

In Surat -

- The foremost task before the East India Company was to find out a suitable place for setting up its establishments. Surat was chosen as it was an important commercial centre and had a status of an international port.
- In 1612 after a clash Portuguese were completely ousted from the area by the Britishers & they established their first settlement in 1612 in Surat.
- In 1615 King James I sent Sir Thomas Roe to Jehangir and obtained Dastak through a Firman and he granted certain concessions to them.
- * By the treaty of 1618 the English were allowed to live according to their own laws, religion, culture and customs.
- There were rest houses, warehouses and residential quarters. There also existed a categorization in the servants of the company.
- The disputes between the English men were adjudicated by English laws & the disputes between the English men and Indians were adjudicated by the local laws, i.e. Indian laws.
- Executives were the sole authority. Non legal persons giving justice on their own.
- Transfer of Surat to Bombay in 1687.
- * All cases of complaints and controversies relating to Englishmen were to be looked into by the Kazi of the place who was to safeguard their interests and ensure justice for them. The Kazi was also directed to treat Englishmen with respect and courtesy.

Law and Justice in Surat

1. **English System of Administration of Justice** - No regular courts or tribunals existed for deciding disputes arising between the Englishmen *inter se*. The President and Council of the factory was empowered by the British Crown to administer justice in criminal cases. Later, the Royal Grant of 1623 issued by James I authorised the Company to grant commission to any of its President and Council to try and punish the English subjects, their heirs and successors who were under the employment of the Company. The President and Council could inflict death sentence only in case of the offence of mutiny or felony after seeking the verdict of a jury. They were also empowered to administer civil justice, but being non-legal persons, they decided cases according to their own notions of justice and fair-play though they were supposed to follow the English law.

2. **Indian System of Administration of Justice** – The English people were governed by a dual system of law namely;

(i) In their own matters by the laws of England;

(ii) In matter with Indians by the native laws of this country by the native courts. But the working of the native tribunals suffered from many serious defects. Bribery and corruption was rampant and the judicial officers were arbitrary in their decisions. Consequently, the Englishmen did not like to be tried by the native courts and exploited the situation to their advantage by taking law into their own hands.

During the course of time, Surat lost its importance as a trading centre and the Company considered Bombay more suitable for its trading activities. Therefore the headquarter of the President and Council, was shifted to Bombay in May 1687 and Surat lost its importance as a British trading centre once for all.

BRITISH SETTLEMENT AT BOMBAY (1668-1728)

The Island of Bombay which was under the control of Gujrat king Sultan Bahadur came under the control of Portuguese. The Portuguese king transferred it to King Charles II as dowry on the marriage of his sister Princess Catheline with Charles II. However, the king Charles II found it difficult to control its administration from England therefore he transferred it to British Company for a petty annual fee of ten euro by the Charter of 1668.

ADMINISTRATION OF JUSTICE IN BOMBAY

The judicial system in Bombay before 1726 can be divided into three distinct phases which are discussed below:
First Phase (1668-1683)

In the initial stage, the Island of Bombay was under the control of President and Council of Surat factory and Governor of Surat was ex-officio Governor of Bombay. Sir George Oxenden, the President of Surat visited Bombay in January, 1669, by the order of the Company. He established exclusive Government under Deputy Governor and Council subject to the control of the Governor and Council of Surat.

THE BEGINNING OF JUDICIAL SYSTEM IN BOMBAY (1670)

- The regular system of courts was brought to Bombay by Gerald Aungir the Deputy Governor of Surat factory in 1670.
- He divided the Island of Bombay into two territorial divisions-one divisions comprised Bombay, Mazagaon, and Girgaon

while the other comprised of Mahim, Parel, and Sion.

- Each of these courts have five judges who were to decide five cases. There was a custom officer for each division who was the president of the respective court.
- Some of the judges were Portuguese and Indians to keep the temper of the natives and at the same time to apprise the English Judge about the customs and usages of the native inhabitants.
- Gerald Aungir who initiated this judicial system was not happy with the working of courts mainly because of two reasons. The first reason was that the judges of lower courts and higher courts were lay person without any knowledge in the field of law and second was that the judicial system identified itself too much with the executive government.
- With a view to removing these defects, Aungir requested the Company to send someone who was well-versed in law but his request was turned down and the Company suggested to choose someone suitable person from amongst the servants of the company working in the settlement itself. Consequently, George Wilcox was appointed as the Judge by Aungir and a new Judicial scheme was introduced in Bombay in 1672.

