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THE CREATION OF THE APEX COURT: A LOOK INTO IT'S PAST AND PRESENT

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Abstract

The history of courts in India has been a predominant sight since time immemorial. It can be traced back to village level disputes which were solved by the Panchayats that are the oldest form of courts. It has since then subsequently evolved from Mayor's court in Fort St. George in Madras which was created after the Charter of 1687 was passed for the creation of the first Supreme Court in Calcutta owing to the Regulating Act of 1773. According to me, *the establishment of Supreme Courts under the Regulating Act of 1773* was the turning point for the future course.

A brief history

The East India Company had become a dominant part of India and its politics, but it was constantly under the fire for poor management, mistreatment of the Indian principles and corruption. To put a halt on it, the Regulating Act of 1773 was passed by the East India Company. The regulating act was introduced as a regulating bill in the House of Commons which was severely criticised. Edmund Burke denounced it as "an infringement of national right, national faith, and national justice. Irrespective of this, the act was passed. The charter of 1774 was passed under the authority of the Regulating Act, 1773. The charter introduced the Supreme court of Judicature at Calcutta, and it was a Crown's court. Established in Fort William, it replaced the mayor's court in Calcutta. The regulating act of 1773 altered the trajectory of legal history in India and its implications can be seen even today. It provided legislation on which the East India Company's activities and affairs were regulated. The charter was also one of the reasons for the changing social, economic and political environment in during the company's reign.

The Supreme Court Of Judicature

The Supreme court of Judicature was established in Calcutta at Fort William. It also acted like a court of record after the abolishment of the mayor's court as all the records and proceedings were delivered to them. The court constituted of one Chief justice and three puisne judges. Subsequently, all of them had to be barristers. The Charter of 1774 appointed Elijah Impey as the first Chief Justice and Robert Chambers, Stephen, Ceaser LeMaister and John Hyde as the first puisne judges. The authority of the Supreme court extended from Bengal, Bihar and Odissa. The court was also allowed to give judgements on British subjects and Indian inhabitants who gave in writing that the matter could be tried in the Supreme Court. The establishment of the Supreme Court at Calcutta was on an experimental basis and the authorities preferred to wait and see its fruitful results before establishing such a court anywhere else.. At this point, the English East India company was facing several issues and one of the primary issues was not having uniform judiciary that could uphold the law and maintain its sanctity. In the early years, the Supreme court received backlash for being corrupt and incompetent along with having limited jurisdiction- civil and criminal involving British subjects. Overtime, one can witness the expansion of its jurisdiction and then they started hearing Indian cases as well. Although formal authority remained in the hands of the Governor and Council, the whites of Calcutta, along lines followed by the inhabitants of towns without effective corporations in contemporary Britain, developed institutions which they could use for their own purpose.

To summarise, the Supreme court of Calcutta has played a very important role and laid the foundations of modern Indian judiciary. It set the precedent for the interpretation of laws and statutes, established the principle of judicial review and provided a platform for the redressal of the grievances to all residents of India.

Supreme Court of Madras and Bombay

After the establishment of the Supreme Court in Calcutta, it was moved forward to Madras and Bombay. The recorder's court were abolished in order for the Supreme court of Madras and Bombay to be created. The recorder's court had its jurisdiction in civil, criminal, ecclesiastical and admiralty cases over the British subjects residing within the British territories. There had been a constant need for evolution of the legal machinery and this is when the recorder's court gave way to the Supreme Court. The Crown, by letters patent issued on 26 December 1800, abolished

the Recorder's Court and established the Supreme Court at Madras which came into being on 4 September 1801. Sir Thomas Strange, who was previously the Recorder, was named Chief Justice of the Supreme Court, with Henry Gwillim and Benjamin Sullivan as the other puisne justices.

The Crown's Charter that established the Supreme Court was issued on 8 December 1823 and the Supreme Court was formally inaugurated on 8 May 1824. It consisted of Sir E. West CJ and, two other puisne judges, Sir Charles Chambers and Sir Ralph Rice. However, the Supreme court of Bombay had conflict with the government of Bombay. The section 30 of the charter act prohibited the court from interfering with the matters revolving around revenue even with in Bombay itself. Natives were likewise excused from appearing before the Supreme Courts in Madras and Bombay unless the circumstances demanded that they do so in the same way as in a native Court. The Supreme Court's jurisdiction was narrowly restricted to the town and island of Bombay. It had no appellate authority over the Mofussil Company courts. In terms of marine offences, the Charter limited the Supreme Court of Bombay's powers to those who would be subject to its usual jurisdiction.

