

# LANDMARKS IN THE CONSTITUTIONAL HISTORY OF INDIA [1]

*by*

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*History seldom helps legal history. Texts of Indian legal history, in India, often appear not to have availed themselves of the original sources of the law. Original sources, again, often become untraceable or inaccessible. Printed copies of the Charters, Grants or Commissions in favour of or by the East-India Company as well as of the private Acts of the British Parliament of the earlier days have become rare in India. The writer of the following essay has, therefore, taken the pains of preparing an aide-memoire of the dates and documents which a student of the Indian constitutional history cannot afford to forget. He has also adumbrated, in the context, the history of English law in India.*

British authority in India was originally derived partly from the British Crown and Parliament and partly from the Great Mogul and other Indian rulers. Disputes between rival powers were settled by arms and allied methods and not by logic or principles of Ethics. Acquisition and expansion of the English possessions in India were pursued by the East-India Company with the connivance, aid, and

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1. A substantial portion of this essay, though not continuously, has been based on the *Historical Introduction*, Chapter I, A Digest of the Law Relating to the Government of India, Sir Courtenay Ilbert, *The Government of India*, 3d ed., 1915. It will be noted, however, that the citations of the Statutes have been checked on the basis of *The Statutes*, 3d revised edition, as printed by authority, London, 1950, and the volumes of the *Statutes at Large* consulted where deemed necessary. The principal Charters as available in a printed form have also been examined and their dates noted. The queries of Sir Courtenay Ilbert have also thus been solved, his citations corrected, and further informations added.

In an attempt to make this essay authentic, the writer has availed himself of the *Charters relating to the East-India Company from 1600 to 1761 reprinted from a former collection with some additions and a preface* by John Shaw, Esq., Madras, 1887. As John Shaw in the preface, page i, observes:

"It is not known at the India Office what has become of the originals, but those granted to the first or London Company were no doubt given up, and perhaps destroyed, when they were surrendered to Queen Anne....., and the others may be among the records of the House of Commons, having been called for by the Committee appointed in November 1767 to consider the question of the sovereignty of Bengal, Behar, and Orissa. Where any verification of the printed collection has

supervision of the Government of Great Britain.[2] References to the relevant portions of the several Charters will be made in order to show that the King or Queen of England gave his or her express sanction to the East-India Company in their pursuits of war, plunder and conquest in Indian territories.

With the acquisition of the *dewanee*[3] the power belonging to the Soubah of the Provinces of Bengal, Bihar and Orissa was totally and in fact vested in the East-India Company. Only the name and shadow of authority remained to him for a period.[4] The Company, for all practical purposes, came into the place of the country Government by His Majesty's grant of the *dewanee* at Delhi.[5] Warren Hastings, in accordance with the instructions of the Court of Directors, repudiated, in 1774, the obligation of making to the Emperor at Delhi the annual payment of 26 *lakhs* of rupees, which, according to Lord Clive's agreement with Shah Alam, was due to the Emperor as his share of revenue.[6] Facts having been as they were, the Supreme Court at Calcutta unequivocally decided in two cases in 1775 that the *Nabob* of Moorshedabad could not be considered as the sovereign authority in Bengal, Bihar and Orissa.[7]

In England, the powers and privileges granted by royal charters to the East-India Company were confirmed, supplemented, regulated, and curtailed by successive Acts of Parliament, and were finally transferred to the Crown. In India, concessions granted by, or wrested from, native rulers gradually established the Company and the Crown as territorial sovereigns, in rivalry with other country powers ; and finally left the British Crown exercising undivided sovereignty throughout British India, and paramount authority over the subordinate native States.[8]

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appeared to be necessary, reference has been made to the Patent Rolls at the Record Office in London."

2. Colonel Clive's letter to the Right Hon'ble William Pitt, 7 January, 1759.

3. As to the grant of the *dewanee*, see *post*.

4. The Governor and Select Committee at Fort William in their letter to Directors dated 16 January, 1767.

5. Select Committee in their Consultations, 10 September, 1766.

6. General Letter to Bengal from the Court of Directors, 11 November, 1768.

7. Case of Joseph Fowke, Francis Fowke, Maharaja Nuncomar and Roy Radha Churn for a conspiracy against Warren Hastings, Esq., and the case of Joseph Fowke, Maharaja Nuncomar, and Roy Radha Churn for a conspiracy against Richard Barwell.

