

HISTORY OF THE BOMBAY HIGH COURT DURING BRITISH RAJ

Sarika Chaturvedi

Research Scholar

Legal History

Indore Institute of Law

Pithampur, Indore, Madhya Pradesh, India

Abstract:

This research paper is limited to the study of historical evolution of Bombay high court during British Raj. The central courtroom of the Bombay High Court has been conserved as a site that memorializes the Court's institutional history. The Court's institutional history refers to the history as remembered and recollected by the judges, lawyers, court staff and different persons associated with the Court. The legal history of the Court identifies the law as documented in judgements, rules and regulations. The conflict between the institutional and legal histories of the Court is brought to the forefront in the case of the sedition trial of Tilak in the central courtroom of the Bombay High Court.

Introduction

The High Court of Bombay is one the oldest high court of India. It has appellate jurisdiction over the State of Maharashtra, Goa, Daman & Diu and Dadra Nagar Haveli. In addition of its principle seat at Mumbai, it has benches at Aurangabad, Nagpur, Panaji(Goa).

In 1661, the legal history of Bombay had begun after it became British possession. The town and Islands of Bombay was received by the British as a part of the dowry of the Portuguese Princess Catherine of Braganza, sister of Alphonso VI, the then Portuguese Monarch, when she married King Charles II. Bombay then was little more than a small fishing village consisting of a few of its indigenous inhabitants; and its harbour, destined in the course of years to develop into the greatest and most important commercial seaport in the East, sheltered only a few fishing boats. Charles II transferred it to the East India Company in 1668 for an insignificant annual rent of 10 Pounds. The remote ancestry of the High Court, though interesting is not quite inspiring, until we come to the Recorder's Court established under the Charter of 1798. Confining ourselves to the British period- for there is no conceivable connection between our High Court today and such Courts of law as existed in the Portuguese, and still earlier Muslim eras- the judicial history of Bombay commences with the Charter of 1668 accompanying the transfer of Bombay from the Crown to the East India Company. The system of 1670 was very elementary and suffered from several drawbacks and the judicial system was too much identified with the executive government of the Island.

Gerald Aungier, the governor of Surat Factory was the real architect of the Judicial system during this period and also described as the 'true founder' of Bombay. Being a liberal person he also had some dissatisfaction with the judicial system as he believed in impartial administration and justice. So, he was advised company to appoint someone knowing something of law among the Company's servants. Aungier chose George Wilcox as the Judge and the First British Court of Justice was inaugurated in Bombay in 1672¹.

So, this paper is about the history and evolution of Bombay High Court from Admiralty Court to The High Court of Bombay.

Discussion

Court of Admiralty and Court of Judicature: The Charter of 1683 was issued by the King Charles II. The Charter authorized the company to raise its military forces and it also empowers the Company to establish Admiralty Courts in India at suitable places. The Admiralty Court was to be consist of three members, one of whom was to learned in the civil law, and the other two were merchants appointed by the Company.² The Court had to hear all cases, mercantile and maritime committed at high seas. And the principles of equity justice and good conscience and the customs of the merchants had to be applied by the court.

The Admiralty court at Bombay established in 1684. It was the first Admiralty court established in India under the Charter of 1683. The establishment of the Admiralty Court at Bombay started the second phase of the judicial administration at Bombay. It consisted

¹ <http://bombayhighcourt.nic.in/history.php#>: Accessed on March 10, 2017

² M.P. Singh, *Outlines of Indian Legal & Constitutional History*, Universal Law Publishing Co., New Delhi, 2014, pp- 6

of three members one chief judge, who had to be learned in civil law, and other two members was to the merchants appointed by the Company. Chief judge of the Admiralty court was known as the Judge-Advocate. He had the jurisdiction to hear and decide all mercantile and maritime cases. St. John, Doctor of Civil Law, was appointed as the first Judge-Advocate of the Admiralty court of Bombay.