Laws and rules

The Supreme courts of Calcutta, Madras and Bombay were heavily influenced by English and Indian traditional laws. The various sources of law that were recognized the English Common Law, the statute law that was prevalent in England in 1726 and had to face no alterations by the Legislative council of India and the statute law that had been expressly extended to India since 1726. The Supreme court was also empowered to create rules and regulations to overlook its own proceedings and apply regulations made by the governor -general-in- council. Cultural and religious law like Hindu and Mohammedian laws were also followed. They were used in times of cases regarding inheritance, goods, succession and all contracts in which the parties belonged to either of those religions.

Importance Of The Regulating Act

The Regulating act of 1773 played a major role in the smooth functioning of the Supreme courts. It introduced the principal of a separate and independent judiciary based on English law principles. A modern legal system was developed based on the law and protection of human right. The regulating act was the biggest pawn that the East India Company had. It was their best effort to

centralize and streamline governance in India. The supreme court played a very important role in this system as it was the place that enforced the rule of law which was the first step at centralization. The supreme court was vested with various legal powers as it also had a defined jurisdiction which comprised of all the British subjects in the beginning. It could hear civil and criminal cases and cases that involve dispute between British and Indians. The power of judicial review was given to them which allowed them to review the decisions of the lower courts. This gave the Supreme court of Calcutta a higher prestige and sanctity. It abolished the dual system of government in Bengal and established a single authority under the Governor-General, Warren Hastings. The centralization of power that was crucial for the smooth functioning of the Supreme Court.

Fall of Supreme Courts

The India High courts act was established to create various high courts for the whole of India replacing Supreme courts. The high courts had the distinction of being the apex court for all matters until the introduction of Federal Court of India under the Government Act 1935. This act for the reason for the separation of power between the centre and the states. The federal courts had then replaced the high courts. Their jurisdiction was wide and they could hear appeals against judgments of the High courts.

Rise of the Supreme Court

After Independence, the constitution of India came into existence on 26th January 1950 and soon after the Supreme court was established with a brand new makeover and new set of powers. According to law, the Supreme court was made the new apex court and their decision was binding to all other courts. This is also what comprises of the modern day supreme court of India. The Supreme court also heads over cases which involve state and state disputes or state and centre disputes. One very prominent example of state vs. centre dispute is the disaster management Act, 2005 which was invoked during the Covid 19 pandemic. This caused problems between the states as the central guidelines are binding and the parliament cannot legislate matters of public health.

Evolution of mayor's court to modern day Supreme court

The charter of 1687 was responsible for the creation of the mayor's court at St. Fort George in Madras. Its jurisdiction was exercised in civil and criminal cases. The quorum consisted on one mayor and two aldermen. The stark evolution of the Supreme court from the Mayor's court is still visible and reflected on a modern day. One of the biggest difference is the law and procedure. There was no specific law and procedure laid down for the old mayor's court. Impartiality was also an issue as most cases since the mayor's court were judged on the principles of equity and good conscience. It is justifiable as it was the first body with legal authority. In modern day supreme courts, cases are judged based on the provisions and as our constitution is the largest one and is extremely detailed with 395 articles, 22 parts and 8 schedules, there is not a lot of scope for mismanagement. Jurisdiction was one of the major differences of the mayor's court and the supreme court. The mayor's court had local jurisdiction whereas the supreme court is the apex court and is also called the law of the land. The mayor's court and supreme court might have major differences but on close inspection, they have a few similarities as well. The Charter of 1687 considered as the base for modern progressive ideas of separation of judiciary from the executive as it is followed even today. Just like in the mayor's court, the quorum consisted of one mayor and two aldermen, in the modern day, the supreme court is also headed by a quorum with a bench consisting five judges and the head of the Supreme court is the Chief Justice of India who as of today is Dhanajaya Y. Chandrachud.

Conclusion

The judicial system is the pillar on which any country's democracy stands. It ensures that justice is served and punishment is met to the guilty. Courts have been a part of the system since time immemorial. Whether it is the mayor's court or the current day Supreme court, it has been established for one thing, upholding the law and they have worked for the same cause. They are the final arbitrators for legal disputes and have the task of interpreting and applying the law in a fair and partial manner.

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