8. Sir Courtenay Ilbert, *The Government of India*, 3d ed., 1915, Historical Introduction, Chapter I, A Digest of the Law Relating to the Government of India, page 1.

**1600-1765**

On 24 September,1599, the merchants of London held a meeting at Founder's Hall, under the Lord Mayor, and resolved to form an association for the purpose of establishing direct trade with India. Waiting for a favourable political situation in Europe, Queen Elizabeth delayed for fifteen months to grant the charter for which the London merchants had petitioned. The first charter of the East-India Company granted on 31 December, 1600, incorporated George, Earl of Cumberland, and 215 knights, aldermen, and burgesses, by the name of the 'Governor and Company of Merchants of London, Trading into the East-Indies.' This Company was popularly known as the London East-India Company.[9]

The Charter of 5 September, 1698, incorporated "The English Company, Trading to the East-Indies", popularly known as the English East-India Company. "The United Company of Merchants of England, Trading to the East-Indies" emerged as a new Company from the amalgamation of the said two former Companies on 29 September, 1708. This United Company later, under 3 and 4 William iv, c. 85, sec. cxi, became known as the East-India Company. An act of 1873, namely, 36 and 37 Vict. c. 17, formally dissolved the East-India Company as from 1 January, 1874.

The London Company were to elect annually one governor and twenty-four committees,[10] who were to have the direction of the Company's voyages, the provision of shipping and merchandises, the sale

9. In 1554, Edward VI countenanced the establishment of the Russia Company: that monarch died previous to the grant of a charter, which was obtained from Philip and Mary. The Levant Company was established by Elizabeth in 1581. The English Merchants, in 1589, turned their thoughts to the advantages which might be desired from engaging in a trade with India.—*see* Peter Auber, *Analysis of the Constitution of the East-India Company,* 1826, 716-724.

A draft of the Charter granted on the 31st December, 1600, which had been prepared by Mr. Altham, was approved of at a Meeting of the Adventurers (later called promoters) held at Founder's Hall in the City of London on the 30th September, 1600, and was submitted to the Queen for sanction. At a meeting held on the 30th October, the proposed constitution of the Company was a little altered.

10. The twenty-four committees to whom, with the governor, was entrusted the direction of the Company's business, were individuals, not bodies, and were the predecessors of the late directors. Their assembly was in subsequent charters called the court of companies, as distinguished from the court general or general court, which answered to the 'general meeting' of the companies.

of merchandises returned, and the managing of all other things belonging to the Company. Thomas Smith, Alderman of London, and Governor of the Levant Company, was to be the first governor of the Company. The charter of 1600 was to last for fifteen years, subject to a power of determination on two years' warning, if the trade did not appear to be profitable to the realm. If otherwise, it might be renewed for a further term of fifteen years. The Company's right of trading, during the term and within the limits of the charter, was to be exclusive,[11] but they might grant licences to trade. The trading privileges of the London Company were reserved to the members, their sons at twenty-one, and their apprentices, factors, and servants. The normal mode of admission to full membership of the Company was through the avenue of apprenticeship or service. But there was power to admit 'others' doubtless on the terms of their offering suitable contributions to the adventure of the Company. During the first twelve years of its existence, the Company traded on the principle of each subscriber contributing separately to the expense of each voyage, and reaping the whole profits of his subscription. After 1612 the subscribers threw their contributions into a 'joint stock', and thus converted themselves from a regulated company into a joint-stock company, which, however, differed widely, in its constitution from the joint-stock companies of subsequent days.

James I in 1609 renewed the charter of Elizabeth, and made it perpetual, subject to determination after three years' notice on proof of injury to the nation. The provisions of this charter[12] did not, except with regard to its duration, differ in any material respect from those of the charter of Elizabeth.

11. The chief privilege of the London East-India Company was the exclusive right of trading between geographical limits which were practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other. 'By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought in question', the Queen straitly charged and commanded her subjects not to infringe the privileges granted by her to the Company, upon pain of forfeitures and other penalties. In 1693 however Parliament formally declared the exercise of this unquestionable prerogative to be illegal as transcending the powers of the Crown. But, as apart from the constitutionality, the expediency of granting a trade monopoly was not doubted, until the beginning of the nineteenth century. It was in the nineteenth century that the trade monopoly of the East-India Company was considered to have outlived the conditions out of which it arose.

