

PART –I

LL.B. (Integrated) Five year Degree Course

EAST INDIA COMPANY

1. At the end of the 15th century some European nations came to India as trading merchants. In year 1498, Vasco Da Gama, a Portuguese, discovered the passage to India round the Cape of Good Hope and he landed at Calicut on the Malabar Coast.
2. The Dutch were the first in this field and English merchants followed them. The Danes came next but they were few in the number.
3. The first Englishman to set foot on the Indian soil was Thomas Stephens. He set sail to India from Lisbon on the 4th April, 1579 and reached Goa in October 1579.
4. Though the French earlier voyages to India, the foundation of French Trade were laid by Colbert only in the middle of the seventeenth century. The purely commercial attitude of foreign traders was suited to the conditions then prevailing in India. But with the weakening of the Mughal power in the 18th century.
5. All they made their own kingdom and fought the war for dominion. The English East India Company finally emerged victorious and developed its area of influence and finally established its empire in India.

CHARTER OF 1600 A. D. :EAST INDIA COMPANY

1. The English came to India in 1601 as a “body of trading merchants” on 31st December, 1600 queen **Elizabeth I** granted Charter to the Company which incorporated the London East India Company “to trade into from the East Indies, in the countries and parts of Asia and Africa ... for a period of fifteen years ... subject to a power of determination of two years notice if trade was found unprofitable”.
2. The charter of 1600 AD had been passed by British Queen Elizabeth-I on dated 31 Dec. 1600. In this Charter included the name of corporation, size, constitution, rights and liabilities.
3. Name- The Governor and Company of Merchants Trading into the East Indies. Thus the company became a juristic person with exclusive privilege of trade with the East Indies.
4. The same Charter further granted legislative power to the Company “to make by laws, ordinances etc. for the good government of company and its servants and to punish offences against them by fine or imprisonment according to the laws statutes and customs of the Realm.
5. Duration of Company: i) the 15 years was given to this company for trade. ii) Meanwhile the company is running in the loss then the British Govt. will withdraw legal recognition and gaining profit that can be extended 15 year more.
6. But in year 1609 the Company obtained the extension benefit and some other facility availed also.
7. Territorial extension of trade- by this Charter company was allowed to trade from cape good hope to bay of Magellan, India, Africa, Asia, America, etc.

8. Monopoly of Company- if any person started or start the trade without prior permission Company as well as Queen will be punished with fine, imprisonment, forfeiture of ship and goods or same punishment as queen so think fit.
9. Management and administration- Company consisted with 24 share-holders, court of directors and Governor. The Court of Directors misuses the post and unexpected performance the majority share-holders could removed him.
10. This east India Company had become the legal personality and enabled to keep the common seal and its use.
11. Right making law- i) the company was permitted to make general laws. It was first time where any non-Governmental body authorized to make laws. Ii) The company was allowed by Charter that it could give simple imprisonment fine and stroke and physical punishment for maintaining the law and orders of company.
12. But Company was prohibited to make laws on following cases:
 - i) Murder, treason and dacoities
 - ii) Company made laws must be justifiable and reasonable
 - iii) Company made laws will be not inconsistent with parliamentary laws, orders of British Empire, customs and usages.
13. Capital of Company- i) Total capital of Company was £75373.
 - ii) Cost of ship £39771
 - iii) Cost of materials £6860
 - iv) Cost of other items £28742

14. On 31st May 1609 **James I** granted a fresh charter to Company which continued its privileges and perpetuity, subject to proviso that they could be withdrawn after three years notice.

15. The Company was also authorized to continue the enjoyment of all its privileges, powers and rights which were earlier granted to by the Queen Elizabeth under the Charter of 1600 C.E.

