

Lecture-27



Development of law in Presidency Towns

What is common law? The expression 'Common Law of England' refers to those Unwritten legal doctrine embodying English custom and English 'traditions, which have been Developed over the centuries by the English courts. So understood It would not Include and Would be different from the English statutes Law, which has from time to time modified the Common law. But the English brought into India not only the mass of legal rules strictly Known as the common law, but also their traditions, outlook and techniques In establishing. Maintaining and developing the judicial system.

The history of present day Indo-British Jurisprudence commences with he formation of the London East India Company In 1600 in the reign of Queen Elizabeth I. The Charters of Queen Elizabeth granted to the Company In the years 1600 and 1609 gave the power to them to make and constitute such and so many reasonable laws, constitution, orders and ordinances as to them so seems necessary .The position of the Company's factories In India was at that time some what anomalous. They were generally a part of the dominion of the Mughal. Yet since the very early days, the Company had obtained the authority of the British Crown to administer justice and constitute judicial authorities fn the areas covered by these factories, In order that they might be able to administer justice according to their own notions and in accordance wIth the laws which they were familiar, the Company had endeavoured to obtain permission to administer their own laws in these areas.

In 1661 the Charter of Charles II gave to the Government and Council of several places belonging to the Company the power to judge all persons belonging to the said Government and Company according to the laws of this kingdom and to execute judgment accordingly.

Almost contemporaneously with this Charter came the Cession of the Island of Bombay by the Portuguese to the English and Its lease by Charles II to the East India Company In 1668, Prior to that this was the territory which had been under Portuguese rules and Portuguese law governed It.

The Charter of Charles II transferring the Island of Bombay to the Company, required the Company to enact laws “consonant to reason and not repugnant or contrary to” and “as near as may be agreeable to” the English laws. The charter also directed that the courts andtheir

procedures should be like those that the established and used in the realm of England. Rules for the Civil Government and equal distribution of justice upon the Island were drafted in England by the Company's Law Officers and after the approval of the Solicitor General a draft was settled and engrossed to be sent out to India In 1669. These laws provided for the establishment of a court of judicature for the decision of all suits and criminal matters under a Judge to be appointed by the Governor and Council and for all trials in the court to be by a jury of 12 Englishmen, except when any party to the dispute was not English, In which case the jury was to be half English and half non-English. It also made provision for regular sitting of the court, the recording of its proceedings In registers, the fixing of reasonable court-fees and for a right of appeal from the court of judicature to the Governor and Council it was constituted the Supreme Court in the Port and Island. There is little information about the administration of criminal justice during this period and the application of laws of the Company. But the correspondence between Bombay and Surat, where the factory of the Company was situated and where the Governor resided contains references of the trial by jury, of crimes, like theft, murder and mutiny. , Thus, were laid the foundation In the Seventeenth Century I although In the small area of the town and Island of Bombay of the application of English laws to Indians residing in the Presidency towns and of the system of administering justice fostered by the common law in England.

'Common Law In England' and 'Common Law In India' are distinct expression. Whereas the former referred to the common law prevalent in England, the latter expression referred to the common law expanded by English in India. The common law, i.e., unwritten legal doctrines embodying English customs and English traditions developed over the centuries by English courts was in the beginning applied to the areas which later became the Presidency towns of Calcutta and Bombay.