12. The Charter of 31 May, 1609 (7 James I).

Queen Elizabeth's Charter of 31 December, 1600, gave to the London East-India Company some legislative authority empowering them to make such laws and orders as were necessary for the good government of the Company. For better advancement of the Company's interests, the activities of the personnel employed by the Company had to be regulated. The laws, orders and penalties of the Company had, however, to be reasonable and not repugnant to the laws of England for the time. The Royal Charters of 31 May, 1609,[13] 3 April, 1661, 27 March, 1669,[14] 9 August, 1683, and 7 October 1693, recognised the same power of the London East-India Company.

Under the Charter of 1600, the London East-India Company might assemble themselves in any convenient place, 'within our dominions or elsewhere', and there hold Court for the Company and the affairs thereof, and being so assembled, might make, ordain, and constitute such and so many reasonable laws, Constitutions, Orders and Ordinances, as to them and there present, shall seem necessary and convenient for the good Government of the same Company, and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages, and for the better advancement and continuance of the said trade and traffick.

The Company might also lawfully impose, ordain, limit and provide such pains, punishments, and penalties by imprisonment of body, or by fines and amerciaments, or by all or any of them, upon and against all offenders as might seem necessary or convenient for observation of these laws and ordinances. But their laws and punishments were to be reasonable, and not contrary or repugnant to the laws, statutes, or customs of the English realm.

In addition to the power under the charter of Elizabeth to make laws and ordinances for the government of factors, masters, mariners, and other officers employed on their voyages, and to punish offenders by fine or imprisonment, the Company were in the habit of procuring

13. The charters of 23 February, 1604 (1 James I), 5 January, 1607 (4 James I), and 8 February, 1608 (5 James I) were licences to transport foreign money and silver, in continuation and extension of the similar privileges contained in the Charter of 43 Elizabeth, that is, of 31 December, 1600. Twenty-four Charters were granted between the years 1609 and 1639. See also *post*.

14. The Charter granted to the Company on 27 March, 1669 (20 Charles II) empowered them to make laws for the better Government of the Port and Island of Bombay and carry the same into Execution.

for each voyage a commission to the 'general' in command, empowering him to inflict punishments for grosser offences and for the maintenance of discipline on long voyages. The 'general' in command could put in execution 'our law martial'. This course was followed until 1615, when, by a Royal grant of December 16, the power of issuing commissions embodying this authority was given to the Company, subject to a proviso requiring the verdict of a jury in the case of capital offences.

In obedience to the need for further coercive powers, King James I by a grant of February 4, 1622/1623,[15] gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorising them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

The Charter of 3 April, 1661, granted by Charles II (13 Charles II), while altering to some extent the constitution of the Company[16] materially increased their powers and conferred new and important privileges on them. The Company were given 'power and command' over their fortresses, and were authorised to appoint governors and other officers for their government. The governor and council of each factory were empowered 'to judge all persons belonging to the said

15. As Sir Courtenay Ilbert explains at page 14 of his book, the double date of 1622/1623 indicates a reference to the three months, January, February and March, which according to the Old Style closed the year, while under the New Style, introduced in 1751 by the Act 24 Geo. II. c. 23, they began the new year. *See* The Calendar (New Style) Act, 1750.

16. The joint-stock principle was recognised by giving each member one vote for every £ 500 subscribed by him to the Company's stock. Prior to this Charter of 13 Charles II, Charters had been granted also on 4 December, 1611 (8 James I), 4 February, 1622 (20 James I), 17 August, 1626 (2 Charles I), and 1657 (granted by Cromwell). According to John Shaw, the Charter obtained by the Company from Cromwell in 1657 is not traceable. Then there were the Charters of 6 February, 1668 (20 Charles II), 7 October, 1673 (24 Charles II), Grant of money to the Company out of customs dated 7 October, 1673 (24 Charles II), Charters of 27 October, 1674 (25 Charles II), 13 March, 1674 (26 Charles II), Warrants of 21 October, 1677 (28 Charles II), 24 January, 1677 (29 Charles II), 22 November, 1678 (30 Charles II). For various charters, grants and warrants of a minor importance *see* John Shaw, *op. cit.*, pages 287-290. See also *post*. As to the chronology of the Charters herein cited it will be recalled that before the (English) Calendar (New Style) Act, 1750, the year, according to the Old Style, closed with the months of January, February and March, and not with December as now. Hence the Charter of 27 October, 1674, fell within the 25th regnal year of Charles the Second, while that of 13 March, 1674, within the 26th.

Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of the Kingdom and to execute judgment accordingly. The chief factor and council of any place for which there was no governor were empowered to send offenders for punishment, either to a place where there was a governor and council, or to England.

The Company were also empowered to send ships of war, men, or ammunition for the security and defence of their factories and places of trade, and to choose commanders and officers over them and to give them power and authority, by commission under their common seal or otherwise, to continue or make peace or war with any prince or people *that are not Christians*, in any places of their trade, as shall be most for the advantage and benefit of the said Governor and Company, and of their trade. 'They were further empowered to erect fortifications, and supply them with provisions and ammunition, duty free, as also to transport and carry over such number of men, being willing, thereunto, as they shall think fit,' to govern them in a legal and reasonable manner, to punish them for misdemeanours, and to fine them for breach of orders. They might seize upon unlicensed persons and send them to England, punish persons in their employment for offences, and in case of their appealing against the sentence seize them and send them as prisoners to England, there to receive such condign punishment as the merits of the offenders' cause should require, and the laws of the nation should allow of.[17]

A factory had been established at Surat as early as 1612,[18] and there was a president with a council of eight members. In 1634 the English were permitted to trade throughout the dominions of the Mogul.[19] In 1639 Madras was bought by the East-India Company, and Fort St. George built. In 1640 the East-India Company's factory at Hugli was erected.[20]

The settlement of Madras or Fort St. George was erected into a Presidency in 1651.[21]

The port and island of Bombay, which had, in 1661, been ceded to the British Crown as a part of the dower of Infanta Catherine of

17. The Charter of 3 April, 1661.

18. The establishment at Surat was formed in 1612 under a *phirmaun* from the Mogul who then resided at Agra.

19. The Company's war against Aurangzeb took place in 1687-9.

20. In 1687 the English were driven from Hugli, but were allowed to return.

21. In 1658, Madras was made independent of Bantam.

Braganza, were by a Charter of 1669, granted to the London East-India Company to be held of the Crown, 'as of the Manor of *East-Greenwhich*, in the County of *Kent*, in free and common soccage' for the annual rent of £ 10.[22] The Company sent their Commissioners from Surat[23] to take possession of Bombay on behalf of the Company and had taken up the administration of the islands of Bombay as early as 1668 and established there laws that were fairly exhaustive. These laws were to be administered by a hierarchy of Courts with distinct jurisdictions. Under the Charter of 27 March, 1669, the Company were invested with power and authority of government or command in the port and island of Bombay.

In 1681 Bengal[24] was made a separate presidency. Calcutta was founded in 1686. In 1696 the East-India Company built Fort William. The acquisition in 1698 of the three villages of Sutanati, Govindpur and Calcutta (Kalikata) placed the Company in the position of a Zamindar paying revenue to the Emperor. For all practical purposes the settlement at Fort William in Bengal could be declared a Presidency only in December, 1699. The battle of Plassey ended in victory for the English on 23 June, 1757.

In 1758, the English got the assignment of revenue in the districts of the Rajah of Burdwan and Nuddiah. In 1760, Chittagong was ceded to the Company by Nawab Mir Kasim. The three districts of Burdwan, Chittagong and Midnapur ceded by Mir Kasim and Mir Jafar and confirmed by Emperor Shah Alam remained for a time a separate entity as distinguished from the dewanny lands of Bengal, Bihar and Orissa.

The victories of Plassey on 23 June, 1757,[25] and of Baxar on 23 October, 1764, made the Company masters of the North-eastern

22. The Grant of 27 March, 1669. This Grant is sometimes referred to as the *Charter* of 27 March, 1669 (20 Charles II).

23. In 1687 the East-India Company's factory was moved from Surat to Bombay.

24. The East-India Company obtained permission to trade to Bengal in 1633, to the port of Pipley only. In 1642, it was extended to Balasore and Cossimbuzar. In 1699 grants were made to the Company of the towns or villages of Chutanuttee (Calcutta) and Govindpore. In 1715 the factory at Calcutta, hitherto subordinate to Madras, was declared an independent presidency.