BOMBAY JUDICIAL PLAN OF 1672

- A Government proclamation was issued whereby Portuguese was abolished from Bombay and English Law was introduced in place of it.
- A court of Judicature was established with George Wilcox as its Judge. This court was to have jurisdiction in all cases, namely civil, criminal, probate and testamentary.
- Civil cases were tried with the help of jury once a week.
- The administration of criminal justice was also reorganized by the Judicial plan of 1672.
- Now, the Island of Bombay was divided into four divisions, namely Bombay, Mahim, Mazagaon and Sion.
- In each, of these divisions, a Justice of Peace was appointed who was to be Englishmen. He had power to apprehend the offender and hold inquiry and conduct preliminary investigation. He also examined witnesses.
- After preliminary investigation the Justice of Peace was to send the record to the court of Judicature where the case was tried with the help of jury. Thus, these justices of peace acted merely as committing Magistrates and were not punitive courts.
- An appeal from the court of judicature were taken to the court of Deputy Governor and Council of Bombay.

COURT OF CONSCIENCE

- A court of conscience was also established with functioned under the court of judicature.
- It decided petty civil cases of a value less than 20 xerophins without the help of jury so that the speedy justice could be available to poor litigants.
- The court held sitting twice a week.

PANCHAYATS

- Panchayats was reorganized in 1672 and were authorized to decide cases among the persons of their own caste, who mutually agreed to submit their dispute through arbitration, otherwise the disputes were brought to the court of judicature.
- The panchayats were also to report the offenders to the justice of peace of the region, so that the offenders would be punished for the crimes they have committed.

SECOND PHASE (1684-1690)

Admiralty Courts

- The British king Charles II, by the charter of 1683 had empowered the company to establish admiralty court in Bombay.
- The functioning of the court was same as the admiralty court of Madras and it decided civil and criminal cases besides the usual admiralty and maritime disputes in accordance with the rules of equity and good conscience.
- St. John was appointed as the Judge and President of the Admiralty court of Bombay. He was specially sent by the Company from England as he was well-versed in civil law. He also got the opportunity to act as the Chief Justice of the court of judicature of Bombay and took to himself the administration of civil and criminal justice as well.
- St. John came in direct conflict with the John Child, the president of the Surat factory. The reasons were obvious Dr. St. John wanted independence of judiciary whereas John Child tried to establish superiority and considered judiciary subservient to them. As a result of conflict Dr. St. John was dismissed as the Chief justice of judicature of Bombay in 1687. The Admiralty court, however, continued to function within the framework of Charter of 1683.

THIRD PHASE (1718-1726)

Court of Judicature, Bombay (1718)

After a gap of thirty years, the English judicial system in Bombay revived again with the establishment of court of judicature in 1718 under Lawrence Parker on March 25, 1718.

- This court consisted of an English chief justice and nine other judges including four Indians representing Hindus, Mohammedans, Portuguese, Christians, and Parsis.
- The Indian judges did not enjoy the same status as English judges and they were called 'Black Judges' and their presence was not counted for the quorum.

- Three English judges formed the quorum and these English judges were to be members of the Court of the Governor and council.
- This court has the power to decide civil and criminal cases according to law, equity and good conscience and the rules made by the company.
- The jury system was not revived and court charged Rs. 5 for making an appeal.
- The Indian judges functioned as assessors and enlightened the English judges on customs, usages and traditions of the natives.
- The revived judicial system adopted in 1718 suffered from serious defect of overlapping jurisdiction. The judges could participate in cases in which their own interest was involved. That apart, some of the members of the council acted as judges in the court of judicature also heard appeals from these very decisions in the capacity of the members of the court to the Governor and Council. The revival court of judicature established in 1718, continued till February 10, 1728 when it was replaced by the mayor's court.
- The defects of the judicial system were reflected in the case of **Rama kamati**, which was decided by Lawrence Parker. Rama Kamati was a wealthy Hindu of Bombay who was arrested on the charge of communicating with Dacoity Angira through letters. The only evidence which was available in the case, was the hear say evidence of a dancer who told the court that Angira himself had told that Rama Kamati had written to him. Rama Kamati was sentenced to perpetual imprisonment and his property was confiscated. It is said it was done at the behest of Governor Boone who had conspired and framed fictitious charge against the accused.

