

Law, Empire, and Codification: Tracing the Judicial System of British India from Early Charters to 1861

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Abstract: *This article comprehensively examines the evolution of the judicial system in British India from the establishment of the Mayor's Court in 1726 through the East India Company's administration and the 1765 Diwani grant, culminating in the Indian High Courts Act of 1861. It analyses the interplay between indigenous legal customs and British institutional frameworks, highlighting structural transformations introduced during the tenures of successive Governor-Generals like Warren Hastings and Lord Cornwallis. Special focus is directed toward the crucial role of the Indian Law Commissions in unifying a fragmented legal landscape through systematic codification. While the system introduced formal procedural predictability, institutional strengths, and unified appellate designs, it suffered from severe systemic flaws, including racial bias, high litigation costs, and cultural alienation. Ultimately, the 1861 Act dissolved the dualities of Company and Crown jurisdictions, establishing an enduring judicial bedrock that continues to shape modern South Asian jurisprudence.*

Keywords: *Bengal Judicial System, Court, Justice, Law Commissions, Legal History etc.*

Date of Submission:10.08.2026

Date of Acceptance: 15.08.2026

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Introduction

Starting as a trading company, the British East India Company gradually transformed into a powerful imperial state through key military victories at Plassey (1757) and Buxar (1764), followed by the establishment of direct Crown rule after the 1857 Uprising. To consolidate control, the British built a centralized state featuring a codified judiciary and vast railway networks. Beneath this administrative framework, however, the regime relied on heavy economic extraction, social division, and the institutionalization of the caste system.

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Ultimately, these colonial legal and administrative structures continue to form the bedrock of modern Indian governance today.

Indigenous Foundations and Early Colonial Consolidations

The East India Company initially set up their trading centres in Bombay and Madras and gradually expanded their trading by establishing factory in Bengal. The Company's trade in Bengal expanded rapidly, and by 1681 Bengal was made a separate presidency. To resolve civil disputes, the Company established Mayor's Court in 1726 which was a court of record. Against decisions of this Court appeal lay to the Governor or President-in-Council, and in important cases further appeal to the King-in-Council. English criminal law was also introduced at this time when the Governor and five senior members of the Council held quarter sessions four times a year. After the grant of *dewani* in 1765 to the East India Company, the Committee appointed by the Court of Directors drew up a plan for effective administration of justice in Bengal and for establishment of Court. The Civil Court was styled as 'Dewani Court' and the Criminal Court as 'Foujdari Court'. At the chief seat of the Government, the Company established 'Sadar Dewani Adalat' and 'Sadar Nizamat Adalat'. By the 1773 Act, the Supreme Court of Judicature at Fort William in Bengal was established by a Royal Charter and it consisted of a Chief Justice and three other Judges. This was the first Supreme Court of Judicature in India. The Supreme Court of Madras was established in 1800 and that of Bombay in 1823. The Supreme Courts were empowered to exercise Civil, Criminal, Admiralty and Ecclesiastical jurisdictions. The jurisdiction of the Supreme Court of Bengal extended over Bengal, Bihar and Orissa. By the East India Act of 1793, the Supreme Court of Bengal, which was situated at Calcutta, was given the power and authority to try offences committed on the high seas. These trials were conducted according to the laws and customs of the admiralty of England. The Supreme Court of Bengal was also empowered to determine all types of action in respect of the inhabitants of Calcutta with regard to their inheritance and succession to land, rent, goods and all matters of contract, etc. In case of Mohammedans, they were to be determined by the laws and usage of the Mohammedans, and in case of Hindus by laws and usage of the Hindus. If one party was a Mohammedan and the other party a Hindu, then the dispute would be sought to be resolved by the laws and usage of the defendant. In case of Mohammedans the laws of the Koran, and in respect of Hindus the Shastras were adhered to. Moulavis or Brahmins were called to attend Court for the purpose

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of expounding the law and giving assistance in framing the decrees. In cases where one of the parties to an action was not a Hindu or a Mohammedan, the Courts were guided by the principles of justice, equity and good conscience so as not to deprive any party of any property. Likewise, in cases where there was no authority in Hindu or Mohammedan texts or enactments, the judges applied the principles of justice, equity and good conscience as per English laws and practice. In this way, gradually local laws and usages were modified and superseded by English laws. Incidentally, appeals against the judgments of the Supreme Court were preferred to the Judicial Committee of the Privy Council.¹