The Court of Judicature was again created, as the authority of the Admiralty Court was not sufficient to cover all other civil business. And Dr. St. John was also succeeded in getting the authority of the Chief Justice of the Court of Judicature. Dr. John was a very sincere and honest person. He also adopted theory of judicial independence in his judicial decisions, which was not accepted by the John Child, Governor of Surat. He thought the Chief Justice as a subordinate to him. It raised conflict between these two. Later then in 1685 the Governor John Child interpreted the judicial independence of the Chief Justice by restricting the jurisdiction of the Admiralty court to hear and decide only maritime and mercantile cases, and Governor also withdraw the powers Dr. John to act as Chief Justice of the Court of Judicature. Vaux, a member of Bombay Council was appointed to preside over the court, in the place of Dr. St. John. Dr. John opposed this appointment of the Vaux in the court to Secretary of State on the basis of that Vaux had no knowledge of law. This ultimately resulted in the dismissal of Dr. John from the Court of Admiralty in 1687. After this no lawyer member appointed in the court of Admiralty. The Court of Admiralty practically ceased to function independently due to the strong position of the Governor.³ Later of the all courts stopped functioning, except the Governor-in-council after the invasion of Siddi Yakub, Mughal Admiral in February, 1690.⁴

RECORDER'S COURT

In 1753 the Company obtained new Charter from King George II., reestablishing the Mayor's Court. The new Charter repeated some provision of the earlier Charter and created a Court of Requests for the summary disposal of small causes. The Mayor's Court with its inherent defects of Principle and personal functioned for 70 years till 1798.

In 1798 the Mayor's Court was abolished and in its place was established the Recorder's Court, as per the Charter of 1798. Judicial administration in Bombay was completely changed for the better by the establishment of this Court. It consisted of a Mayor, three Aldermen and a Recorder appointed by the Crown, who was to be a Barrister of not less than 5 years standing. The first Recorder was Sir William Syer. The official association of Indians in the administration of law started with the establishment of this Court.

A Hindu Pandit learned in the Law of the Shastras and a Mussalman Malvi, learned in the Law of Sharia were appointed to assist the Recorder in the determination of cases involving points of Hindu & Mahommedan Law. With the Recorders' Courts a great step was taken towards the elimination of the Executive from the Judicial sphere. This Court was accumulated at first in Col. Jones's House in Marine Street, and by 1800 in the Admiralty House, otherwise known as 'Hornby House' which later became well known as the Great Western Hotel, in Apollo street. This building accommodated the Recorder's Court till 1824.⁵

THE SUPREME COURT OF BOMBAY

In 1773 the Regulating Act was passed and Warren Hastings was appointed as the Governor General of Bengal. The Supreme Court of Calcutta was established to remove the evils of the prevailing system. In 1823, an Act of Parliament authorized the Crown to establish a Supreme Court in place of the Recorder's Court at Bombay by Royal Charter. The power vested in the Recorder's Court were to be transferred to the Supreme Court. The Supreme Court at Bombay was to be invested with the same powers and authority and was to be subject to the same limitations & restrictions as the Supreme Court at Calcutta by the 17th Section of the Act of 1823. The Court was formally inaugurated at Bombay on 8th May, 1824.

The Supreme Court functioned from 1824 to 1862. The purity and prestige of judicial administration went an increasing. English barristers began to practice in Bombay and some of them achieved distinction in the High Court later. Several notable judgments

³ B.M. Gandhi, V.D. Kulshreshtha's Landmarks in Indian Legal and Constitutional History, EBC, 2011, pp-

⁴ J.K. Mittal, Indian Legal & Constitutional History, Allahabad Law Agency, 14th ed., pp-21

⁵ <http://bombayhighcourt.nic.in/history.php#>; accessed on May 10, 2017

were given in the Supreme Court, which made important contributions to the development of Law in India. The main inspiration of the Supreme Court and even the High Court in its early years, was the Law of England: and apart from Hindu and Mahommedan Laws, it was the principle of the Common Laws and Equity which were embodied with slight modification in the judgments of the Courts and the principle Acts of the Indian Legislature later. In the first century of British Justice in Bombay, there is no record of any Indian judge or lawyer. It was only after the establishment of the High Court that Indian Barrister began to make their solitary appearances in the High Court.

The Supreme Court had its own deficiencies and its inadequacy as a Court of plenary jurisdiction were borne upon the authorities in England. In 1852, it was urged upon the Parliamentary Committee for East India Affairs that it was desirable that the Supreme Court and the Sadar Adalats in each Presidency should be consolidated. This led the passing of the India High Courts Act by the British Parliament in 1861 for the creation of High Courts in the three Presidencies instead of the Supreme Court and Sadar Adalats. After the Muting of 1857, the Company was dissolved and the Government of India was taken over by the Crown in 1858. This created a sense of responsibility in the British Government for administration in India and a complete over hauling of the judicial system took place.⁶

THE BOMBAY HIGH COURT

The 'Indian High Court Act' of 1861, vested in Her Majesty the Queen of England to issue letters patent under the Great Seal of the United Kingdom to erect and establish High Courts of Calcutta, Madras and Bombay. The Indian High Courts Act, 1861 did not by itself create and establish the High Courts in India. The express and avowed aim of the Act was to effect a fusion of the Supreme Courts and the Sadar Adalats in the three Presidencies and this was to be consummated by issuing Letter Patent. The Charter of High Court of Bombay was issued on June 26, 1862.