Later on 14th December 1615 the King authorized the Company to issue such commission to its Captain subject to one condition that in case of capital offence, e.g., willful murder and mutiny, a jury of 12 servants of Company will give the verdict. In 1618, Sir Thomas Roe, Ambassador of James I, succeeded in gaining the Emperor's favor and the English Company entered into a treaty with the Mughal Emperor. The Mughal Emperor granted the right of self-government to the English. This treaty proved a turning point in the legal history of India as the English Company^y secured various privileges from the Mughal Emperor. It provided:

- (i) That the disputes amongst Company's servant will be regulated by their own tribunals.
- (ii) That the English people will enjoy their own religion and laws in the administration of Company.
- (iii) That the local native authorities will settle such disputed cases in which Englishmen and Hindus or Muslims were the parties.
- (iv) That the Mughal Governor or Qazi of the relevant place will protect the English people from all sorts of oppression and injury.

The President and members of his Council at the Surat Factory were working as executive officers of the Company. They were also having judicial authority over English people as the Indian Emperor allowed them to be governed by their own laws.

CHARTER OF 1661 C.E.

The Company spent 60 years of trade in India and facing of problem control over that the Englishmen who were not the workers of company. But they were trading in Indian Territory and were residing in British colonies. Therefore, the company put on the demand before the British King to make such legal instrument for controlling their colonies and its institutions and penalize to that person who were interloper (law breakers).

The Company's trade was growing continuously in India. Apart from this company was taking interest in political conflicts and took benefits of internal rebels and splitting. The British King Charles II realized the weak condition of Indian rulers.

The income of the Company was very beneficial to British fund and it was become necessary to give extra facilities. The growth of income was depended on the legal adjudication system. With view of all things the Charter of 1661 had been issued on third April, 1661. So, that it was called the judicial Charter.

The Charter of 1600 C.E. had become a milestone and it was first step to establish the Judicial Court in British India. This Charter entrusted law making power into the Company.

THE MAIN FEATURE OF CHARTER OF 1661 AD

- 1. Right to Administration.-** i) the Charter empowered to the Company to administrated over the Fort, Colonies and cities. If it is expedient to maintain the administration could fought the war with Indian local King and could make the peace treaty. ii) Company was authorized for that if any person who interferes in the trade monopoly of Company be sent to Britain for starting litigation.
- 2. Appointment of Officer:** i) Company was authorized to appoint the Governor and officers for judicial administration over all subjects as well as workers of Company. ii) Every person equally punished for the breach of law and orders of Company.
- 3. . Security. -** i) Company was enabled by this Charter that it could keep the armed forces, weapons, and fighters ship for itself security. ii) Company could keep the commander and other officers who were suitable for Governor and his Council and they were convenience for trading purposes.
- 4. Judicial Administration.-** Following rights were given to Governor and his Council:
That they could adjudicate and execute accordance with the English law in cases which is there under:
 - a) Cases concerned with company,
 - b) Matters within the limits of Company, and
 - c) All the cases of civil and criminal nature.
- 5.** The direction was given by this Charter that the governor and his Council will apply the English law in all cases. Those Indian who were residing in their colonies the also will be governed by this English law. It was very arbitrary compliance of English law and orders of upon the Indians. That was very undesirable.
- 6. Punishment. -** i) the Charter of 1600 AD provided very simple punishment. But the Charter of 1661 enabled to Governor and his Council to penalize with the punishment of hanging in the heinous crime.
ii) Wherever the Governor and his Council was not constituted the accused was sent for nearby Governor and his Council or sent to Britain for trial.

THE CHATER OF 1726 C.E.

INTERODUCTION.- King George I issue a Charter of Company on 24th September 1726. This Charter became an important landmark in the legal history of India due to its various vital provisions having far reaching consequences. By this Charter the Admiralty Court of Madras has been abolished and thereupon enlarged the power of Mayor's Court of Madras, Calcutta and Bombay. This Charter was introduced a uniform judicial machinery for justice in India. By this Charter the Civil and Criminal Courts entrusted the authority directly from the King. Not from the Company.

The Charter of 1726 played an important role in introducing English Common Law Statutory law in India.