Harry Verelst, Governor of Bengal from 1767 to 1769, warned of the negative consequences of introducing English laws. The views of early Company officials were similar to those of Edmund Burke of England. He was anxious that the east India company not endanger its possessions in India, and “be congenial to the feelings and habits of people”. Burke also observed the antiquity of indigenous laws. Burke noted the existence of two dissimilar people in India, the first being Gentoos.² The code of Gentoos Law was the first initial attempt in British India to prepare Ancient Indian Law, which was about the culture and local customs of different parts of Indian subcontinent. Warren Hastings was convinced that Indian law must be administered to Indians. In 1772, at his request Brahmins versed in *Shastras* gathered at Fort William and prepared a treatise on Hindu Law, the *Vivadarnavasetu*. That was translated into Persian, and, in 1776, into English by Nathaniel Halhed as *A Code of Gentoo Laws*.³

Lord Cornwallis, who hailed from an aristocratic, landowning family, wanted company rule to be accordance with British Constitutional principles. That essentially meant the application of Whig political philosophy, which advocated the division of powers between the executive, legislature, and judiciary. Cornwallis pointed out that when the East India Company first acquired political power. Its immediate objective was to raise a high revenue, and to provide a large investment. One consequence of the priority accorded to revenue collection was neglect of company’s judicial responsibilities. That was apparent from the fact that the judicial duties of a collector were regarded as inferior to his obligations of revenue collection. In fact, a collector received no remuneration for his duties as a judge or magistrate. Till 1790, the administration of criminal justice had remained with the Nawab of Bengal. That year, Cornwallis announced that criminal justice and criminal courts would be transferred to magistrates, Though Mohammadan judges were removed from the office, Mohammadan law

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prevailed in courts. Cornwallis identified two problems that required redress- defects in Muhammadan law, and deficiencies in constitution courts. Cornwallis specified that in cases of murder, the doctrines of Abu Yusuf and Muhammad, and not those of Abu Hanifa, would be followed. Instead of the loss of two limbs, an offender would be sentenced to fourteen years imprisonment. The law of evidence also revised, and the testimony of non-Muslims was accepted in cases of death sentence for Muslims convicted of murder. During tenure of Cornwallis executive and judicial powers were detached in the new legal system. The Cornwallis code entrusted the judicial work of the collector to the District judge and Magistrate. The collectors duties were confined to the collection of revenue; the Judge-Magistrate had powers of Civil judge and Magistrate, and also controlled the police. The faujdari courts were replaced by four provincial Courts of Circuit, three for Bengal and one for Bihar. Two Judges selected from among the company's covenanted servants, were to sit in each Court, to be assisted by a Qazi and Mufti. They were above District Judges. At that time important posts held by Europeans and Indians excluded from judiciary.⁴

Several corrective measures were introduced subsequently; among them increasing the number, and powers, of subordinate Indian judges, limiting appeals, and expediting proceedings, In 1801, the Sadar Diwani Adalat was handed to three judges, and the judicial work of the Governor- General in Council, ended. In 1814 and 1821-31, *munsiffs* (native judges) and *sadar amins* were given greater powers in civil cases, and fifth judge was added to the Sadar Diwani Adalat. The number of Zillah judges was increased, and some revenue matters referred to Collectors. Regulation IV of 1821 permitted the government to authorize Collectors to act as Magistrates in criminal Cases. In 1824 and 1831, Collectors were permitted to deal with summary suits of rent, though regular suits could be brought before the civil courts. In 1837, there was again a separation of powers. Each district was to have a district civil and sessions judge, a collector, and a magistrate, frequently aided by native deputies. The Act of 1833 tried to address some of the problems on the judicial front. Judicial positions were opened to Indians, and a Law Commission provided for the codification of laws. Thomas Macaulay was appointed Law commissioner. The Work of codification was completed by 1837.⁵

