

cruel and lingering death to the unfortunate person who had to undergo it, for he could not adopt any means of livelihood. The manner was one to give gooseflesh in ones body. The culprit was tied down. The executioner took a blunt hatchet and hacked off the hand by the joint of a wrist and the foot by the joint of an ankle. The bleeding stump was immediately immersed into a pot of boiling butter (ghee) in order to stop bleeding.

British Period: Modernisation of Ancient Indian Law

The modernisation of ancient Indian law took place in the hand of the British people who came in India as a trading company under a series of Royal Charters. The pace of the development of the administration of justice in British India may be divided into following five periods:

- a. Early Administration of Justice until the Charter of 1726;
- b. Administration of Justice from the Charter of 1726 till the Regulating Act of 1773;
- c. Administration of Justice from the Regulating Act of 1773 till the era of Unification in 1861; and
- d. From 1861 till the Independence in 1947.

First Period: Early Administration of Justice until the Charter of 1726

This period marks the beginning of the British involvement into the administration of justice in India. In another sense, this period deals with the intervention of the Company into the administration of justice in India as opposed to intervention by the British Queen. The East India Company gradually took possession of three factories and settlements at Bombay, Madras and Calcutta. Starting as trading stations, these settlements became known as the Presidency Towns and the territories around these towns came to be known as Mufassil. Till 1726 the administration of justice in three Presidency Towns was haphazard. The Company participated in administration of justice in cooperation with the local Mughal authorities. Some changes were brought in the administration of justice in three Presidency Towns with the intervention of some Charters issued from time to time by the Company though these changes were fringe and different in three Presidency Towns. For example, the first Mayor's court in India was established at Madras by

the Company's Charter of 1687. This was a Company's court as opposed to the Crown's court and no specific rules of law and procedure was laid down for this court by the Company. On the other hand, the Company first acquired the territorial acquisition of Bengal, Bihar and Orissa in 1765 as Mufassil area as opposed to Presidency Towns. Though the Company took the full control of Diwani and military power, the administration of both civil and criminal justice were left to the indigenous machinery at the hand of natives until 1772. The development of adalat system in Mufassil area will be discussed in a different heading.

Second Period: The Era of the Mayor's Court: Administration of Justice from the Charter of 1726 till the Regulating Act of 1773

This period may be divided into two parts: from the Charter of 1726 till the Charter of 1753; and from the Charter of 1753 till the Regulating Act of 1773. The first part of this period marks the beginning of the intervention by the British Crown in the administration of justice in India. The Charter of 1726 issued by King George I by way of granting Letters Patent¹ to the Company was the first gateway of the introduction of English law in India. The Charter of 1726 established a corporation for each Presidency towns. Following changes in the administration of justice were made by this Charter:

Civil Judiciary:

- a. A Mayor's court was established in each Presidency town. Unlike earlier this Mayor's court was a Crown's court, i.e. the courts of the King of England. These courts consisted of the Mayor and nine aldermen. In British India Mayor's court was declared to be a court of record and thus had power to punish persons for its contempt. These courts were royal courts in true

¹ 'Letters Patent' is derived from Latin *literae patentes* meaning writings sealed with the Great Seal of England, whereby a man is authorised to do or enjoy anything that otherwise of himself he could not. They are so termed by reason of their form, because they are open with the seal affixed, ready to be shown for confirmation of the authority given them. There are other Letters Patent of 1865 establishing High Courts at Calcutta, Bombay and Madras.

'Letters Patent' is not an Act but is granted by the Sovereign by virtue of an Act of Parliament, and it should be construed in the same way as an Act. (*Banwari Lal v*

sense as they derived their authority not from the company but from the British Crown.

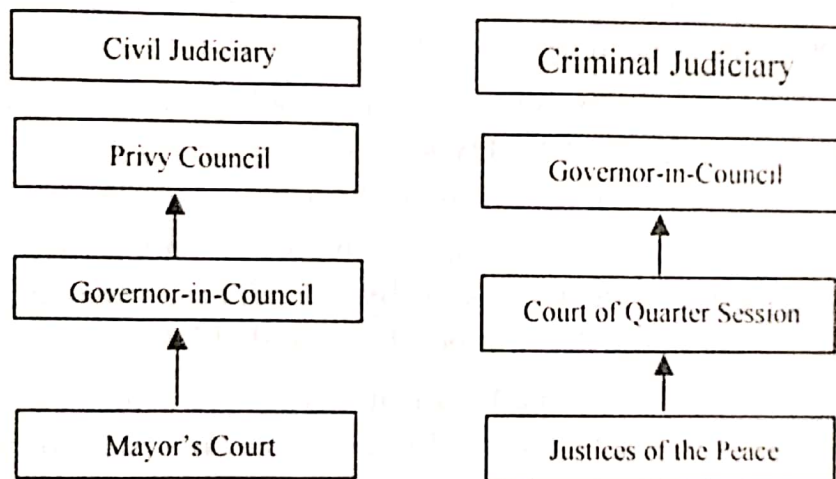
- b. The Mayor's court had jurisdiction to try, hear and determine all civil suits arising within the Presidency town and its subordinate factories.
- c. Appeal was allowed to the Governor-in-Council from the decision of the Mayor's court.
- d. From the decision of the Governor-in-Council a second appeal lay with the Privy Council in England in cases where the sum involved was either 1000 pagoda or more. This was the first time that a right of appeal to the Privy Council (King-in-Council) from the decision of the courts in India was created and thus was established a bridge between the English and Indian legal system. Thus the King of England was made the ultimate fountain of justice for litigation in India.
- e. Though the Charter of 1726 did not expressly state that the law to be applied by the Mayor's court was to be the law of England, the Privy Council decided that the Charter introduced into the Presidency towns the law of England- both common law and statute law and the Mayor's courts were to be courts of English law.

Criminal Judiciary:

- a. **Justices of the Peace:** Under the Charter the criminal justice was fully executive dominated. In each Presidency town the criminal justice was vested in the Governor and five senior members of the Council of the Company. Each of them was to act in the same manner, and to have the same powers, as the justices of the peace in England. A justice of the peace could arrest persons accused of committing crimes, punish those who were guilty of minor crimes, and commit the rest to be tried by the Quarter Sessions.
- b. **Court of Quarter Session:** Three justices of the peace collectively were to form a court of record and they were to hold quarter sessions four times a year to try and punish each and every criminal offence, except high treason, committed in the Presidency Towns. Trial at these session courts was to be

held with the help of grand jury and petty jury. All technical forms and procedures of the English criminal justice were introduced in the Presidency Towns as it was explicitly laid down in the Charter.

- c. **Governor-in-Council:** Under the Charter criminal justice was vested in the Governor and five senior members of the Council of the Company. They had both original and appellate jurisdiction in some specified criminal matters, e.g. high treason and serious crimes like murder etc.