Causes of Issue of Charter of 1726: i) uniformity in judicial system ii) establishment of Crown Court iii) appeal to Privy Council from India iv) right to make law of Governor-in-Council v) introduction of English law vi) avoid the Non-Lawmen Judges and non-separation of Powers.

IMPORTANT PROVISIONS OF CHARTER OF 1726

CORPORATION

1. Constitution of Corporation.- I) **The Charter of 1726** provided for the establishment of a Corporation in each presidency towns *i.e.*, Bombay, Calcutta, Madras. Each consisted of **a Mayor and nine Aldermen**, seven of whom *including the Mayor were required* to be natural born **British subjects** and the remaining **two** were chosen either from subjects of any princely State or State having friendly relations with **Great Britain**. The jurisdiction of Corporation was over all Presidencies and on the subordinate factories.

2. Appointment of Mayor & Aldermen and their Tenure.- i) With the effect of Charter of 1726 **a Mayor and Nine Aldermen** nominated for each Presidency. The tenure of Mayor was one year and Aldermen were appointed for life time or for the term of residence in the Presidency town. Thereafter the ex-Mayor was being the member of Corporation as Aldermen. The fresh election of Mayor was made for new session at 20th December of each year. The former mayor and all Aldermen were participated in this election. The **Mayor** and the **Aldermen** were authorized to fill up the vacant post of an Alderman from amongst the inhabitant of that particular presidency town, who fulfilled the preliminary conditions of eligibility, as mentioned in the Charter.

3. Reserved Power of the Governor-in-Council.- This Charter gave the full autonomy to the Corporation for this purpose they were sworn. But The Governor-in-Council was empowered or to dismiss or remove the Alderman on reasonable cause. Those dismissed person had the right to appeal in King-in-Council (Privy Council).

PROVISIONS CONCERNED TO JUDICIARY

1. **Justice of Peace.**- the Charter provided that in each presidency town, the Governor and five senior members of the Council will have criminal jurisdiction and would be justices of peace. The Governor-in-Council was as a justice of peace, given the status of Court of Oyer, Terminer, Gaol Delivery and was empowered to hold quarter session,. This Court could arrest the accused, trial and pronounced judgment. The case of severe offences and its relevant evidences was sent to Quarter Session.
2. **Quarter Session.**- Governor and five senior members was working as a justice of peace. The Quarter Session was comprised with three or more Justices of peace and four sessions were held in a year. The case of treason and heinous crimes was **not** within the jurisdiction of this court. Quarter Session was called Kutchehary.
3. **Juries.**- two juries were constituted for the purposes of aiding the adjudication of criminal cases. This was as under:
 - i) **Grand Jury.**- the main liability of this jury to arrest the accused sent to Quarter Session for trial. With help of this jury the witnesses and proof were produced before the Quarter Session.
 - ii) **Petty Jury.**- this jury was cooperated to Quarter Session in examination of witnesses, argument and finding of facts.
4. **Mayor Court.**- a **Mayor** and **nine Aldermen** was presided over the Mayor Court. The quorum of this Court was completed with three persons e.g. a Mayor or senior most Alderman and two Aldermen. This Court was working three days in a week. The Mayors' courts were declared to be court of record.
 - i) **Jurisdiction of Mayor Court**¹.- a) *Territorial Jurisdiction of Mayor Court.*- The Presidency and other neighbor town will had come in the Jurisdiction of Mayor Court. Court was enabled for adjudication of civil cases only. In the case of offences the judges of Mayor Court were enabled only in the form of Grand Jury. The trial of offences of criminal nature was not given to this Court.
 - ii) *Civil Jurisdiction of Mayor Court.*- Mayor court had the whole jurisdiction of the cases of civil nature.
 - iii) Probate Jurisdiction.- Mayor Court had the power to decide the cases of will, succession and the cases of coparcenaries division.
5. **Appointment of Sheriff and his Duties.**- Sheriff, an officer of Court, was appointed by the Governor and his Council every year to serve the processes of the court. On the written compliant of the aggrieved party the Court issued summon directing to Sheriff to order the defendant appear before the court on the fixed by the court. In the case defendant failed to appear on fixed day a warrant was issued by the court asking the Sheriff to arrest the defendant and present in him before the court to face the Charge.
6. **Procedure of the Mayor Court.**- i) it was the duty of Sheriff to produce the defendant before the Mayor Court. This Court was empowered to release the defendant on such bail or on security as it consider suitable. During the course of the proceedings, the parties were required to take oath, produce and examine witnesses and plead their cases. The judgment of the Court was followed by a warrant of execution under the seal of the court issued to the Sheriff to implement the decision. The Sheriff was authorized to arrest and imprison the defendant.