The Era of Centralised Codification & Law Commissions

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Section 40 of the Charter Act of 1833 provided for the appointment of a Law Member of the Council of the Governor General. He was to be appointed from amongst persons who were not servants of the East India Company, and he was not entitled to sit and vote in the said Council except at meetings for making Laws and Regulations. Thos. Babington Macaulay (Lord Macaulay was appointed the first Law Member. Section 53 of that Statute provided for the appointment of a Law Commission and from time to time commissions (the number of the commissioners not to exceed five at any one time) to enquire fully "into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the said territories, and all existing forms of judicial procedure and into the nature and operation of all laws whether civil or criminal, written or customary, prevailing and in force in any part of the said territories. This section also provided that the commissioners should make reports, in which they should fully set forth the result of their enquiries. In pursuance of the authority thus conferred the First Indian Law Commission was appointed in 1834. This Commission consisting of Lord Macaulay, J. M. Macleod, G. V. Anderson; and F. Millet. The members of this Commission, under the instructions of the local governments, employed themselves in the first instance in the preparation of a draft of a Penal Code. This Commission also recommended various changes in the procedure in civil suits and drafted a Code of Civil Procedure. In 1842 it prepared a draft code of the Law of Limitation in British India. Activity of the First Law Commission declined after Lord Macaulay's return to England and there was strong opposition to Macaulay's draft Penal Code by many of the Judges in British India.⁶

The codification and the curation of the laws and codes in India is the solid foundation of the present-day law and the legal system of India, however, there were some difficulties and objections to the codification of the Anglo-Indian codes by the British especially the Law commission since it was the authoritative body for the suggestion and drafting the codes and law in British occupied India. One of the first objections to the codification, in general, is the incompleteness or the insufficient nature of the codes proposed and drafted by the lawmakers. History is evident for the cumbersome debates and discussion of the already passed codes and the numerous amendments to the codes this created an unfavourable opinion in the minds of the common man who was very much frustrated with the changing rules and laws. The law was mostly codified by the British appointed officers though the Indians participate they do not have the absolute authority and the final say in the making of law, this led to the eruption of the various issues on the ground level application of the curated laws in the day to day

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lives since the British were unaware of the situations and the conditions of the Indians. Another effect of the same cause is the misuse and the unfair judgments by the judges since the laws made were not actually suitable at the ground level. The multitude of population and the existence of the diverse customary practices and laws was also an issue in law-making.⁷

The period between the two Charter Acts of 1833 and 1853 was of great significance in laying out the network of juridical categories, procedures, and discourses that were to overdetermine both the nature of political authority the East India Company was to exercise in India, and also the relationship between the Parliament in England and the company's government in India. It was in this period that the primarily judicial role of the British King-in-Parliament with respect to India was institutionalized. Also, even as the East India Company was recognized as the sole legislative authority for British India, Indian legislature itself came to be configured in 1853 in the image of British Law court based on the centrality of judicial procedures and personae, and also of juridical categories. The specific alignment of categories and institutions that was set in place in this period was to have far-reaching implications for the development of anticolonial politics in India. By the Charter Act of 1833 the Governor-General's Council was also converted into legislative body, collapsing the separation of executive and legislative powers. An attempt was made to give the new institution a cover of legality by introducing a fourth legal member in the Council as a substitute for the sanction of the Supreme Court. The Charter Act of 1833 institutionalized the position of the British King-in-Parliament as a purely judicial body with respect to the laws passed in India. It did this by discontinuing the provision of Pitt's India Act of 1784 that gave the home authorities in London the right to amend laws made in India. The Privy Council as the King's Council was to remain the supreme judiciary for India until end of the British Empire in 1947.⁸

The Second Indian Law Commission was appointed under the authority given by Charter Act of 1853 on Nov. 9, 1853. Its members were Sir John Romilly M.R., Sir John Jervis, Sir Edward Ryan, Lord Sherbrooke (Mr. R. Low) and Mr. T. F. Ellis. Its duty was to examine and consider the recommendations of, and the enactments proposed by the First Law Commission, for the reform of the judicial establishments, judicial procedure and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure and laws as might be referred to them for consideration. This Commission sat in London till the middle of 1856, examined and adopted the recommendations of the

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First Law Commission regarding the civil substantive law. After careful consideration this Commission reported "We have arrived at the conclusion that what India wants is a body of substantive civil law, in preparing which the law of England should be used as a basis, but which, once enacted, should itself be the law of India on the subject it embraced. They presented four reports in which they submitted a plan for the amalgamation of the Supreme and Sudder Courts and an uniform code of civil and criminal procedure applicable both to the High Courts to be formed by that amalgamation and the inferior courts in British India. The recommendations of this Commission resulted in important legislation both in Parliament and in the Legislative Council of India. Macaulay's Penal Code was taken up and revised and was passed into law in 1860. A Code of Civil Procedure was passed in 1859 and a Code of Criminal Procedure in 1861. By the year 1861 India thus acquired a Penal Code and codes of Civil and Criminal Procedure. The draft of the Law of Limitation in British India by the First Law Commission was taken up and passed into law in 1859.⁹