25. One moiety of the booty taken or seized from the Navob of Bengal, his allies, soldiers, subjects, adherents and others, by the Company was granted to the Company by the Charter of 19 September, 1757 (31 Geo. II) under the circumstances therein mentioned; and on 14 January, 1758, His Majesty granted to the Company all

provinces. Clive who returned to England from Bengal in 1760 came back to Calcutta in 1765 as Governor and Commander-in-Chief of Bengal, armed with extraordinary powers. The *dewanee* or fiscal administration of Bengal, Bihar and Orissa[26] was granted to the Company from Shah Alum on 12 August, 1765.[27]

At Fort St. George two or more officers of the Company used, before 1678, to sit as justices in the 'choultry'[27a] to dispose of cases but there was not yet any machinery for dealing with serious crimes.

On 18 March, 1678, the Agent and Council at Madras resolved that under the Royal Charter (13 Charles II) of 3 April, 1661, they had power to judge all persons living under them in all cases, whether criminal or civil according to the English laws, and to execute judgment accordingly,[28] and it was determined that the governor and council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this high court was not to supersede the justices of the choultry, who were still to hear and decide petty cases. A mint for the coinage of *pagodas* had also been established at Madras.

By a Charter of 5 October, 1677, the Company were empowered to coin money at Bombay to be called and known by the name or names of rupees, pices, and '*budgrooks*', or by such other name or names as the Company might think. The Charter of James II in 1686, too, empowered the Company to coin in their forts any species of money usually coined by the Indian princes, and by the said Charter of 12 April, 1686, it was declared that these coins were to be current within the bounds of the Charters or Letters Patents.

By the Charter of 9 August, 1683, (35 Charles II) the Company were given full power to make and declare peace and war with any of

booty taken by their ships and forces, and the disposal of any fortresses or territories acquired by them from any of the Indian Provinces or Governments. The Charter of 14 January, 1758, is the last Charter granted directly by the Crown to the Company, the Commissions issued by His Majesty in 1761 for trying pirates not being treated as charters. The subsequent Charters establishing Bishops, Supreme Courts, and the like, were all founded upon Acts of Parliament.

26. The 'Orissa' of the grant corresponded mainly to the modern district of Midnapur in the State of West Bengal, and should not be confused with the whole of the modern Orissa, which was not acquired by the Company until 1803.

27. See also *post*.

27a. 'Choultry' meant town house.

28. John Shaw, *op. cit.*, preface, vii.

the 'heathen nations'.....and to 'raise, arm, train and muster, such military forces as to them shall seem requisite and necessary; and to execute and use, within the said plantations,[28a] forts, and places, the law, called the martial law, for the defence of the said port, places, and plantations against any foreign invasion or domestic insurrection or rebellion'. This power was subject to a proviso reserving to the Crown the sovereign right, powers and dominion over all the ports and places and plantations and 'power of making peace and war, when we shall be pleased to interpose our royal authority therein'.

In 1686, James II granted the Company a charter by which he renewed and confirmed their former privileges, and authorised them to appoint 'admirals, vice-admirals, rear-admirals, captains, and other sea officers' in any of the Company's ships within the limits of their Charter, with power for their naval officers to raise naval forces.....'[29]

James II, in 1687, delegated to the London East-India Company, the power of establishing by charter a municipality at Madras. The charter of 30 December, 1687 (3 James II) establishing a municipality and mayor's court at Madras[30] proceeded from the Company, and not from the Crown.

The Charter of 7 October, 1693, while confirming the former Charter of the Company expressed itself to be revocable in the event of the Company failing to submit to such further regulations as might be imposed on them within a year. These regulations were embodied in two supplemental Charters dated respectively the 11th day of November, 1693, and the 28th day of September, 1694. By a Charter of 1698, the provisions as to voting powers and qualification of the subscribers, governor, deputy governor and the committees were modified.[31]

On 11 January, 1693/1694,[32] the House of Commons passed a resolution 'that all the subjects of England have equal rights to trade to the East-Indies unless prohibited by Act of Parliament'. In 1698

28 a. The expression 'plantations' meant 'habitations'.