The Bombay High Court was inaugurated on 14th August ,1862. The High Court had an Original as well as an Appellate Jurisdiction the former derived from the Supreme Court, and the latter from the Sadar Diwani and Sadar Foujdari Adalats, which were merged in the High Court. With the establishment of the High Court the Penal Code, the Criminal Procedure Code and Code of Civil Procedure were enacted into law.

The high was to consist of a chief justice and the other puisne Judges not exceeding 15 in number. The Letter Patent of the Bombay High Court authorized 15 Judges, but it started with only 7. It is remarkable that, for about 60 years thereafter, the High Court managed to pull on with just 7 Judges, although with advancing years, the laws and the litigation both multiplied. The qualifications of the Judge were also laid down in the act. A person could be appointed Judge of High Court if he was either

1. A barrister of not less than 5 years standing, or
2. a member of the covenanted civil service of at least 10 years standing who had served as Zila Judge for at least 3 years in that period, or
3. a person having held judicial office not inferior to that of Principle Ameen or Judge of Small Cause Court for at least 5 years, or
4. a person who had been a pleader of a Sadar Court or a High Court for at least 10 years.⁷

The Bombay High Court had the original jurisdiction in all the civil, criminal, revenue, admiralty and testamentary cases. The Charter of the High Court also made it the supreme and final court of appeal in all cases, civil and criminal, decided by inferior courts, except such as possessed the requisite importance, pecuniary or legal, demanding a further appeal to the Judicial Committee of the Privy Council.

The High Court was first housed in a building in Apollo Street called the Admiralty House where the Recorder's Court and the Supreme Court held their sittings. The work on the present building of the High Court was commenced in April 1871 and completed in November 1878 and is situated between the University Building and the Public Work Secretariat.

⁶ <http://bombayhighcourt.nic.in/history.php#>; accessed on May 10, 2017

⁷ M.P. Singh, *Outlines of Indian Legal & Constitutional History*, Universal Law Publishing Co., New Delhi, 2014, pp-93

After the reorganization of the States with effect from November 1, 1956, the territories of the Bombay State and with it the jurisdiction of the High Court were extensively extended.

Benches of the High Court were established at Nagpur and Rajkot to deal with matters arising from Vidharbha and Saurashtra districts respectively. In 1960 on the formation of the State of Gujarat, the Gujarat High Court was set up. In 1981 a Bench of the High Court was notified in Aurangabad and the Permanent Bench was established in 1984 by the Order of the President. In accordance with the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981, the Panaji (Goa) Bench of the High Court for the Union Territory of Goa, Daman and Diu was inaugurated in 1982. Later when Goa attained statehood in 1987 the High Court came to have jurisdiction.

Over the two States of Maharashtra and Goa and over the Union territories of Dadra and Nagar Haveli, and Daman and Diu. The High Court has at present a sanctioned strength of 75 Judges.⁸

CONCLUSION

In 1661, the legal history of Bombay had begun after it became British possession. The Charter of 1683 was issued by the King Charles II. Under this Court of Admiralty was established in Bombay. It practically ceased to function independently due to the strong position of the Governor. Later of the all courts stopped functioning, after the invasion of Siddi Yakub, Mughal Admiral in February, 1690. In 1753 the Company obtained new Charter from King George II., reestablishing the Mayor's Court. But it has some inherent defects. In 1798 the Mayor's Court was abolished and in its place was established the Recorder's Court, as per the Charter of 1798. In 1773 the Regulating Act was passed and in 1823, an Act of Parliament authorized the Crown to establish a Supreme Court in place of the Recorder's Court at Bombay by Royal Charter. The 'Indian High Court Act' of 1861, vested in Her Majesty the Queen of England to issue letters patent under the Great Seal of the United Kingdom to erect and establish High Courts of Calcutta, Madras and Bombay. The Charter of High Court of Bombay was issued on June 26, 1862. The Bombay High Court was inaugurated on 14th August, 1862.

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⁸ <http://bombayhighcourt.nic.in/history.php#>; accessed on May 10, 2017