Defects of the Judicial System under the Charter of 1726

- (i) The criminal justice was fully executive dominated as it was at the hand of the Governor-in-Council.
- (ii) The Mayor's courts were not free from the executive influence. The aldermen were either Company's servants or other English traders who depended upon the Company's permission to stay in India and were at the mercy of the local government. In other words, the Governor and Council were the maker and unmaker of the judges.
- (iii) Judges were non-professionals. The Company had a policy of confining administration of justice to its servants and hence it avoided appointing lawyers.
- (iv) The Mayor's court was constituted to work independently. But its relationship with the executive was not stated clearly and there emerged an unhappy clash between the executive and the

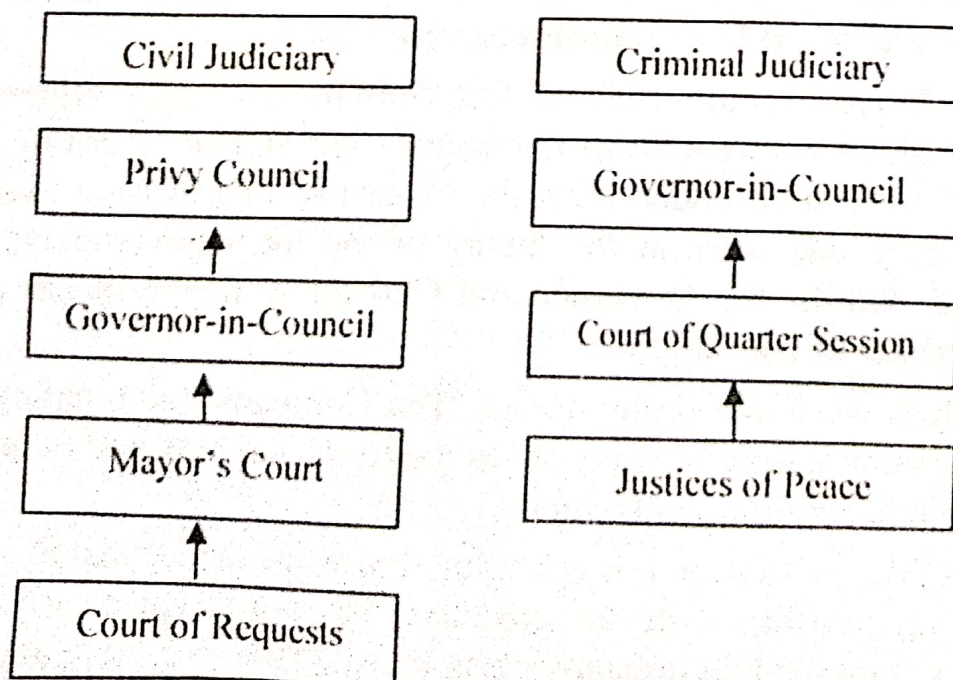
judiciary. This clash is evident from some important cases like Shrimpy's case, Arab Merchant's case, Pagoda Oath case etc.

- (v) The Charter did not mention anything about the jurisdiction of the Mayor's court. When the Mayor's court decided that it was empowered to decide cases where both the parties were native Indians, it created great dissatisfaction and unrest among native people.

The Administration of Justice under the Charter of 1753

This period starts with the Charter of 1753 issued by King George II out of the deficiencies created by the operation of the previous Charter of 1726. The reforms introduced by this Charter were as follows:

- a. All suits and actions between natives only were excluded from the jurisdiction of the Mayor's court unless both the parties involved in the matter submitted it for the courts decision.
- b. The Mayor's court was made completely subordinate to the Government of the Company by introducing changes to the appointment in the post of the Mayor and aldermen.
- c. A new court namely the Court of Requests at each Presidency Town was created. This was to decide cheaply, summarily and quickly cases up to 5 pagodas or Rs. 15. The idea behind was to help poor litigants with small claims who could not afford to go to the Mayor's court.



Further Explanation:

- (i) Privy Council had only appellate jurisdiction.
- (ii) Court of the Governor-in-Council had both civil and criminal jurisdiction. For criminal matter it had both appellate and original jurisdiction. For civil matter it had only appellate jurisdiction.
- (iii) The Mayor's Court heard civil cases involving more than 5 pagodas, one for each Presidency Towns.
- (iv) The Court of Requests heard civil suits up to 5 pagodas, one for each Presidency Towns.

Defects of the Judicial System under the Charter of 1753

- (i) The Charter made the judicial machinery a branch of the Company's executive.
- (ii) The judiciary was manned by the servants of the Company.
- (iii) Judges were ignorant of law. Particularly the Governor-in-Council were quite ignorant about the technicalities of the English criminal law on the basis of which they were expected to decide cases in India.
- (iv) The appeal system in Kings-in-Council was difficult and expensive.
- (v) Indians were excluded from having any share in the administration of justice.
- (vi) The criminal justice being at the hand of the Governor and Council was too much a political farce.

Third Period: The Era of the Supreme Court: Administration of Justice from the Regulating Act of 1773 till the era of Unification in 1861

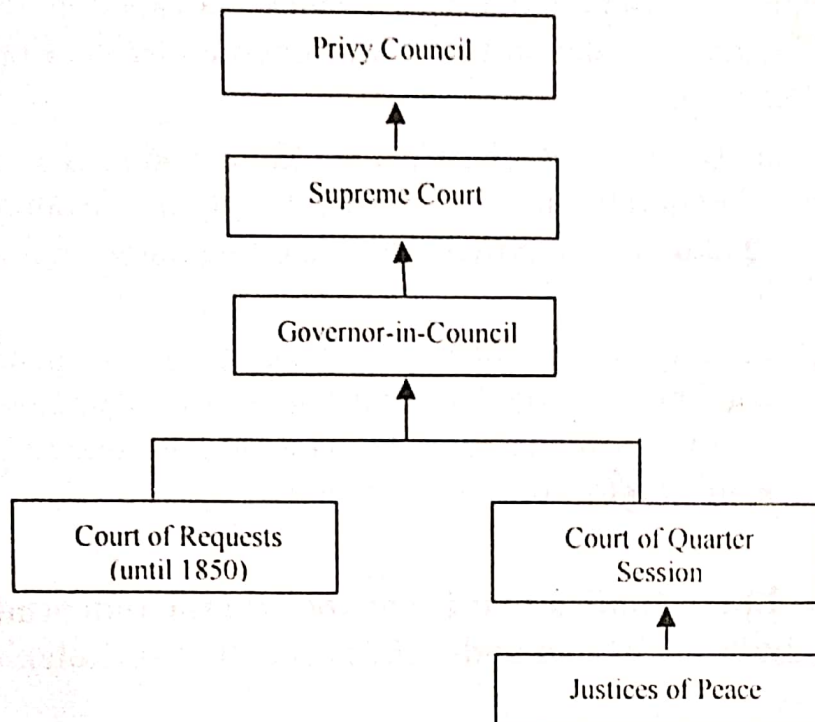
Though the Charter of 1753 was issued with a view to removing the defects of the Charter of 1726, the Mayor's Court suffered from certain drawbacks having far-reaching consequences. In 1772 the House of Commons appointed a secret committee to probe into the affairs of the Company. The committee reported, *inter alia*, that the Mayor's court had

degenerated into an engine of oppression rather than acting as a court of justice. On the basis of report of the committee the House of Commons intervened and passed the Regulating Act 1773. The Act empowered the King to establish by Charter a Supreme Court at Calcutta. Accordingly the King issued the Charter of 1774 establishing the Supreme Court at Calcutta. Subsequently Supreme Courts were established in Madras in 1801 and in Bombay in 1824 abolishing the Mayor's Court. After the establishment of the Supreme Court under the Regulating Act of 1773 the judicial reform took the following shape:

- (i) A Supreme Court was established in place of Mayor's Court in each Presidency Town of Calcutta, Bombay and Madras.
- (ii) Three Courts of Requests in three cities were retained and they were made subordinate to the Supreme Court. However, in 1850 these Courts of Requests were abolished and in their place Small Causes Courts were established in three Presidency Towns.
- (iii) The Supreme Court consisted of a Chief Justice and three other puisne judges. They were to be all professional barristers sent out to India from England. They held office during the pleasure of the King.
- (iv) The Supreme Court was empowered to supervise the Court of Collector, Quarter Session, Justice of Peace and the Court of Requests. Under this supervisory jurisdiction the Supreme Court could issue various prerogative writs.
- (v) The general jurisdiction of this court was limited within the geographical limits of the Presidency Town. Beyond the Presidency Towns, the court exercised a personal jurisdiction over three categories of persons- British subjects and persons employed directly or indirectly to the service of the Company.
- (vi) The Supreme Court had both original, appellate, civil, criminal, ecclesiastical and admiralty jurisdiction. It heard appeal from the decisions of the Mufassil courts and Company's courts.
- (vii) A second appeal from the decision of the Supreme Court where the cause of action exceeded 1000 pagodas lay with the King-in-Council within six months from the decision of the Supreme Court. In criminal cases the Supreme Court had full and

absolute discretion to allow or deny permission to make an appeal to the King-in-Council.

- (viii) In 1850 the Courts of Requests were abolished and in their place Small Causes Courts were established in three Presidency towns.



Defects with the Working the Supreme Court

- (i) In actual functioning both the judiciary and the executive came into serious conflicts and dissatisfaction arose between them under the following points:
- (ii) There appeared huge debate over the point of jurisdiction. In Patna and Cossijurah's cases the Supreme Court came into an open conflict with the Company on the issue whether the Indian Zaminder and farmers of revenue came under the jurisdiction of the Supreme Court or not.
- (iii) There emerged conflict between the Supreme Court and the Company's court. This was because neither the Regulating Act nor the Charter of 1774 clarified the question of relationship between the Supreme Court and the Company's Courts.
- (iv) There occurred conflicts on point of superiority between the Council and the Supreme Court. There was a great deal of

vagueness in the crucial area of relationship between the Company and the Supreme Court.

- (v) The two distinct and parallel judicial systems- the Supreme Court in the Presidency Towns and Adalat in the Mufassil area soon gave rise to conflict over the question of jurisdiction. For example, the Supreme Court claimed jurisdiction over the whole native population which was opposed by the Council of the Company.
- (vi) Raja Nandkumar's, Radha Charan, Kamaluddin, Saropchand, Patna, Cossijurah etc cases provide glaring examples of lacunae and defective provisions of the Regulating Act and the Charter of 1774.

Thus though the Supreme Court was designed to be independent in discharging its functions, two fundamental things- shortcomings in the Regulating Act and the Charter and the violent interference of the executive- did not allow it to work independently.

Fourth Period: Era of Unification: From 1861 till the Independence in 1947 (Judicial Reform under the Direct British Rule).

Unification:

This period may be divided into two sub-heads: from 1861 till 1935 (the era of High Court); and from 1935 till 1947 (the era of High Court and the Federal Court).

As a result of severe clash between the executive and the Supreme Court, within only seven years time the Supreme Court came to be a body disliked by all. Petitions in the form of allegation were submitted to the King of England not only by the Governor-General but also by the inhabitants of Bengal which followed by the appointment of a Select Committee in 1780 to enquire into administration of justice in Bengal. The Committee's report led to the passage of the Act of Settlement, 1781 which in fact curtailed the power of the Supreme Court to accommodate the Council's opinion. The Supreme Court now was deprived of its jurisdiction in revenue matters and Company's Court. Though the plan did away with the clash between the executive and judiciary, it virtually undermined the position and prestige of the Supreme Court as a highest court and also as a court of record, for no longer was it in a position to

control the executive. Secondly, the Supreme Court continued its interpretation of 'constructive inhabitancy' whereby it exercised jurisdiction over many persons residing outside Presidency Towns. Again, Mufassil courts had jurisdiction over these persons. Third, problems continued to arise regarding concurrent jurisdiction of the two sets of courts. At times the Supreme Court and Mufassil Courts passed conflicting decrees. Fourth, serious conflicts arose in execution proceedings. The process of the Supreme Court ran through the Mufassil where it could execute it in Presidency Towns. On the other hand, the Mufassil courts could not execute its decree in Presidency Towns. To execute it in the Presidency Towns separate suit was to be filed in the Supreme Court for its recognition. Against the background of this unsatisfactory state of affairs gradually opinion began to crystallise in favour of merger and consolidation of the two rival systems.

The first important step to unite the two sets of courts was taken in 1853, when the first Law Commission was established in India and an all India Legislature was created whose laws were to be binding on all courts whether established by the Royal Charter or the Company's authority.

The second step was the appointment of the second Law Commission which was assigned to formulate a scheme of amalgamation of the Sadar Adalats and the Supreme Court and also to prepare codes of procedure to be applied to all courts.

The third step was the dissolution of the company and the taking over the Government of India by the British Crown in 1858 following the event of mutiny in 1857. This ultimately paved the way of unification much easier.

The final step was taken with the enactment of three uniform codes (Civil Procedure Code, Criminal Procedure Code and Penal Code). With the achievement of these common legal fabric, the stage was set for the union of the two judicial systems and this was finally done by the British Parliament in 1861 by enacting the Indian High Courts Act which provided for the creation of the High Courts in three Presidency Towns by merging the Supreme Court and Sadar Adalats. The Charter for the Calcutta High Court was issued in 1862 and the High Court was established on 2nd July 1862.