29. The Charter of 12 April, 1686 (2 James II).

30. The Town of Fort St. George at the time was commonly called the Christian Town and City of Madrassapatam.

31. The Charter of 13 April, 1698.

32. As to this double dating, see note 15, *ante*.

an Act was passed by Parliament for settling a Trade to the East-Indies.[33]

The Charter of 3 September, 1698, granted under the said Act of 1698 incorporated the General Society as a registered company. The Charter of 5 September, 1698, (10 Wm. III) granted, again, under the said Act of 1698,[34] incorporated most of the subscribers to the General Society as a joint-stock company, under the name of 'The English Company, Trading to the East Indies', popularly known as noted before, as the English East-India Company. The constitution of this English Company was formed on the same general lines as that of the London Company, but the members of their governing body were called directors instead of committees.

The English East-India Company were given the exclusive privilege of trading to the East-Indies, subject to a reservation of the concurrent rights of the London East-India Company until 29 September, 1701. The English Company, like the London Company, were authorised to make by-laws and ordinances, to appoint governors, with power to raise and train military forces, and to establish courts of judicature.[35]

For a number of reasons, the privileges normally obtained by the English Company were of no real value to them; and a coalition between the two Companies was the only practicable solution of the difficulties which had been created by the Act and Charters of 1698.

The coalition[36] was effected in 1702, through the intervention of the Earl of Godolphin,[37] and by means of an Indenture Tripartite[38] to which Queen Anne and the two Companies were parties, and which embodied a scheme for equalizing the capital of the two Companies

33. 9 Will. 3 c. 44; also cited, 9 & 10 Wm. 3, c. 44;

34. Sections 47, 48, 49, 52, 56, 61, 62, 70 and 82 of 9 & 10 Wm. III. c. 44.

35. The Charter of 5 September, 1698. *See* Peter Auber, *Analysis of the Constitution of the East-India Company*, 1826, 718-721.

36. According to His Majesty, "it would be 'most' for the interest of the India trade." See also *The Law relating to India and the East-India Company*, 4th ed., 1842, pages 11, *et seq.*

37. As to the Earl of Godolphin's award between the old and new East-India Companies, *see* John Shaw, *op. cit.*, p. 217.

38. The Indenture was dated 22 July, 1702. As to the Indenture Tripartite between Her Majesty Queen Anne and the two East-India Companies, for uniting the said Companies, *see* John Shaw, *op. cit.*, pp. 157-199.

and for combining their stocks. The London Company were to maintain their separate existence for seven years, but the trade of the two Companies was to be carried on jointly, in the name of the English Company, but for the common benefit of both, under the direction of twenty-four managers, twelve to be selected by each Company. At the end of the seven years the London Company were to surrender their Charters. The English Company were to continue their trade in accordance with the provisions of the Charter of 5 September, 1698, but were to change their name for that of 'The United Company of Merchants of England, Trading to the East-Indies.' [39]

The London Company, however, by their influence obtained a private Act of Parliament [40] which continued them as a trading corporation until repayment of the loan of two millions (which was advanced by the General Society for the service of the Crown). On the other hand, by an Act of 1707 (6 Anne, c. 71) the English Company were required to advance to the Crown a further sum of £1,200,000 without interest. In consideration of this advance the exclusive privileges of the Company were continued to 1726, and Lord Godolphin was empowered to settle the differences still remaining between the London Company and the English Company. The Earl of Godolphin's Award was given on 29 September, 1708, and on 7 May, 1709, Queen Anne accepted a surrender of the London Company's Charters and thus terminated their separate existence.[41] The original Charter of the English Company dated 5 September, 1698, came to be, in point of law, the root of all the powers and privileges of the United Company, subject to the changes made by statute. The United Company emerged as a new Company on 29 September, 1708. Henceforth down to 1833, the Company bore the new name of 'The United Company of Merchants of England, Trading to the East Indies'. Under 3 & 4 Will. IV. c. 85, sec. cxi, the United Company became known as The East-India Company.[42]

39. For the emergence of the name of "The United Company of Merchants of England, Trading to the East-Indies" *see* page 196, *ibid.*

40. This Act (11 and 12 Will. III c. 4) was a private Act for continuing the Governor and Company of Merchants of London, trading to the East-Indies. See *Statutes at Large*, London, 1769, vol. IV, Index.

41. For Queen Anne's acceptance of the surrender of the Charters of the Governor and Company of Merchants of London, Trading into the East-Indies on 7 May, 1709, *see* John Shaw, *op. cit.*, p. 229.