The Second Law Commission faced heavy criticism for intentionally excluding Hindu and Muslim personal laws, which left native social customs fragmented and uncoded. It also attempted to force an alien English legal framework onto rural India through the *Lex Loci* report, overriding traditional local systems, also operating entirely without Indian representation, the commission prioritized colonial administrative control over the actual needs of the local population.

In December, 1861 a fresh Commission was issued authorizing the Commissioners to prepare for India a body of substantive law, in preparing which the law of England should be used as basis. for giving effect to the recommendations of the Commissioners. Lord Romilly m.r., Sir W. Erie c.j., Sir E. Ryan, Mr. R. Low, Mr. Justice Willes and Mr. John Macpherson Macleod were its original numbers. Afterwards Sir W. M. James i.,j. succeeded Sir W. Earl and Mr. John Henderson succeeded Mr. Justice Willes and Mr. Justice Lush succeeded Mr. Henderson. This Commission submitted seven reports. These Commissioners did in the first instance direct their attention to the preparation of law of succession and inheritance generally applicable to all classes other than Hindus and Mahomedans, both of which have laws of their own on this subject. They submitted in their First Report a draft of the rules they recommended on this subject. 2nd Report (1866) containing draft Contract Bill, 3rd Report (1867) containing Draft Negotiable Instruments Bill, 4th Report (1867) did not contain any draft, 5th Report (1868) containing Draft Evidence Bill, 6th Report (1870) containing Draft

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Transfer of Property Bill, 7th Report (1870) containing Revision of the Code of Criminal Procedure. The Commissioners also prepared a draft code of the Law of Insurance (Fire, Life and Marine).¹⁰ Though critiques say the commission uniquely operated entirely from London, causing a total geographical disconnect that resulted in the literal, forced transposition of complex English common law onto Indian society. Its rigid refusal to allow the local Government of India to modify its drafts sparked an unprecedented institutional deadlock.

In 1861, the India Councils Act modified the constitution of the Governor General's executive Council in India, and re-modelled the legislature by establishing a Council, presided over by the Governor-General, to make laws for the whole of India, with subordinate legislative Councils at Madras, Bombay, and Calcutta. Another statute instituted High Courts of Judicature under royal charter, at these three capitals; and in 1860-1 the enactment of the Penal Code and the Code of Criminal Procedure assimilated throughout the country the general system of criminal law. By these measures the executive and judicial administration was systematically rearranged; so that, when Lord Canning, the first Viceroy of India, left Calcutta in 1862, he made over to his successor a government very different in organization and character from that which had been transmitted to him, six years earlier, by Lord Dalhousie. The royal supremacy, proclaimed in 1858, became the actual and visible sign of substantial incorporation into the British empire in all parts of the world, at a time when India had received large accretions of territory; while the sense of unity created by the Queen's assumption of direct government restored confidence, and gave a powerful impulse to the moral and material advancement of the Indian people. The administrative history of India during the next fifty years may be described as a development upon the lines that were laid down by these fundamental executive and legislative reforms.¹¹

Fourth law Commission composed of Sir Charles Turner, sometimes the Chief Justice of Madras, Raymond West, one of the late Judges of the High Court at Bombay, and Dr Whitley Stokes. These Law Commissioners in their report dated the 15th November, 1879 made the following, amongst other recommendations : — (a) That the process of codifying well-marked divisions of our substantive law should continue ; (b) that the eventual combination of those divisions as parts of a single and general Code should be borne in mind ; (c) that the English law should be made the basis in a great measure of our future Codes, but that its materials should be recast rather than adopted without modification ; (d) that in recasting those materials due regard should be had to Native habits and modes of thought ; that the

