**(a) Civil Jurisdiction:** The High Court could hear appeals in all cases authorised by any law or regulation.

**(b) Criminal Jurisdiction:** The High Court had criminal jurisdiction in all cases decided by the subordinate courts to it. It could also entertain revisions against the decision of the lower court and reference from them.

**Appeals from High Court:** An appeal to Privy Council lay from judgement of High Court in civil cases when the amount involved is Rs. 10,000 or more or if the High Court certified that the case is fit one for appeal. And in case of criminal cases from its original jurisdiction or if the High Court certified that the case is fit one for appeal.