42. See *The Law relating to India and the East-India Company*, 4th ed., 1842, pages 11-12.

An Act of 1711 (10 Anne, c. 35) provided that the privileges of the United Company were not to be terminated by the repayment of the loan of two millions. The exclusive privileges of the United Company were extended for further terms by Acts of 1730 (3 Geo. II. c. 14) and 1744 (17 Geo. II. c. 17).[43]

On an application to the King in Parliament, the Company obtained a Charter in 1723 empowering the Company to manage with greater authority the administration of their settlements in India. One Charter more was granted for this purpose on 24 September, 1726. According to this Charter (13 George I), an Annual Sheriff and nine nominated persons were to make the Court of Mayor and Aldermen to try all civil suits. The said Charter of 24 September, 1726, was granted establishing or reconstituting municipalities at Madras, Bombay, and Calcutta, and setting up or remodelling mayor's and other courts at each of these places. The Company were authorized in this Charter, as in previous Charters, to appoint generals and other military officers, with power to exercise the inhabitants in arms,[44] to repel force by force, and to exercise martial law in time of war.[45] The Charter of 17 November, 1727 (1 George II) granted to the Company regulated the disbursement, etc., of the fines imposed and collected by the Courts at the Presidencies.

43. Section XI of 17 Geo. II. c. 17. See *Statutes at Large*, London, 1769, vol. VI, 534-541.

44. The Company's Indian Army was first established at Madras in 1748. At the same time a small European force was also raised. The nucleus of a European force had however been formed at Bombay in 1669. An Act of 1754 (27 Geo. II. c. 9) as amended by another Act passed in 1760 (Geo. III. c. 14) laid down for the Indian forces of the Company provisions corresponding to those embodied in the annual English Mutiny Acts. The Charter of 19 September, 1757, (31 George II), recited, *inter alia*, that One Moiety of all plunder and booty 'which shall be taken from the Moors' should be set apart for the use of the captors, and that the other Moiety thereof should be deposited till the pleasure of the Crown should be known. The Charter went on to grant this reserved moiety to the company, except any part thereof which might have been taken from any of the King's subjects; (*ibid.*, second paragraph). This Charter also authorised the United Company of Merchants of England, Trading to the East-Indies, to take one Moiety of all the booty or plunder, etc., which had been or might be taken, or seized, from the Nabob of Bengal, or any of the forces employed by him, or on his behalf, or from any of his subjects, allies or adherents. See also the Charter granted to the Company on 14 January, 1758. For military forces—King's and Company's, *see* Peter Auber, *op. cit.*, 438-507.

45. The Charter of 24 September, 1726.

The capture of Madras by the French in 1746 having destroyed the continuity of the municipal corporation there, the Charter of 1726 was surrendered, and a fresh Charter was granted on 8 January, 1753 (26 Geo. II).[46]

A Charter of 1758, after reciting that powers of making peace and war and maintaining military forces had been granted to the Company, authorised them to take all such booty or plunder, ships, vessels, goods, merchandises, treasure, and other things as had since the Charter of 1757 been taken or seized, or should thereafter be taken, from any of the enemies of the Company or any of the King's enemies in the East Indies by any ships or forces of the Company employed by them or on their behalf within their limits of trade. There was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the King's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company.

**The English law in India**

Subject to later laws, whether of the British Parliament or of the Governor-General in Council of India, or the Governors, the law *factually* administered by the Courts at the three Presidencies was, theoretically, the law of England as it stood at the introduction of each of the Charters of 1723 and 1753, that is to say, for the period of 1723 to 1753, it was the law of England as it stood in the year 1723, and from 1753 onward as the same law stood in 1753.[47] As to the applicability of the English statute and common law in the three presidencies the only doubt expressed had been whether the condition and circumstances of the place and the persons in India admitted of the law being administered as in England. The *quaere* was whether the English law obtaining in England was introduced *sub modo* in the three Presidencies of India. The resultant of the doubt in question was that the Privy Council as well as the High Courts at the Presidencies in India applied the English common law as it was found applicable to Indian society and circumstances. That is to say, subject to the

46. The Charter of 1726 was surrendered on the grant of the subsequent Charter of 1753.

47. *See* Patra, *The Administration of Justice under the East-India Company in Bengal, Bihar and Orissa*, 1962, Section VIII: Laws in Operation. *See* also Patra, the Journal of the Indian Law Institute, July-September, 1962, *Historical Background of the Indian Contract Act, 1872.*

