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Establishment of High Court Act 1861

STUTI WASNIK¹ AND TEJASWI ANAND²

ABSTRACT

The rule of “The East India Company” ended in 1857, after the first war of Independence. It was overthrown by the direct rule of “The British Crown in 1858”. High Courts in India have a long history dating back to the British Raj. The British arrived in India as traders, but they quickly established a footing on the Indian mainland and got actively involved in India’s governance. There were two established judicial systems for dispensing justice in the three Presidency towns of “Calcutta, Madras, and Bombay”, namely the Supreme Court and the “Sadar Diwani” and “Sadar Nizamat Adalat”. This type of judicial proceedings was uncomfortable for the people who lived in the Presidency. In reality, it frequently clashed, resulting in contradictory outcomes. The British Parliament eventually settled this issue by passing the Indian High Courts Act in 1861. From the start, the Crown's valor assisted them in expanding its territorial control over the majority of Indian geographic locations, and this was a moment when the British were well enough on the question of power over India. As a result, they require an implemented control in which several inferior courts have their major courts inside the geographical bounds of their region. Prior to this legislation, the highest courts were solely at the central level, namely the Supreme Court in Calcutta. It was a problematic and complicated decision on the part of this subordinate court, thus there was an immediate need for a structure in which the primary courts are grouped into various sections. Changes in judiciary enacted under this legislation are abundantly visible in India's current judicial system. In order to construct an effective legal system over India's large geography, a suitable hierarchy of courts was required. There was an urgent need for courts at various territorial units that might act in the same capacity as the Supreme Court by monitoring districts and inferior courts.

I. INTRODUCTION

Under these acts, British Greon was authorized to establish a high court in each presidency town.

Bombay, Calcutta, and Madras.

1st high court was established in Calcutta [May 1862] other 2 high courts were established in Bombay Madras [June 1862].

¹ Author is a student at Guru Ghasi Das University, India.

² Author is a student at Guru Ghasi Das University, India.

With the establishment of the High Court of Judicature at William Kolkata, the existing supreme court and Sadar Adalat were abolished and their jurisdiction and powers were transferred to the newly created High court.

This act British crown abolished:

1. crown court
2. company court
3. Sardar diwani Adalat

II. PRIOR TO THE PASSING OF THE ACT, 1861

There exists a dual system of courts in India:

1. crown court - Supreme court established in presidency town
2. company court - Adalat established in mofussil areas on Sadar Adalat

Working with two parallel courts and their different rules used in jurisdiction created confusion and conflict.

(A) Objective

1. Remove defects under the Dual system of court
2. To abolish the dual system of court
3. To Transfer the jurisdiction of the court into the High court
4. To simplify the process of judiciary
5. And under the influence of zamindar on a system of court

III. PROVISIONS OF THIS ACT

1. Unification of Court

Under the high court act 1861, the existing supreme court and Sadar Adalat were abolished and their jurisdiction and power were transferred to the newly created High Court all records of this court were also transferred to the high courts in this way the unification of this court was done.

2. Constitution of the High Court

The Constitution of the High Court made in Kolkata Bombay Madras and Agra by this act which the high court consisted of:

- chief justice

- not more than 15 puisne judge

IV. QUALIFICATION OF JUSTICE OF HIGH COURT

1. Barrister advocate of Great Britain with not less than 5 years standing
2. Companies civil service for not less than 10 years' experience including 3 years as district judge
3. Practice as pledgers in the Sadar Adalat and supreme court for at least 10 years
4. Judicial office not inferior to that of principle Sardar Adalat or a judge of a small cause court for not less than 5 years

V. OTHER PROVISION

The following provision was made in this act:

1. High Court was to have original an applet jurisdiction Over civil criminal admirably testamentary intestate and matrimonial
2. The British crown can establish a High Court outside of the presidency town
3. The jurisdiction of the High Court could be clear and modified with period approval of the privy concept
4. In 3 years of the establishment of the High Court any modification can be done in letter patent
5. The high court where empowered to frame rules for the division bench and single-judge bench seating

VI. JURISDICTIONS

Following the jurisdiction provided by the high court under the Act of the year 1861:

(A) Civil Jurisdiction

a. Normal Original Jurisdiction

The high court where was a state with power for the trial of following cases under normal original jurisdiction. The case related to land and other immovable property other civil cases originated within specified limits. Such cases of the defendants where the defendant was residing with the course territorial jurisdiction or trending or performing for personal profit interest.

b. Specific or Extra Original Jurisdiction

In special original jurisdiction, the High Court may call such cases from its subordinate courts for a final decision. Where it appears that by doing this there will be justice for the parties and both parties are egg rate for the same.

c. Appellate Jurisdiction

Under appellate jurisdiction the High Court were empowered for hearing appeals in the following matters:

- An appeal for the decision of its subordinate courts
- An appeal for the decision of its division bench
- Appeal for the decision of not arrived out by the majority of votes
- Appeal for the decision made on the basis of arrangements customs and traditions

d. Jurisdiction for trial of the case of a minor and insane person

High Court was empowered to try and determine Such cases of minor and insane persons which were being finalized by the Supreme court.

e. Jurisdiction of trial of the cases related to insolvency

The High Court was also empowered to try and determine the case related to insolvency.

(B) Criminal Jurisdiction

High court also provided the criminal jurisdiction:

a. Normal Original Jurisdiction

Its jurisdiction was limited to the local limits of the presidency towns it also had criminal jurisdiction over all Britishers and Europeans residing beyond the local limits of presidency towns.

b. Specific or Extra Original Jurisdiction

The high court had extraordinary jurisdiction to trial and determine the offence committed by persons deciding in place within the jurisdiction of any court which was subjected to its superintendent.

c. Appellate Jurisdiction

The High Court was given appellate jurisdiction over criminal cases decided by the quotes subordinate to it.

d. Admiralty Jurisdiction

The high court was given powers to Try and determine all the cases of civil as well as criminal origin during the war and at ships.

e. Supervisory Jurisdiction

The high court also exercised power to superintendence over all subordinate courts it was also the court of reference and revision for the subordinate criminal courts which were subjected to aids it could transfer from one court to another court.

(C) Procedure

1. Civil cases- In the finalization of civil cases of equity and the principles of equity good conscience and justice were followed by the High Court and such laws were referred to which were applicable at that time.

2. Criminal cases -were finalized by the provision of the Indian penal code and the panel procedure code.

VII. ADVANTAGES OF THE ACT

1. The number of court was decreased
2. The dual system control came to an end
3. High court supervised the lower court
4. The equity of work of the lower court improved
5. Efficiency of the judge improved
6. Procedure was simplified
7. The clash and conflict between the two system gradually decreased and immersed simplicity, harmony and efficiency
8. The appellate procedure also become uniform

VIII. CONCLUSION

The British parliament eventually settled this issued by passing the INDIAN HIGH COURTS ACT IN 1861 pretty much from the start, the crown's favour assisted them in expanding its territorial control over the majority of Indian geographic location and this was a moment when the British were well enough on the question of power over India.

As a result, they require an implemented control in which the several inferior courts have their major courts inside the geographical bound of their region. Prior to this legislation, the highest courts were solely at the central level namely the Supreme court in Calcutta. it was a problematic

and complicated decision on the part of the subordinate court, thus there was an immediate need for a structure in which the primary courts are grouped into various section.