BRITISH SETTLEMENT AT CALCUTTA (1690-1726)

Some, Englishmen landed at Sutanati on the bank of river Hooghly in 1690 and constructed a fortified factory named a Fort William. The foundation of Fort William at present (Kolkata) was laid down by Job Charnock on August 24, 1690. In 1698, the East India Company obtained zamindari rights of three adjacent villages of Calcutta, Sutanati and Govindpur from the grandson of Aurangzeb, Prince Azimushshan who was the subedar of Bengal at that time. By obtaining the zamindari rights of these villages the company acquired a legal and constitutional status to exercise administrative jurisdiction over the natives residing in that particular area. In 1699, Calcutta was declared a Presidency and a President and Council was appointed to administer the settlement and the factory came to be known as the factory of Fort William.

ADMINISTRATION OF JUSTICE IN FORT WILLIAM (CALCUTTA)

- After acquiring zamindari rights, the company assumed the functions of zamindars.
- Under the Mughal ruler the zamindars were responsible for collecting land revenue and maintaining law and order in their zamindari.
- The administration of civil and criminal justice was managed by separate courts but with the disintegration of Mughal empire, these courts ceased to function and taking advantage of this situation the zamindars took administration of justice in their own hands
- Each zamindar held a court called 'Cutcherry' to decide civil case. Appeals from this court lay to the court of Nawabs Court at Murshidabad. Capital punishment was to be awarded by the zamindar's court but it was subject to confirmation by the Nawab's court at Murshidabad.
- The East India Company appointed an English member of the Governor's Council as 'Collector' in 1700 who was responsible for collecting taxes and decide civil and criminal matters of the native inhabitants.
- The English Collector maintained a Fouzdari court for the administration of criminal justice. The trials were held in a summary manner without the help of jury. The common modes of punishment which could be awarded were whipping, imprisonment, fine, banishment, work on roads etc. The execution of death sentence, however required the confirmation of President and Council and due process of death sentence was to be followed, that is death sentence can be awarded by whipping and not by hanging. Regarding the offences committed by Englishmen, the Collector could only take cognizance of only petty crimes and misdemeanours committed by them and the serious offences could be tried by President and Council.
- The Collector decided civil cases in his court called 'Cutcherry'. The case decided in a summary manner according to the customs and usages of the native individuals, and in their absence, according to the principles of equity and good conscience. An appeal from this court could lay down to the President and Council.
- It is to be noted that the appeal from the English Collector's court was not to be taken to Nawab's court but was to taken to the President and Council in both civil and criminal matters which shows that the company as zamindar exercised much more power in comparison to local native zamindar. However, this system continued only till 1727 when a mayor's court under the Royal Grant of 1726 was established at Fort William.
- e office before Governor and Council.

BRITISH SETTLEMENT AT MADRAS (1639-1726)

- The East India Company had a factory at Masulipattam which was a subordinate factory of Surat Presidency.
- One of the servants of the Company named Francis Day secured permission from a Local Hindu ruler to construct an English factory on a strip of land.
- The fort was named as Fort. George and the Englishmen and other Europeans lived inside the factory.
- The company was allowed to mint money and govern Madraspatnam which was a small village near company's fort.
- This village where Englishmen and Europeans were living came to be known as 'White Town' and simultaneously a

town inhabited by local natives grew adjacent to the English settlement and came to be known as “Black Town”. In course of time entire territory comprising “White Town” and “Black Town” developed into the city of Madras.

- It was in 1665 that the Madras which was a subordinate to Surat Presidency was raised to the status of Presidency for the first time.

ADMINISTRATATION OF JUSTICE IN MADRAS

The administration of justice in Madras before 1726 can conveniently be studied under three distinct phases-

First Phase (1639-1678)

- In the first phase the administration of justice was primitive and elementary. As already stated, Madras was merely an agency working under Surat administration who conducted all affairs through small council.
- In white town, the administration of justice was done by Agent and Council which decided both civil and criminal matters cases.
- In Black town, prior to British settlement. Choultry were functioning for administering justice to the natives residing in Madraspatnam.
- The Choultry Courts were headed by a native village headman who was known as Adigar. He dealt with petty case of civil and criminal and was also responsible for maintenance of law and order.
- However, he was not empowered to decide criminal cases of serious nature and had to refer to the native Raja for the execution of the punishment.
- The Adigar kanappa who inherited the post from his father was removed from his position by the Agent and his Council on the charges of corruption and misuse of power.
- In place of him two English servants of the Company, Captain Matin and John Light were appointed at the Choultry Courts.
- There was another officer named ‘Peddannaigai’ who was subordinate to Adigar. His function was to apprehend the offenders before adigar with the help of the constables.