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form which those materials should assume, should, as far as possible, resemble that of rules already accepted ; that in other words, the propositions of our Codes should be broad, simple, and readily intelligible ; (e) that uniformity in legislation should be aimed at, but that special and local customs should be treated considerately ; (f) that the existing law of persons should not at present be expanded by way of codification, save that the operation of the European British Minors Act of 1874, should be extended ; (g) that the laws relating respectively to negotiable instruments, to the subjects dealt with by the Transfer of Property Bill, to Trusts, to Alluvion, to Easements, and Master and Servants, should be codified, and the Bills already prepared on these subjects be passed into law, subject to the amendments suggested in the report ; (h) that the law of actionable wrongs should then be codified; (i) that concurrently with or after the framing of a law of actionable wrongs, the laws relating to insurance, carriers and lien should be codified ; (j) that the legislature should then deal with the law of property in its whole extent ; (k) that preparation be made for a systematic chapter on Interpretation. In accordance with these recommendations the Council of the Governor-General passed the code dealing with Negotiable Instruments in 1881, and the codes relating to Trusts, Transfer of Property and Easements in 1882. In 1881 the Probate and Administration Act was passed by the Council of the Governor-General and in 1882 revised editions of the codes dealing with Companies, and Procedure (civil and criminal) were brought out. d criminal) were brought out. After 1882 till the year 1912, there had been very little codification in British India and the Legislative Department of the Government of India had been busy with consolidating and amending the different branches of law in British India. All the important codes have been amended and consolidated.¹²

Institutional Unification- The High Court's Act

The year 1861 is a conspicuous landmark in the process of development of the legal institutions in India. Hitherto, there existed two parallel judicial systems in the provinces of Bengal, Bombay and Madras. One set of Courts, being the Crown's Courts, consisted of the Supreme Courts of Judicature which functioned in the presidency towns. The other set of Courts, being the Company's Courts and having Sadar Courts at the apex, functioned in the provinces beyond the presidency towns. In course of time, the existence of two parallel systems was found to be inconvenient. It was considered to be eminently desirable that a greater unity and harmony should be established in respect of the judicial administration. In the context of changed circumstances after 1858, the distinction between the Crown's Courts

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and the Company's Courts had lost all its validity. The year 1861, therefore, witnessed the merger of two sets of Courts and the consequent emergence of three High Courts in the three provinces. The process of establishing High Courts, initiated in 1861, continued, as a result of which more and more High Courts were created in India during the years to follow.¹³

Sir Erskine Perry, Chief Justice of Bombay, referred later to "the strange anomaly in the jurisprudential condition of British India which consists in the three capital cities having systems of law different from those of the countries of which they are the capitals." "The amalgamation of the Supreme and Sadar Courts and their jurisdiction was clearly essential." The letters patent or charters relating to the High Courts of Calcutta, Madras and Bombay were issued on December 28, 1865, and on their establishment the Supreme Courts and the Sadar Adalats ceased to exist. The original jurisdiction of the High Courts was derived from the Supreme Courts, and the appellate jurisdiction was derived from the Sadar Adalats. The Indian High Courts Act passed on 6th August 1861 was entitled as 'An Act For Establishing High Courts Of Judicature In India'. The Act had several provisions like : 1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those Presidencies respectively. 2. Upon the Establishment of such High Court as aforesaid in the Presidency of Fort William in Bengal the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the same Presidency shall be abolished. And the Records and Documents of the several Courts so abolished in each Presidency shall become and be Records and Documents of the High Court established in the same Presidency. 3. Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction, original and appellate, and all such Powers and Authority for and in relation to the Administration of Justice in the Presidency for which it is established, the High Court to be established in each Presidency shall have and exercise all Jurisdiction and every Power and Authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts. 5. Until the Crown shall otherwise provide under the Powers of this Act, all Jurisdiction now exercised by the Supreme Courts of Calcutta, Madras, and Bombay respectively over inhabitants of such parts of India. 6. All

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laws relating to Supreme Courts applicable to High Courts. 7. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate Jurisdiction, and shall have power to call for Returns, and to direct the transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction and shall have Power to make and issue general rules for regulating the practice and proceedings of such Courts. 8. It shall be lawful for Her Majesty, if at any time here after Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the Territories within Her Majesty's Dominions in India, not included within the limits of the local Jurisdiction of another High Court.¹⁴