Judicial System after the Unification

- a. Two parallel judicial systems, namely, the Company's courts in Mufassil areas and three Supreme Courts (King's Courts) in three Presidency Towns were merged into a unified system under three High Courts of Judicature at three Presidency Towns.
- b. The Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat Adalat were abolished.
- c. The ordinary original jurisdiction of the High Court was limited to the local limits of the Presidency Towns. Its predecessor the erstwhile Supreme Court did in fact exercise a broader jurisdiction in the sense that in certain circumstances persons and property beyond the local limits of the presidency towns fell within its jurisdiction.
- d. In its ordinary civil jurisdiction the High Court was empowered to try and determine suits of every description except those falling within the jurisdiction of the Small Causes Courts.
- e. The High Court had original criminal jurisdiction within the local limits of its civil jurisdiction.
- f. The High Court exercised its appellate jurisdiction to hear appeals from both civil and criminal courts from which appeals were preferred to the Sadar Diwani and Sadar Nizamat Adalats. To be more specific, the original side of the High Court was the immediate successor to the Supreme Court and the appellate side of the High Court was the immediate successor of the Sadar Diwani Adalat and Sadar Nizamat Adalat.
- g. The High Court had supervisory jurisdiction over all subordinate courts both civil and criminal.
- h. Unlike the erstwhile Supreme Court, the High Court was empowered to exercise jurisdiction over revenue.
- i. A further appeal from the decision of the High Court involving a sum not less than Rs. 10,000 lay to the Privy Council. The High Court was also empowered to certify that the case was fit one for appeal to the Privy Council.

Aftermath of Unification: Regular Hierarchy of Civil And Criminal Courts

After establishment of the High Courts, a regular hierarchy of civil courts were established by Civil Courts Act 1887. On the criminal side the Criminal Procedure Code 1898 re-organised all criminal courts. The present system of both civil and criminal courts in Bangladesh have their legal basis in Civil Courts Act 1887¹ and the Criminal Procedure Code 1898². Section 3 of the Civil Courts Act created the following four classes of civil courts:

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

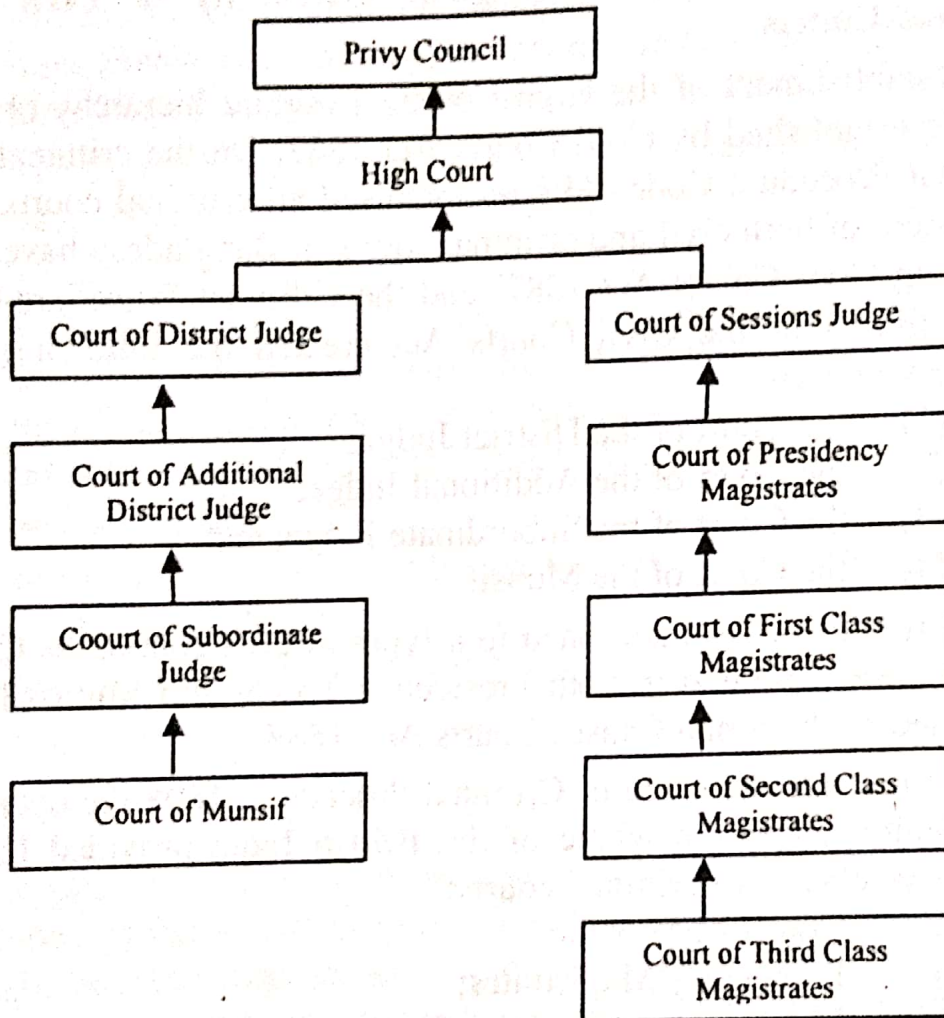
Apart from the abovementioned four types of civil courts, the Courts of Small Causes operated in both Presidency Towns and Mufassil area were retained by the Small Causes Courts Act, 1887.

In criminal side the Code of Criminal Procedure, 1898 the operation of which extended to the whole of the British India provided for the following five classes of criminal courts:

- (1) Courts of Session;
- (2) Presidency Magistrates;
- (3) Magistrates of the First Class;
- (4) Magistrates of the Second Class; and
- (5) Magistrates of the Third Class.