CHARTER OF 1661

- Charter of 1661 was granted by British King Charles II to the English Company which introduced some radical changes in the existing judicial system.
- This Charter authorized the Company to appoint Governors and other officers in India. They were empowered by the Charter to hear the and decide the criminal as well as civil of the servants of the company and those living under its jurisdiction according to the laws of England.
- The natives residing within the territorial jurisdiction of company’s settlement also came under the authority of the Government and council whether they were employees of the company or not.
- The case of Mrs. Ascentica Dawes in 1665 proved to be turning point in the Anglo-Indian history. The facts of the case were that, Mrs. Dawes was accused of murdering her slave girl. The case, as usual was referred to Agent and Council of Madras, who being uncertain about the competence to try the case, referred it to the authorities in England. The Charter of 1661 had granted judicial power to the Governor and Council and it was doubted whether these powers extended to the Agent and Council or not.
- Therefore, after great consideration it was decided that the Agency of Madras would be upgraded as Presidency of Madras so that the Agent and Council would become President and Council and he will be empowered to try the case.
- After trying the case, Mrs. Dawes was not found guilty by President and Council for murdering his slave girl.
- This case is important case in the history of British rule in India because for the first-time absence of legal expert in the administration of justice was considered to be most disastrous by the company’s administration.

SECOND PHASE (1678-1683)

- The second phase of the evolution of judicial system in Madras commences from 1678 when Streynsham Master became the Governor of Madras.
- The Court of Governor and Council which was created after Mrs. Dawes case was not functioning properly and therefore the new governor introduced the Judicial Plan of 1678 to eliminate the delays in disposal of criminal and civil cases. The governor ordered the court to hold its sittings twice a week and in deciding criminal matters take the help of jury of twelve persons. Now this court came to be known as High Court of Judicature and was to follow English law and procedures.
- The working of Choultry courts were also reorganized by the Judicial Plan of 1678 where the officers, namely, the Adigar were replaced by the two English Servant of the Company. They were known as pay-master, the mini-master and the custom-master and all three were to sit judges in the Choultry courts twice a week.
- The Choultry courts could decide civil matters of upto fifty pagodas and criminal nature of minor nature. An appeal from this court lay to the High Court of Judicature comprising of Governor of Madras and his council.
- Judicial Plan of 1678 was the first plan or charter which created hierarchy of court for the first time in India.

THIRD PHASE (1683-1726)

The main feature of this phase of judicial administration was the establishment of Admiralty courts in 1686. The company enjoyed monopoly of trade yet many private English merchants started to trade in India which resulted in loss to the East India Company and also saw increase considerable increase in crimes in high seas which also had to be

settled by an efficient Court. With the above conditions, the British Crown passed a Charter of 1683 which expanded the power of the company in the following matters.

- The company was authorized to establish more than one court at places wherever it deemed it necessary.
- Each court was to consist of one legal expert in the field of civil law and two Indian merchants to aid the judges in explaining the local usage and laws of the natives.
- The court could decide cases related to mercantile as well as maritime cases.
- The court was to impart justice based on the notions of justice, equity and good conscience and laws and customs of merchants. It was also empowered
- to lay down its own procedure.

ADMIRALTY COURTS

- The Admiralty court was created in 1686 under the crown's charter of that year. The need for the creation of court was felt due to increase in the number crime of piracy.
- The court consisted of three senior servants of the company one of whom acted as the Judge and other two as his assistant.
- The chief-judge was to be known as Judge-Advocate. The company appointed Sir John Biggs, a person well-versed in civil law, as the Judge-Advocate.
- The company also appointed Attorney-General and Registrar in this court in the same year.
- Besides the maritime cases, the Admiralty Court also exercised jurisdiction over civil and criminal cases and thus, it became the 'General Court' of Madras replacing the High Court of judicature which now cease to exercise judicial functions.
- Unfortunately, John Biggs died in 1689, thereafter in absence of any suitable person, the functions of the Admiralty Court was discharged by the Court of Judicature which consisted of the Governor as the Judge-Advocate and two members of his council to be judge. In addition, it also had two merchants one of whom was to be an Armenian while other was a Hindu native.
- This system continued till 1692 when John Dolben was appointed as Judge-Advocate. From 1692-1696 the appointment of Judge-Advocate was made by the British Government. But in 1696, the Company directed that the member of the Council should be appointed as the Judge-Advocate in succession.
- The Admiralty court functioned well till 1704 when John Dolben, returned to England. Thereafter, the company decided to keep the position of Judge-Advocate vacant and finally the Admiralty court ceased to function.