¹ . The Mayor Court was established for adjudication of Civil and Probate cases and it was the Court of Record.

- i) by virtue of the same Charter an appeal was allowed to the Governor and Council from the decision of the Mayors' court in each presidency towns. A period of 14 day, from the date of judgment, was prescribed to file an appeal.
- ii) the decision of Governor and Council was final in all cases involving a sum less than 1000 pagoda.
- iii) in case the sum involved was either 1000 pagodas or more, a further appeal was allowed to filed to the King in Council from the decision of the Governor and Council.

Cases decided by the Mayor Court.- 1.- Shimpy women case
2.- Arab Merchant case
3.- Sukkuram case

THE CHARTER OF 1774 AND THE SUPREME COURT AT CALCUTTA

1. The Regulating Act, 1773 superseded the provisions of the Charter of 1753 and empowered the Crown to establish a Supreme Court. Under Section 13 of the Act, George III issued a Charter on 26th March, 1774 which established the Supreme Court at Calcutta.
2. The Charter of 1774 constituted the Supreme Court and elaborately defined its jurisdiction and powers.
3. **Sir Elijah Impey** was named as the first Chief Justice while Stephen C. LeMaistre, Robert Chambers and John Hyde were named as three puisne Judges.
4. For the subsequent appointment of a judge the Charter stated the qualifications as-
 - i) At least five years' standing as a Barrister of England and Ireland.
 - ii) The judges were to hold office at the pleasure of the King.
 - iii) Each judge of the Supreme Court was to be a Justice of the Peace and was to have authority and jurisdiction as the Judges of the King's Bench in England had under the Common Law.
5. The Court was authorized to establish rules of practice and process. It had the power to appoint the necessary subordinate staff and regulate the court-fees with the consent of the Governor-General.
6. The Charter granted civil jurisdiction to the Supreme Court. Where the cause of action exceeded Rs. 500, the Supreme Court was authorised to hear in the first instance. It could also hear the matter by way of appeal from the decision of a Mofussil Court, a Company's Court. Where the valuation of a suit exceeded 1000 Pagodas an appeal could lie to the King-in-Council within six months from the decision of the Supreme Court.
7. While exercising its criminal jurisdiction the Supreme Court was to be a Court of Oyer and Terminer and Gaol Delivery in and for the town of Calcutta, the factory and Fort William and the other factories subordinate thereto. All offences of which the Supreme Court had cognizance were to be tried by a Jury of British subject's resident in Calcutta.
8. The Supreme Court was empowered to superintend the Court of Collector, Quarter Sessions, and the Court of Requests and was empowered to issue to these Courts the writs of *certiorari*, *mandamus*, *error or procedendo*.
9. The Court was also granted full ecclesiastical civil and criminal jurisdiction over all the British subjects in Bengal, Bihar and Orissa and over all the persons employed directly or indirectly in the service of the Company.
10. The powers of a Court of Equity and those of a Court of Admiralty for Bengal, Bihar and Orissa and the other adjacent territories and islands under the jurisdiction of the Company, were also given to it.
11. The judges of the Supreme Court were authorised to admit attorneys and advocates and they nominated three persons for the office of sheriff when selection was made by the Governor-General and Council. The Supreme Court was vested with four distinct jurisdictions, namely, civil, criminal, and ecclesiastical and admiralty.
12. The Governor-General and the Council were exempted from the criminal jurisdiction of the Supreme Court except in cases of treason and felony and they were not liable to be arrested or imprisoned but the provisions were incomplete as many other matters were left untouched by the Act which were very necessary to maintain the prestige of the high office of the Governor-General and Council.