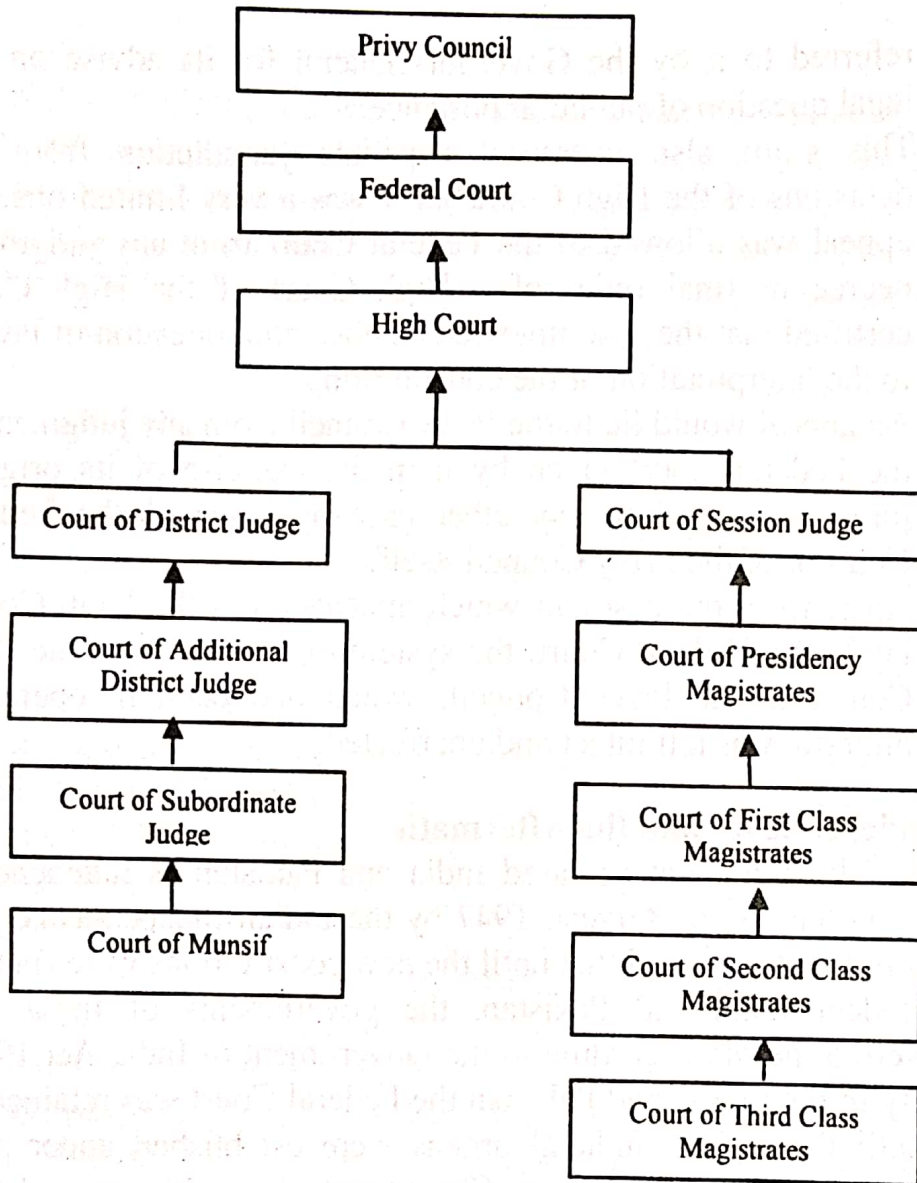
¹ This Act of 1887 (Act No. VII of 1887) was entitled 'District Courts Act'.

Structural Shape of the Legal System after the Unification in the Province of Bengal



The Era of Federal Court and the High Court

The Government of India Act 1935 changed the structure of the Indian Government from 'unitary' to that of 'federal' type. It, therefore, distributed powers between the centre and the constituent units. And consequently it had provided for the establishment of a Federal Court. The Federal Court of India was inaugurated on 1st October 1937. Below is the structure of judicial system after the Government of India Act 1935 which follows the discussion on relationship and jurisdiction of the Federal Court.



Constitution and Jurisdiction of the Federal Court

- a. The Federal court was composed of three judges- one Chief Justice and two puisne judges. A person having (i) five years experience as a judge of the High Court; or (ii) a barrister of at least ten years standing; or (iii) a pleader/ advocate in the High Court having ten years standing was qualified to be a judge in the Federal Court.
- b. The judges were appointed by His Majesty and would hold the office until the age of sixty five.
- c. The Federal Court was given exclusive jurisdiction to decide cases between the Centre and the units. Its advisory jurisdiction was limited only to those cases which were

- referred to it by the Governor-General for its advise on any legal question of public importance.
- d. This court also exercised appellate jurisdiction from the decisions of the High Court but it was a very limited one. An appeal was allowed to the Federal Court from any judgment, decree or final order of a High Court, if the High Court certified that the case involved a substantial question of law as to the interpretation of the constitution.
 - e. An appeal would lie to the Privy Council from any judgment of the Federal Court given by it in the exercise of its original jurisdiction, and in any other case by leave of the Federal Court or of the Privy Council itself.
 - f. Apart from the cases in which appeals from the High Courts lay to the Federal Court, the system of appeals from the High Courts to the Privy Council, which had been in operation hitherto, was left intact and unaffected.

The Independence and the Aftermath

The British Parliament declared India and Pakistan as independent Dominions on the 15th of August, 1947 by the Indian Independence Act 1947. This Act also provided that until the new constitutions were framed for independent India and Pakistan, the governments of India and Pakistan were to be run according to the Government of India Act 1935. Accordingly in both India and Pakistan the Federal Court was retained to function until the highest judicial organs were established under new constitutions. In 1949 the Indian Constituent Assembly passed the Abolition of the Privy Council Jurisdiction Act, 1949 which abolished the system of appeal to the Privy Council from India.

In 1950 after the adoption of the Constitution of independent India the Federal Court itself was replaced by the Supreme Court of India and all the Federal Court judges became the judges of the Indian Supreme Court.

On independence in 1947 immediately by an order of the Governor-General of Pakistan a new Federal Court was established at Karachi according to the provisions of the Government of India Act 1935. By another order (the High Courts (Bengal) Order 1947) a High Court was established out of constitutional necessity in Dhaka. Judicial structure in all other area remained same as it was before 1947. As like as India the

Federal Court Order allowed the Federal Court of Pakistan and High Courts in provinces to continue as subordinate courts to the Privy Council for the time being. In 1950 two important Acts were passed- the Federal Court (enlargement of Jurisdiction) Act and the Privy Council (Abolition of Jurisdiction) Act. Under these two Acts Pakistan's tie with the Privy Council was severed and the Federal Court appeared as the highest court in Pakistan and it continued till 1956 when the Supreme Court of Pakistan was established under the new constitution of Pakistan.

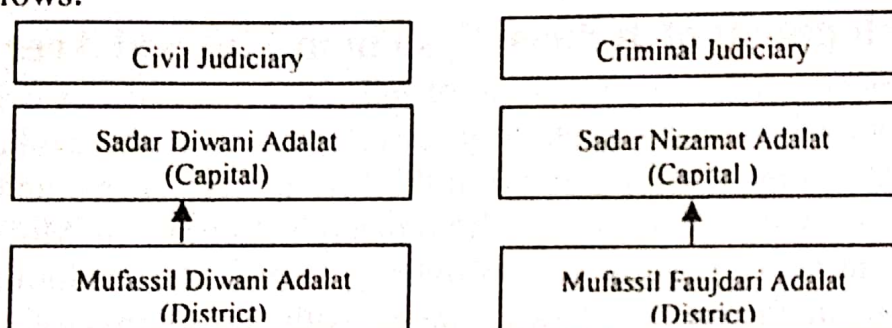
Development of Judicial System in Mufassil Area

As mentioned earlier the evolution of judicial institutions in British India can be traced from two sides of its development: (a) the evolution of judicial institutions (Royal Courts) in the Presidency Towns; and (b) the evolution of judicial institutions (Company's Courts) in Mufassil area, i.e., the territory beyond the presidency towns. The evolution of judicial system in Presidency Towns started with the Charter of 1726 which passed through the era of the Mayor's Court and then the Supreme Court and then culminated into the unification by establishment of High Courts in 1861. This has been discussed above. On the other hand, the evolution of judicial systems in the Mufassil area started in 1772 with the judicial plan of Warren Hastings in Bengal, Bihar and Orissa. Unlike in the Presidency Towns, the whole judicial development in the Mufassil area took place at the absolute control of the Company. The elementary system of judiciary established by Hasting's was in time modified, improved and redefined by different Lords. As a result "Bengal served as a laboratory where experiments were made in the adalat system, and when workable results were obtained they were transmitted to the provinces of Bombay and Madras."¹ Because of the division of Presidency Towns and Mufassil area the judicial system operated by Crown Courts in Presidency Towns came to be known as Presidency system of justice and the system of the company's court in Mufassil area came to be known as the provincial or Mufassil system of justice. Cowell stated that this two separate streams of judiciary flowed in the province of Bengal for 88 years starting from 1772 and ending with the unification of these two systems in 1861.