NEED FOR CHARTER OF 1726

- The judicial administration in the three Presidency town were unsatisfactory and poor.
- With an increase in company business activities in India, the population of 'British Settlements' were also increased and a greater number of cases were coming to courts on daily basis.
- The Company believed the powers of court should be derived from a complete authority so that the judgement delivered could have binding force and uniformity in judicial administration.
- After seeing a successful working of mayor's court in Madras the company wanted to adopt the similar corporations at Bombay and Calcutta.
- Many Englishmen died living movable and immovable property in India. This created a problem for the company regarding the distribution and disposal of their assets. No doubt, the mayor's court of Madras established in 1687 was authorized to deal in matters of testamentary cases but its decisions were not recognized in England as it was the court of company and not of British Crown. Therefore, to avoid unnecessary litigation in England regarding the disposal and distribution of property who died back in India the Crown wanted to establish a mayor's court in each Presidency town.

MAIN PROVISIONS OF CHARTER OF 1727

• Establishment of a Corporation at Bombay and Calcutta

- The mayor's court consist of a mayor and nine aldermen.
- The mayor and seven aldermen were to be natural born British subject and other two can be of any nationality.
- The first mayor and aldermen were to be appointed by Charter itself. Thereafter, the mayor was to be elected annually by the aldermen. The aldermen were to hold office for lifetime or till residence in the presidency town.
- They could be removed from their office by Governor and Council on a reasonable cause.
- An appeal against such removal could be made to the King and Council.
- The mayor and aldermen had to take oath of allegiance to the office before Governor and Council.

2-Mayor's Court in Presidency Towns

- The mayor and nine aldermen to each corporation formed a court of record which was called 'Mayor's Court'. It was empowered to decide all civil case within the Presidency town. The mayor with other two aldermen formed the quorum.
- The court also exercised testamentary jurisdiction and could grant probates of will and letter of administration in case of intestacy.

- The court was to held sitting three times a week and an appeal from mayor's court could lie to Governor and Council. But in case involving the value of subject matter above 1,000 pagodas, a further appeal lay to the King in Council.

3-Crime and Punishment

- The mayor's court has no criminal jurisdiction. It was only a court of civil and testamentary jurisdiction.
- The Governor and five senior members of the Council were appointed as Justice of Peace in each Presidency for the administration of criminal justice. They also constituted court of Oyer, Terminer and Goal delivery and were also required to hold quarter Sessions for, trial of all offences excepting high treason for at least four times a year.

4-Jury trial in Criminal Cases

- The Charter of 1726 provided that criminal cases in Presidencies be decided with the help of Grand Jury and Petty Jury.
- The Grand Jury which consisted of 23 persons, who entrusted with the task of presenting persons suspected of having committed a crime. Therefore, it was also called "Jury of Presentment".
- It is significant to note that along with Charter of 1726, the Company sent to each Presidency, a list of statutes, law-books and instructions etc., which contained a list of procedure to be followed in civil, criminal cases and testamentary. This was intended to maintain uniformity in the functioning of the law courts in all presidencies and follow the English Law.

5-Legislative powers under the Charter

- Before passing of Charter of 1726 the law-making power was vested in the hands of court of director of the company in England. But this was not convenient because the directors hardly had any knowledge about the local conditions in India and, therefore, the laws framed by them were ineffective.
- After Charter of 1726 this power was vested in the hands of Governor and Council of each Presidency-town to make bye-laws, rules and ordinances for the regulation of the Corporations and inhabitants of the Presidencies and they would also prescribe punishment for the breach of such laws and rules.

DIFFERENCE BETWEEN CHARTER OF 1726 AND 1687

- The mayor's courts established in Madras under the charter of 1687 was a company's court whereas the new mayor's court under the charter of 1726 were crown's court.
- The charter of 1687 has a wider scope has it had jurisdiction to both civil and criminal matters whereas the charter of 1726 has only civil jurisdiction.
- Under the charter of 1687, appeals from mayor's court lay to the admiralty court whereas in charter of 1726 an appeal from mayor's court could lay down to Governor and Council and second appeal would go to King and Council.
- The mayor's court established in 1687 has no testamentary jurisdiction whereas the courts established under the charter of 1726 had testamentary jurisdiction.
- The recorder in the mayor's court under the charter of 1687 were professional's lawyers to advise the court in legal matters whereas the recorder appointed under the charter of 1726 does not belong to legal background.
- The mayor's court established in Madras under the charter of 1687 consisted of twelve aldermen out of which at least three were to be Englishmen. But the new corporations set up under the charter of 1726 consisted of nine aldermen, out of which seven were to be Englishmen. Thus, the new mayor's courts were far more English dominated than the earlier one.
- The mayor's court established in Madras under the charter of 1687 were not bound to follow specific procedure and technical rule of law in the administration of justice but the courts established under the charter of 1726 were bound to follow the laws and procedure of English courts.
- Under the charter of 1687, the executive has no interference with the administration of justice but the charter of 1726 invested powers in the hand of Governor and Council to decide criminal cases.