PITTS INDIA ACT, 1784

- **William Pitt (28 may 1759 – 23 Jan 1806)**- He became youngest British Prime Minister in 1783 at the age of 24. The East India Company Act, 1784, also known as Pitt's India Act, was an Act of the Parliament of Great Britain want to remove the shortcomings of Regulating Act, 1773. The Act provided **for** the appointment of a Board of Control and provided for a joint Government of British India by the company and Crown with Government holding the ultimate authority.
- A six member Board of Controller was set up for political activities and court of Directors for financial activities. Thus the governor General had the two masters to obey, the Court of Directors and the Board of Control.

Main provisions of Pitts's India Act, 1784:

1. **Board of Control**- A Board of six Commissioners was set up in England which was called the Board of Control. It was consisted of a Secretary of a State, the Chancellor f Exchequer and four other members form the Privy Council be appointed by the Crown. The Secretary was to act as Chairman of the Board having casting vote.
2. **Authority of the Board**- the Board was authorized to superintend and control all the revenue and civil activities and military forces held by the British in the East Indies. The directors of the company were required to supply to the Board, copies of all communications received from India and for all resolutions, orders and minutes of their proceedings and their dispatches to Indian authorities. The order and dispatches had to be approved by the Board.
3. **Court of Proprietors sacked of its Power**- the Court of Proprietors was completely deprived of its powers to counter the orders and resolutions of the directors, which had secured due approval of the Board of control.
4. **Power and Privileges of the board of Directors**- the CoD was allowed to retain its full powers in the appointment, reduction and retrenchment of all the civil and military servant of the Company. The commercial privileges of the CoD were left intact and it was empowered to appeal to King-In-Council in case of any encroachment on its rights by the Board.
5. **Company's Central Government:** the Act provided that it will consist of three other members besides the Governor General². Out of the here members, one was to be the Commander –in-chief of the British forces in India. More effective a casting vote was given to the Governor General. In the appointment of Governor General, the Directors were required to secure prior approval of the Crown. The Directors were given full powers in the appointment of the members of the Council and Governors. But the Crown was empowered to recall a Governor General or any Governor in case it so desired. Resignations of the high officials were required to be in writing³.
6. **Restrictions:** the Governor General and Council were not authorized to declare war on another power without the express permission and authority of the Court of Directors or at least of the Committee of Secrecy. In sudden emergency case, the Presidencies were allowed to enter into such treaties which were subject to the ratification of the Governor General and Council. In the case of specific direct

². The Regulating Act provided for four other members of the Council besides the Governor General.

³. This provision was specially made in order to obviate the possibility of the repetition of the trouble created at the time of Warren Hastings' resignation in 1777.

orders from the Directors, the Presidencies were allowed not to obey the Governor General and Council. But in such cases the Presidencies were required to send immediately a copy of such direct orders to the Governor General.