¹ Jain, M.P. *Outlines of Indian Legal History*, 5th ed, 1993.

Warren Hasting's Judicial Plan of 1772:

Beyond the Presidency Town of Calcutta the first territorial acquisition of the company consisted of Bengal, Bihar, and Orissa. After the grant of Diwani in 1765 the company did not change anything as to the administration of justice. All civil and criminal courts were left intact till 1772 at the hand of natives. In 1772 with a view to regulating the machineries of administration of justice Hastings divided the whole territory of Bengal, Bihar and Orissa into a number of districts taking each as a unit. The judicial organisation took a new turn which was as follows:



Civil Courts:

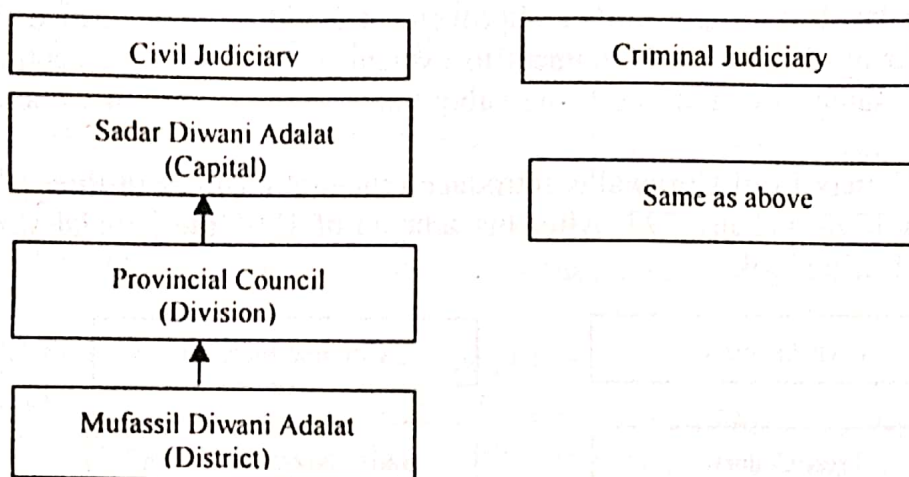
- (b) **Sadar Diwani Adalat** was the chief court of Appeal at the capital presided over by the Governor-in-Council. It heard appeals from the Mufassil Diwani Adalat.
- (c) **Mufassil Diwani Adalat** was established at each district with a collector, an English man as the judge. Appeal against its decision in cases above Rs. 500 lay to the Sadar Diwani Adalat.

Criminal Courts:

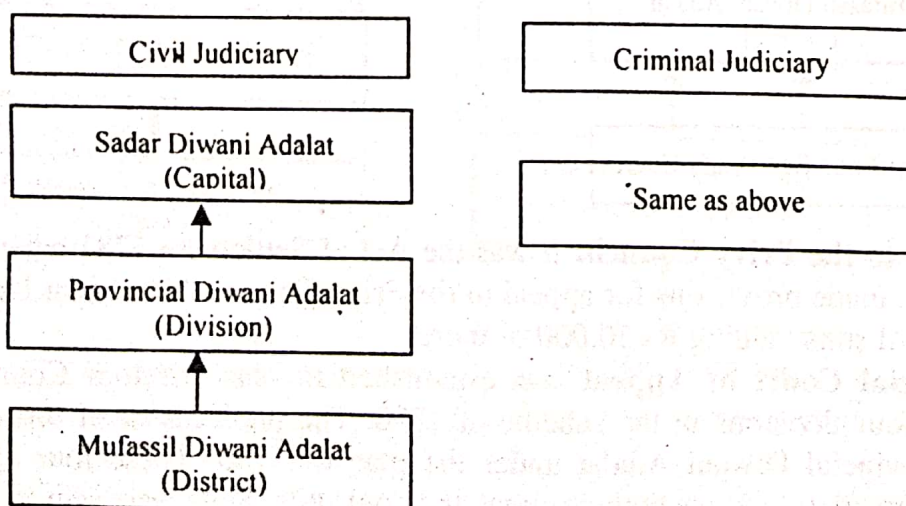
- (a) **Sadar Nizamat Adalat** was the chief court of criminal appeal at the capital presided over by an Indian judge known as Daroga-i-Adalat who was appointed by the Nawab on the advice of the Governor.
- (b) **Mufassil Faujdari Adalat** established in each district was presided over by a collector to try all kinds of criminal cases. Appeal lay to the Sadar Nizamat Adalat.

New Plan of 1774: Under this plan the whole territory of Bengal, Bihar and Orissa was divided into 6 divisions each having several districts. No change was brought into the criminal judiciary but one court

named Provincial Council or Provincial Sadar Adalat was added to the civil judiciary at each division which was presided over by 4/5 servants of the company. This court had three-fold functions: (i) looking after the revenue collection; (ii) hearing appeals in civil cases; and (iii) deciding civil cases as a court of first instance at its seat. The court structure in the civil judiciary came to be as follows:



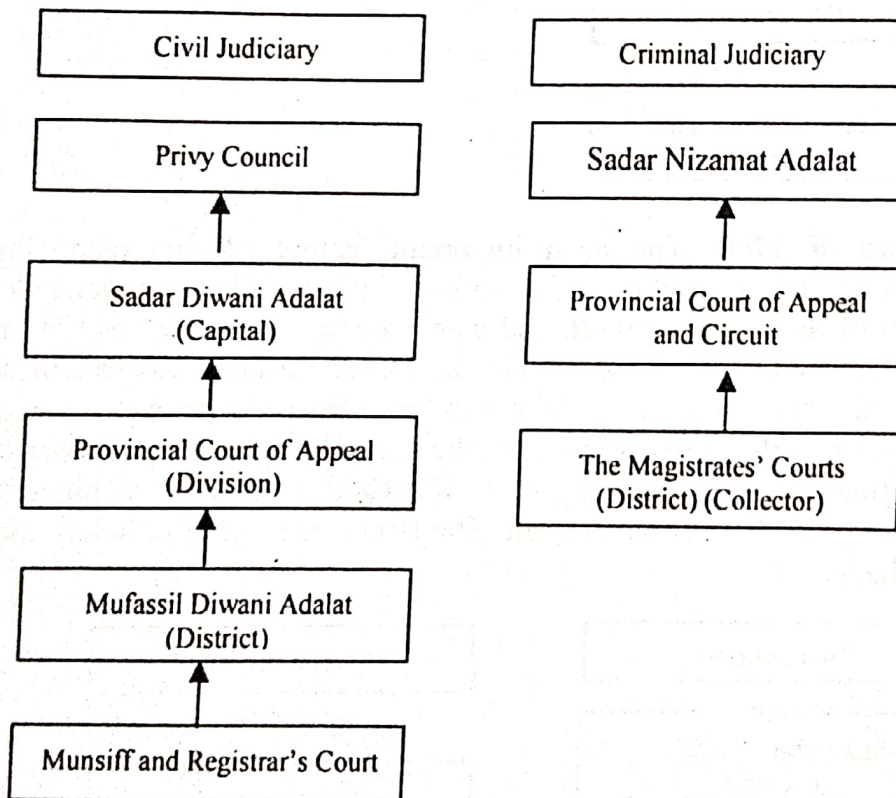
Judicial Plan of 1780: The most important feature of this plan was the separation of revenue from the administration of justice. The Provincial Council was divested of their judicial work and were to confine themselves only to the collection of revenue. A separate Provincial Diwani Adalat was established in each of the six divisions. This adalat was presided over by a servant of the company known as the Superintendent of the Diwani Adalat. The decision of this court were final in cases involving up to Rs. 1000. In matters of higher value appeal lay to the Sadar Diwani Adalat. The structure of civil judiciary took the following shape:



Judicial Reforms by Lord Cornwallis (1787-1793):

In 1781 Elijah Emyap who was the Chief Justice of the Calcutta Supreme Court was appointed by the company as the Chief Justice of the Sadar Diwani Adalat as well. After being so appointed Emyap introduced some important reforms like the number of Mufassil Diwani Adalat was increased from 6 to 18; a Civil Code was compiled for the guidance of the Sadar Diwani and Mufassil Diwani Adalat. Before any further improvement could be done Justice Emyap was recalled by the British Parliament to explain his conduct in accepting two posts at the same time and one being subordinate to the Governor-General and Council.

After Emyap Lord Cornwallis introduced judicial changes in three phases- in 1787; in 1790 and in 1793. After his scheme of 1793 the judicial structure took the following look:



Appeal to the Privy Council: It was the Act of Settlement 1781 which for the first time made provisions for appeal to the Privy Council from Sadar Diwani Adalat in civil suits valuing Rs.50,000 or more.

Provincial Court of Appeal was established in place of four Courts of Circuits in four divisions in the scheme of 1790. The predecessor of this court was the Provincial Diwani Adalat under the plan of 1780. These four appeal courts had jurisdiction to try both criminal and civil suits. Suits were sent to them by the Government or Sadar Diwani Adalat. They could also entertain original

suit which a Mufassil Diwani Adalat referred to them. They also heard appeals from all decisions of the Mufassil Diwani Adalats.

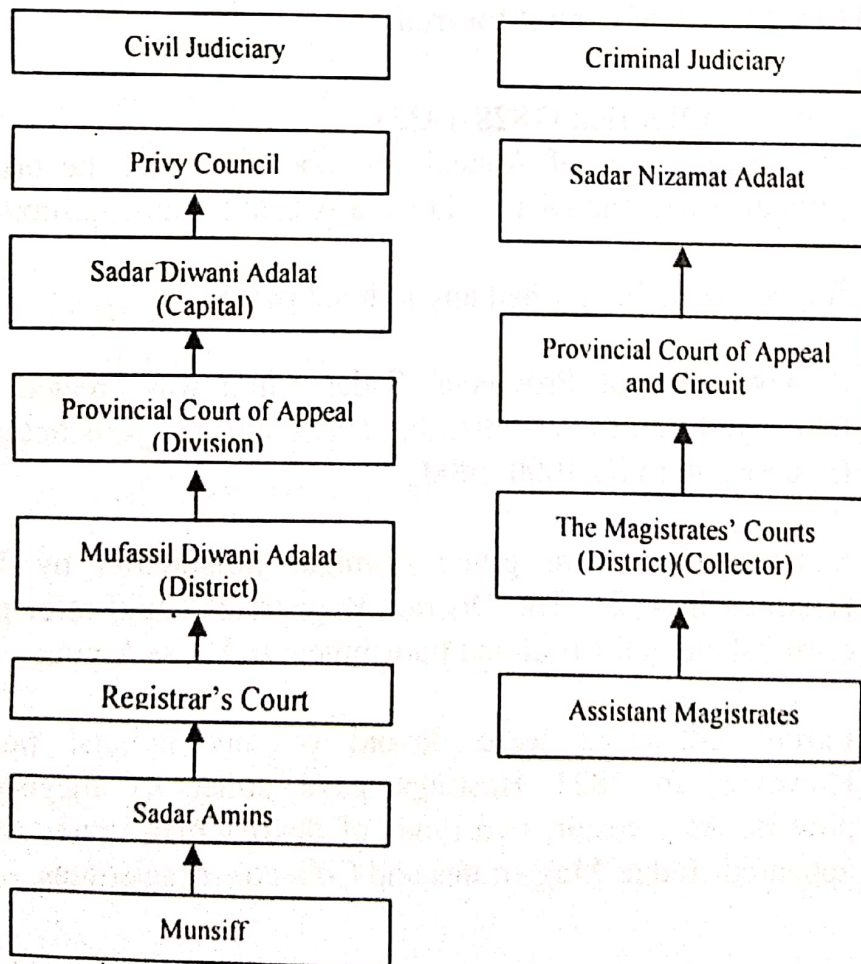
Magistrate's Courts were not a separate tire of court; magisterial powers of the collectors was shifted to the Mufassil Diwani Adalat. Thus unlike earlier the Mufassil Diwani Adalat was to exercise dual functions- civil and criminal.

Registrar's Court was a subordinate court run by a servant of the company. It heard cases up to value of Rs.200. Up to Rs.25 the Registrar's court's decision was final and in case of more than Rs. 25 appeal lay to the Provincial Court of Appeal.

Munsiff's Court was established within 10 miles of the residence of the defendant to bring justice nearer to the people and to save them from inconveniences of attending the diwani adalat. This court presided over by tehsilder, landholders, farmers etc native commissioner heard cases up to Rs.50 in value.