Establishment of Mayor's Court – 1726

Introduction:

The **Mayor's Court** was established in India in by The **Charter of 1726** at Madras, Calcutta and Bombay which were [East India Company](#)'s Highest Courts in British India. The East India Company till 1726 had no power to manage Capital Offences and Capital Punishments, to all the Presidencies with only Civil Jurisdiction being applicable. The Charter was issued by King George on Twenty Fourth September (1726) to the Company. Mayors Court was specially empowered to hear cases against The Company.

The requirement of Establishing Mayor's Court:

- The need for establishing a **Mayor's Court** was felt as before 1726 different judicial systems were working in British India.
- Since there were different Judicial Systems the servants of The East India Company at different settlements were

governed by a different set of rules.

- Thus, there was a lack of uniformity in The Justice System and the same offence would carry a different punishment at different settlements.
- There was an absence of a Competent Court in India which could Supersede all the other courts.

Features of The Charter:

- It established a local Court in each of The Presidency Towns at Madras, Calcutta and Bombay.
- The Governor-in-Council of each Presidency Town was given the power to make by-laws, rules and regulations for better settlement of the disputes arising in the Presidency.
- Each Presidency had a Corporation which consisted of **Nine Aldermen and a Mayor**.
- The Person appointed as The **Mayor** could maximum be a mayor for one year and after that had to continue as an Alderman.
- The Vacancy against The Mayor's position was to be filled amongst the Aldermen who was in turn recommended by the outgoing Mayor and The Aldermen.

Changes in the Judicial System:

The **Charter of 1726** changed the Judicial System in the following ways

- It Established a separate Civil and Criminal Court at each of The Presidency Towns at Madras, Chennai and Bombay.
- It Constituted a **Mayor's Court** for each of The Presidency Towns.
- The Court's were as powerful as The Royal Courts whose source of Authority came directly from The Crown which was regarded as a Fountain of Justice.
- The Charter initiated a System of Appeals from the courts in India to The King-in-Council/Privy Council in England.

Mayor's Court under Charter of 1687:

- The **Charter Of 1687** gave The East India Company power and Authority to establish a Municipality along with A **Mayor's Court at Madras**.
- To Try Civil and Criminal Cases, the permission to establish The Court of Record was also given.
- The power to cede territories and creation of Probate and Testamentary Jurisdiction was also given to The Company.
- Till 1765 through a number of Charters, The Company's power's increased and it established Municipalities and Court of Requests were established at Bombay and Calcutta.

Mayor's Court under Charter of 1687 v/s Charter Of 1726:

- The **Mayor's Court under The Charter of 1687** drew the powers from The East India Company while The **Mayor's Court under The Charter of 1726** drew its power from The Crown.
- The **Mayor's Court under The Charter of 1687** was a Company Court while The **Mayor's Court under The Charter of 1726** was a Crown Court.
- The Charter of 1687 established a **Mayor's Court only at Madras** while under The Charter of 1726 established **Mayor's Court at all The Presidency Towns** at Madras, Chennai and Bombay.
- The Mayor's Court under The Charter of 1687 was a Court of Equity while The Mayor's Court under The Charter of 1726 was a Court of English Law.
- The Mayor's Court built up under The Charter of 1687 arranged the portrayal
- of the locals on the court. The Crown's Mayors Courts did not have any such portrayal, however, there was no arrangement for the same under The Charter of 1726
- There was yet another imperative qualification between the two Mayor's Courts. The
- Mayor's Court under The Charter of 1627 developed its method and apportioned equity as per the standards of the presence of mind, value and great inner voice. The Charter of 1726 which brought the British laws into India brought all the legitimate details of the British Courts of law, which complicated the Justice process as every rule had to be followed.
- The Charter of 1627 which established The Mayor's Court at Madras had a wider Jurisdiction (Civil and Criminal) while The Mayor's Court under The Charter of 1726 had Jurisdiction only In Civil Cases.
- Under The Charter Act of 1627, The Mayor's Court had a legal counsellor called Recorder but under The Charter Act of 1726, The Mayor's Court had no legal counsellor.
- Under The Charter Act of 1627 judgements against The Mayor's Court went to The Court of Admiralty while under The Charter Act of 1726 judgements against The Mayor's Court went to The King in Council.
- The governance of The Mayor's Court established under the Charter of 1687, had in total Twelve Aldermen in which minimum Three Aldermen were to be Englishmen but the governance of The Mayor's Court established under the Charter of 1726 had Nine Aldermen out of which seven had to be Englishmen. Thus, the new Mayor's Court was more of English in nature in terms of Command and Control.