Each of these High Courts was to consist of a Chief Justice and puisne Judges, not exceeding fifteen in number at a time. At least one third of these Judges, including the Chief Justice, were to be barristers of not less than five years' standing. Not less than one third of the Judges had to be from amongst those members of the covenanted civil service of not less than ten years' standing who had served as Zilla Judges for at least three years. The remaining quota of Judges could be selected out of the following categories of persons: (i) Barristers of at least five years' standing (ii) Civil servants of at least ten years' standing who had three years work as District Judges to their credit (iii) Persons who had been holding the office of Principal Sadar Ameen or Judges of Small Cause Courts for at least five years (iv) Pleaders of the Sadar Courts or the High Courts of at least ten years' standing. The Judges of the High Court were to hold office during Her Majesty's pleasure. With the establishment of the High Courts in Bengal, Madras and Bombay, the Supreme Courts, the Courts of Sadar Diwani Adalat and the Courts of Sadar Nizam at Adalat were to be abolished.¹⁵

Weaknesses of the Judicial Machinery

Earlier judicial system had several drawbacks like: A) the general jurisdiction of the Supreme Court extended to the presidency town of Calcutta. Beyond Calcutta, it exercised jurisdiction over a few categories of persons only, viz., British subjects, servants of the Company etc It exercised an exclusive criminal jurisdiction over the European British subjects residing in the country. B) the Supreme Court did not have any jurisdiction in any matter concerning revenue. It did not possess any appellate jurisdiction. Its whole jurisdiction was original. C) The Supreme Court, for the most part, applied the English Civil and Criminal Laws. Exceptions were made in favour of the Hindus and the Muslims who were governed by their

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own respective personal laws in certain cases, viz., inheritance, succession and contract etc. D) The Judges in the Supreme Court were barristers or professional lawyers sent out to India from England. They were appointed by the Crown and held office during its pleasure. E) The procedure of the Supreme Court was based closely on the model of the procedure followed in the Courts of England. F) Before 1833, the Supreme Court was not subject to the legislative authority of the Governor General in Council. G) The Mofussil Courts had nothing to do with the English Law. They were amenable in all respects to the Regulations of the Government. H) the Sadar Diwani Adalat and the Sadar Nizamat Adalat did not have any original jurisdiction. They were primarily Courts of appeal and they supervised the working of the lower Courts. I) The Sadar Courts consisted entirely of the members of the civil service who had risen from the successive stages of the service, and who did not necessarily have the slightest legal training. These Judges were appointed by the Government and they held their office during its pleasure. Similar judicial systems existed in the two other presidencies of Bombay and Madras. So, the existence of two systems of judicature functioning concurrently and independently of each other in the three presidencies, was inconvenient for the Government as well as for the people. There was nothing common between these two parallel judicial systems. The Supreme Courts exercised original jurisdiction principally within the limits of the respective presidency towns. The bulk of the Indians residing in the provinces, beyond the presidency towns were immune from their jurisdiction. They were mainly subject to the Company's judicial system which administered a refined scheme of native laws or rather the Anglo-Indian Law. Unfortunately, the boundary or the line of demarcation between them was not very distinctly or clearly defined. Sometimes the decrees of the King's Court interfered with the previous decrees of the Company's Court. But there were many difficulties in the way of unification of the two rival systems. Many eminent lawyers thought that it would be useless to attempt to unite the two systems till certain forms of procedure were established. Ultimately, in 1861 the British Parliament enacted the Indian High Courts Act which merged the Supreme Courts in the presidency towns with the Sadar Courts and created in their stead new Courts, which were called the High Courts of Judicature.¹⁶

Conclusion

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The evolution of British India's judicial system—from the 1726 Mayor's Courts and the 1765 Diwani to the 1861 High Courts Act—reflects a deliberate shift from mercantile administration to centralized imperial control. Through progressive reforms under successive Governor-Generals, the integration of indigenous practices, and the vital codification efforts of the Law Commissions, the British forged a unified legal order out of a fragmented landscape. While this architecture introduced procedural predictability, hierarchical appellate structures, and formal uniformity, it was deeply compromised by systemic flaws. Racial dualities, prohibitive litigation costs, and cultural alienation ensured the system functioned primarily as an instrument of political subjugation and resource extraction. The High Courts Act of 1861 ultimately merged fractured Company and Crown jurisdictions into professionalized benches. In a profound historical irony, this apparatus—engineered to secure colonial hegemony—was ultimately bequeathed as the enduring institutional bedrock of modern Indian constitutional democracy.

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