7. **British Possessions:** All the Company possessions in India were, for the first time, stated as the “British Possessions”.
8. **Government of Presidencies:** The Government of Presidencies was to consist of a Governor and Council of three members one these was required to be the Commander-in-Chief of the Company’s forces in the Presidency. The Governor and Councillors were appointed by the Court of Directors. The Crown reserved the right to recall or remove any of them. The Presidencies were completely made subordinate to the Governor General and Council. In the case of disobedience the Governor of a Presidency was liable to suspended. They were required to send the copies of papers on all matters to the Governor General.
9. **Measures for checking Corruption:** the Act also made provision to regulate the presents and to check corruption amongst the servants of Company holding high posts. It was provided that receiving presents would be considered to be extortion and Company officers on their retirement were to declare on oath the fortune they possessed. A dismissed servant would not be restored his office. Acts of receiving or giving up office were considered misdemeanours. A special Court was set up to try these offences. The Governor General and Governors were given special powers to arrest a person within the European Settlements in any native State, who was suspected of having unlawful correspondence with authorities. All the subject of majesty whether in the service of Company or not, were brought under the jurisdiction of the Courts in Great Britain and in India, for any crime committed in the territories of an Indian State.
10. **Dual Government:** this Act introduced a dual government for the Company’s affairs in England. The control of the purely commercial functions was placed entirely into the hands of the directors, while for the control of the political functions the responsibility was given to the Board of control the board represented to the crown. While the directors represented the company. Consequently, the power of the Court of the proprietors to influence political decision in India came an end.

PRIVY COUNCIL

The Norman Conquest in 1066 played a very important role in shaping the English law and constitution of court of justice in England. The Normans ruled over England through Curia Regis, which was a sort Supreme Federal Council of Normans to control the administration of England. At that time the two bodies emerged first **Magnum Concilium**. **Curia Regis** was the smaller council consisted with high officials of the state, members of the royal Household and certain important clerks chosen by the Crown.

Another wing had been developed as the Court's of the King's Bench at the court of Common pleas. In the reign of Edward I this smaller body of the King's Council developed as Privy Council.

In the 18th century the work of the PC had been increased. By passing the Judicial Committee Act, 1833 the PC was transformed by the Act of 1833 into a great imperial court of unimpeachable authority. The name of PC was continued and it was constituted with seven Lords, had become the last Court of Appeal under the Crown. Till 1929 the composition of PC modified and appointed Councilors following way:

Lord Chancellors

The existing or former Lords President of the Council

Privy Councilors who hold or have held high judicial office (including retired English or Scottish Judges)

The Lords of appeal in ordinary and such judges of the superior courts of Dominions and Colonies as the Crown may appoint.

Quorum: 3 but in important cases it could become 5.

In fact it was the advisory board for getting the opinion of Crown. Every appeal was addressed to "the King's Most Excellence majesty in Council"

Judgments were pronounced only by way of unanimous. It was the duty of every Councilor not to disclose the advice he had given to His Majesty. The meeting of the PC was held in the Buckingham Palace.

Jurisdiction of appeal:

- i) Right of property
- ii) Political and legal rights
- iii) Variations of law of eastern possessions
- iv) Appeal from the three presidencies of India

Rules of the Appeal:

- i) His Majesty prerogative- Criminal and Civil cases,

- ii) In reference where the legal process are disregarded and violation of principle of natural justice,
- iii) Miscarriage of justice and
- iv) Violation of some legal principles or procedure.

Pecuniary Jurisdiction of Appeal:

- i) **Section 30** of the Charter of 1774 granted the right to appeal from the judgment of the Supreme Court in civil cases of the amount of 1000 Pagoda.
- ii) By the Crown's Charter Act, 1797 the Recorder's Court was replaced to Mayor Court of Madras and Bombay. The Charter provided the direct appeal recorder's Court to King's in Council.
- iii) The Act of Settlement 1781 provided the appeal from Calcutta Sadar Diwani Adalat to His Majesty in the civil cases of the valuation of 5000 Pagoda.

Appeal from various Courts:

- i) In year 1818 madras SDA appeal was allowed in all civil cases.
- ii) Till 1818 of 60 years duration only 50 appeals were filed.

Appeal from HC:

Section 109 to 112 of CPC allowed appealing in PC. H C had to certify that the case involved an important question of law and that it was fit case for appeal.

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6. एन०वी० परांजपे: भारत का वैधानिक एवं संवैधानिक इतिहास, सेन्ट्रल लॉ एजेंसी।