Court of Requests:

- A court established to deal with cases involving up to Fifteen Rupees.
- It also involves cases relating to poor people with small claims who cannot afford to pay the expenses of litigation of Mayor's Court.

- The purpose was to resolve cases quickly and speedily.

Shortcomings of The Charter Act 1726:

- The Mayor's Court lost its Autonomy and Independence.
- The Mayor's Court was debarred from entertaining a case and action between the natives until both parties approached The Court. The Criminal Courts were completely official Ruled as the official was The Governor-in-Council.
- The Mayor's Court council members were either Company's Workers or other English Dealers, who were dependent on The Company's Policies to stay in India and thus were helpless.
- The Mayor's Court was designed to work with Freedom and independence but due to constant pressure from The Company, the freedom and autonomy was impugned.
- There was no legal expert/professional in the council as The Judges who were themselves not experts were appointed by The Governor and Council.
- The Company had a policy of giving the offices/powers of equity to its people and workers and this policy made sure no legal expert could be hired.

Charter of 1753

Introduction

The Charter of 1753 was a modified and reformed version of the Charter of 1726. The conflicts and clashes between Mayor's Court and the Governor and Council created much confusion and chaos in the Presidencies in India. The Company, therefore, requested the British King George II to issue a fresh Charter so as to introduce suitable amendments in the earlier Charter of 1726. The Charter of 1753 was an attempt to improve upon the earlier Charter of 1726 which suffered from several lacunas and defects.

The Provisions of Charter of 1753

The main provisions of this charter were are follows –

1. **Revival of Mayor's Courts with modifications** – The British King George II granted a new Royal Charter for the Presidencies of Madras, Bombay and Calcutta whereby the Corporation of Madras which ceased to function because of French occupation during the period for 1746 to 1749 was revived again and the jurisdiction of all the three Mayor's Courts of Presidencies were modified to overcome the shortcomings of its earlier working.
2. **Mayor's Courts were subordinated to the Governor and Council** – With a view to end the strained relations between the Mayor's Court and Corporation on the one hand and the Governor and Council on the other, the Charter of 1753 brought the Corporation of each Presidency under the control of the Council by changing the mode of appointment of Mayor and Aldermen. Under the new Charter, the Governor and Council was empowered to select the Mayor out of a panel of two names elected by the Mayor and Aldermen. The Council also assumed full power to appoint Aldermen in the Corporation and dismiss them. Thus, the Mayor's Court was completely subordinated to the Executive Council.
3. **Natives were to be governed by their own laws** – The Charter of 1753 provided that the Mayor's Court were not to try civil cases between natives, such cases being left to be decided by the natives themselves. However, the Mayor's Court could decide only those cases of the natives in which both the parties consented to accept the jurisdiction and decision of the Court. Some authorities have asserted that though the Charter clearly provided that cases of natives were to be decided by their own laws, customs and usages, but this was never followed in practice in Bombay.
4. **Change in oath system** – In order to end the controversy regarding taking of oath, the charter expressly provided that the native Indians and Christians could be allowed to take oath in such a manner as they deemed most binding on their conscience to speak out the truth.
5. **Depositing of Court-fee by the litigants** – This charter provided that the litigants would deposit money of court fee with the Government and not with the Courts. This was intended to ease the burden of courts.
6. **Establishment of the Court of Requests** – The Charter provided for the establishment of a new Court, called the Court of Requests in each Presidency town to decide civil cases up to five pagodas. The civil cases exceeding this value were to be decided by the Mayor's Court. The object of establishing Courts of Requests was to provide cheap and quick justice. It consisted of Commissioner varying from eight to twenty four in number and three of them were to sit in rotation once a week. The first Commissioners were to be appointed by the Governor and Council but thereafter half of them were to retire every year and the vacancies so caused, were to be filled in by the remaining Commissioners, through the system of ballots. Thus, the Court of Requests was an inferior court subservient to the Council. Its jurisdiction was extended to all inhabitants, including the natives.

Judicial Arrangement under the Charter of 1753

The following courts were established under the Charter of 1753 for the administration of justice in the three Presidencies –

1. **The Court of Requests** – This court was to decide summarily the petty civil cases upto five pagodas. Now these cases could not be tried by the Mayor's Court.