Judicial Reforms by Lord Hastings (1814)

Though reforms were made by Sir John Shore in 1795, Lord Wellesley in 1798 and Lord Minto in 1812, the big change was done by Lord Hastings in 1814 which were as follows:



Registrar's Court established in 1793 had jurisdiction to hear cases up to Rs.500 during the time of Hastings.

Sadar Amin's Court was established by Wellesley at each district headquarters was to decide cases up to Rs.100 which was raised up to Rs.150 by Hasting.

Munsiff's Court was established by Wellesley in every thana to decide cases up to Rs.50 which was raised up to Rs.64 by Hastings.

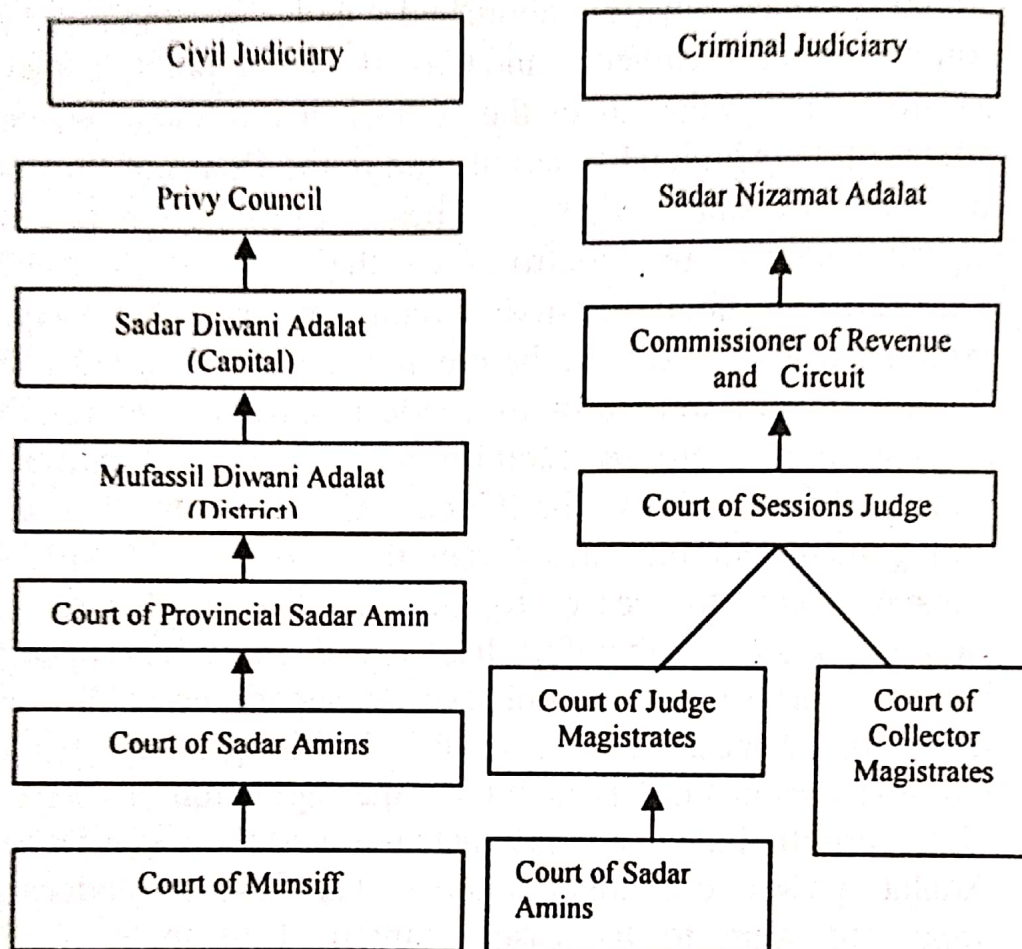
In 1796 the District Magistrates, i.e, Mufassil Diwani Adalat were authorised to employ their assistants in execution of their duties. In 1807 Lord Minto enhanced the power of the District Magistrates so as to enable them to award sentences up to six months' imprisonment with a fine not exceeding Rs.200 and in default, a further period of imprisonment not exceeding six months. Thus the entire period of imprisonment under the sentence of a District Magistrate could in no case exceed one year. Cases deserving severe punishment than this had to be referred to the Court of Circuit for trial.

Reform by Lord Bentick (1828-1835)

- (a) Provincial Court of Appeal was abolished and the original jurisdiction of the District Diwani Adalat became unlimited.
- (b) Registrars no longer had any judicial power.
- (c) A new court of Provincial Sadar Amin was created with native judges at every district. This court had jurisdiction to try cases up to Rs.1000-5000.
- (d) Sadar Amins were given criminal jurisdiction by Lord Hastings In 1821. The District Magistrates could refer petty criminal cases for trial and punishment to Sadar Amins.
- (e) Earlier collectors were devoid of any judicial power. However, in 1821 Hastings gave collectors magisterial powers. As a result, two types of district magistrates' court appeared: Judge-Magistrates and Collector-Magistrates.

- (f) Circuit Courts were abolished and in their place Commissioner of Revenue and Circuit were appointed at each division. They were under the control of the Sadar Nizamat Adalat in their judicial functions and to the Board of Revenue in their revenue duties. These Commissioners had superintendence and control over the magistrates, police, collectors and other executive revenue officers. They were to exercise powers vested in the previous courts of circuits. The Commissioners were also to conduct sessions and for this purpose they were to exercise all powers and authority hitherto exercised by the Circuit Court. With this new arrangement coming into force, the Provincial Courts of Appeal were to cease to act as Circuit Courts. A Commissioner was therefore loaded with triple functions: he had to supervise collection of revenue, superintend police and try criminal cases. As a result of this pressure of the Commissioners Lord Bentinck by the regulation No VIII of 1831 permitted the Commissioners to invest the Sadar Diwani Adalats power to conduct sessions. The Sessions Judges so appointed were to try cases committed to them by the Magistrates. As the Commissioners were generally unable to manage the sessions in addition to their duties, so trial of criminal cases invariably came to be transferred to the judges of the district adalats. Thus were born the District and Sessions Courts which subsists even today and exercise judicial functions in both civil and criminal matters.
- (g) The jurisdiction of the Munsiff court was increased to Rs.300 and Sadar Amins to Rs.1000.

The structural shape of the judiciary came to be as follows:



The above structure of the judiciary remained intact until the establishment of the High Court in 1861 under the unification plan. As mentioned earlier, after the adoption of the Civil Courts Act 1887 and the Code of Criminal Procedure 1898 both civil courts and criminal courts were re-organised and these two Acts are the legal basis of the present system of courts in Bangladesh.

Pakistan Period

As mentioned earlier, with the adoption of the Constitution of 1956 the highest court in Pakistan became the Supreme Court of Pakistan and the High Courts were retained at provinces as earlier. The subordinate courts were the same as in 1947. After the adoption of the Constitution of 1962 the whole judicial structure was the same as under the Constitution of 1956.