2. **The Mayor's Court** – This court had jurisdiction to hear civil cases involving a sum exceeding five pagodas. It had jurisdiction over the cases of natives provided both the parties to the suit voluntarily submitted to the jurisdiction of the court.
3. **The Court of Governor and Council** – This court had exclusive jurisdiction over criminal cases, as the Governor and Council acted as Justices of Peace and held Quarter sessions to decide criminal cases. It was also empowered to hear appeals from the Mayor's Court.
4. **The Court of King in Council** – The King in Council in England was empowered to hear appeals from the Court of Governor and Council in all civil cases involving a sum of 1,000 pagodas or more.

Working of Judicial system established under the Charter of 1753

The judicial system introduced by the Charter of 1753 created difficulties in settlement of civil cases of the natives residing in the presidency of Madras and involving a sum exceeding 5 pagodas. The court of Requests could decide cases only up to the value of five pagodas.

These cases could not be tried by the Mayor's Court unless both the parties voluntarily submitted to the jurisdiction of the court and accepted its decision. The problem continued in the Presidency of Madras until the introduction of the Recorder's Court in 1798. The Presidency of Calcutta did not have this problem because of the existence of the Zamindar's Court which had jurisdiction to decide the cases of the natives. So far the Presidency of Bombay was concerned, it appears that the exemption granted to natives from the jurisdiction of Mayor's Court by the Charter of 1726, was in fact never effectively followed in practice and the Mayor's Court freely decided the cases of natives ignoring the exemption granted to them by the earlier Charter.

Defects of the Charter of 1753

The Charter of 1753 was mainly devised to do away with the jurisdictional conflicts between the Mayor's Court and the Governor and Council. For this purpose the exact limits of the jurisdiction of the Mayor's court were outlined in the Charter and this Court now ceased to have jurisdiction over the cases involving natives except where both the parties voluntarily submitted to its jurisdiction and judgment. It was also expressly provided that the Mayor's Court could hear suits against the Mayor, Aldermen or the Company. Despite these positive achievements, the judicial system introduced by the Charter of 1753 suffered from the following defects –

1. The Mayor's Court of each Presidency consisted of company's servants who were appointed by the Governor and Council. Thus, the court lost all its independence and could no longer remain impartial in cases where the company was one of the parties to the suit.
2. The servants of the company were allowed to carry on their private trade. Consequently, there were often disputes between them and the natives. The Mayor's court being a court of the company's junior servants, usually took the partisan view and favoured their fellowmen. Beside, the Governor and Council also exerted undue pressure on the judges of the Mayor's court. This frustrated the cause of justice.
3. The Governor and Council had jurisdiction over civil as well as criminal cases. They were also the executive Heads of their Presidency. Consequently, they exercised certain legislative powers as well. Thus, all independence the three functions were centralised in a single authority which was a derogate step so far independence of judiciary was concerned
4. The judges of the Mayor's Courts were laymen and not well versed in law. They were supposed to follow the English law but had no knowledge of it. In the absence of law-reporting in India, the complicated cases had to be referred to England for opinion. This caused difficulties and delay in the disposal of cases.
5. The exclusion of Indians in sharing the administration of justice was the most disgusting feature of the history of early courts. Significantly, the Indian Christians were allowed to participate as jurors in the court of Sessions under the Charters of 1726 and 1753.
6. The territorial jurisdiction of all the courts established under the Charter of 1753 was confined to the respective Presidency. Therefore, there was no forum to take cognizance of cases arising beyond those limits whereas the activities of the English Company and its servants had extended beyond these territories.

In spite of the above mentioned defects in the judicial scheme introduced by the Charter of 1753, it must be accepted that it made a good beginning for the establishment of a uniform judicial system in the company's settlements on the basis of English law and procedure and thus laid the foundation for an improvised judiciary in times to come. In 1770 Bolt made a bold attempt to make the Mayor's courts independent of the control of the Governor and Council who had the power of obstructing and interfering with the course of justice in presidencies. He suggested that appellate jurisdiction of the Governor and Council's Court should also be abolished and instead, a Court of Appeals should be instituted to hear appeals from the Mayor's Court. This Court of

Appeals should also be completely independent of the Governor and Council's influence. However, these suggestions of Bolt could not be implemented. In 1774 the Mayor's Court of Calcutta was replaced by the Supreme Court of Judicature. The Mayor's Courts at Bombay and Madras were replaced by the Recorder's Court in 1798 by the Charter issued by King George III on Feb. 1, 1798 for this purpose.