Indian laws, orders, rules and regulations, the English law was applied in India in so far as the said law was deemed consonant with the rules of justice, equity and good conscience as viewed on the background of the Indian society and circumstances.[48]

Apart from the fact that *apropos* the Charter of 24 September, 1726, copies of English laws, text-books and detailed instructions[49] were sent by the Court of Directors to the Company's governments at the Presidencies in the matter of judicial administration there, the very fact that the Company were given the power, through the medium of Charters and Grants,[50] to make and alter laws for the administration of their management as well as the territories under them and that such laws, whether as rules, laws, constitutions, orders, ordinance, regulations or judicial decisions had to be reasonable and could not be contrary or repugnant to the laws, statutes and customs of the English realm for the time[51] will entitle one, it is submitted, to hold that the English statute, case and common law were introduced in the Presidencies in India. This position continued from the time of the Charter of 31 December, 1600, till the Charter Act of 1833. Only after 1833, the laws in the Company's India could differ from the laws of the English realm. Even in 1773 and 1781, the British Parliament by

48. *Mayor of Lyons* v. *East-India Company* (1836-37) 1 Moo. I.A. 175, 271. *Webbe* v. *Lester* (1864-66) 2 Bom. H.C.R. 2d. ed. vol. 2, 56, 60. *Anandrav* v. *Ravji Dashrath* (1864-66) 2 Bom. H.C.R. 214, 218. *Juttendromohun Tagore* v. *Ganendromohun Tagore* (1872-73) I.A. Supplemental 47, 64. *Param Shook Doss* v. *Rasheed Ood Dowlah* (1871-74) 7 Mad. H.C.R. 285, 287. *Khusalchand* v. *Mahadevgiri* (1875) 12 Bom. H.C.R. 214, 216. *Dorab Ally Khan* v. *Abdool Azeez* (1877-78) 5 I.A. 116, 126. *Mithibai* v. *Limji Nowroji Banaji* (1881) 5 Bom. 506. *Parvathi* v. *Mannar* (1885) 8 Mad. 175, 178. *Lopez* v. *Lopez* (1886) 12 Cal. 706. *Waghela Rajsanji* v. *Shekh Masludin* (1886-87) 14 I.A. 89, 96. *Bhagwat Dayal* v. *Debi Dayal* (1907-8) 35 I.A. 48. *Mahomed Musa* v. *Aghore Kumar Ganguli* (1914-15) 42 I.A. 1, 8. *Debnarayan Dutt* v. *Chunilal Ghose* (1914) 41 Cal. 137. *Kerwick* v. *Kerwick* (1919-20) 47 I A. 275. *Manzur Hasan* v. *Muhammad Zaman* (1924-25) 52 I.A. 61, 67. *Chhatra Kumari* v. *Mohan Bikram Shah* (1930-31) 58 I.A. 279, 297. *Kshirodebihari Datta* v. *Mangobinda Panda* (1934) 61 Cal. 841.

49. For the guidance of the Courts established by the Royal Charter of 24 September, 1726, detailed instructions entitled "Instructions for putting in Execution the East India Company's Charter were sent to Fort William. See para. 11 of the Court of Directors' Letter to Bengal, 17 February, 1748/1749. See also the Manuscript Proceedings of the Mayor's Court at Calcutta dated 20 July, 1749.

50. The Charters of 31 December, 1600; 31 May, 1609; 3 April, 1661; 27 March, 1669; 9 August, 1683; and 7 October, 1693; 13 Geo. III. c. 63; 37 Geo. III. c. 142; and 47 Geo. III. Sess. 2. c. 68, for examples.

51. The position was the same beginning from the Charter of 31 December, 1600, till 3 and 4 William IV. c. 85.

statutes modified the operation of the English laws in their application to the Company's territories in India. That is to say, subject to express exceptions,[52] the English statute, case, common, and civil law became, *sub modo*, the law also of the Company's possessions in India.[53]

It will be an absurdity to hold that *all* the statute, case and common law obtaining at a particular date, whether 1723 or 1753, in England became *proprio vigore* also the law of the Presidencies of Fort William, Fort St. George and Bombay. It will also be unhistorical and unfunctional, on the other hand, to assert that the said English laws were not introduced in the Presidencies. The Courts at the three Presidencies were mostly of the view that English statute case and common law were introduced in their jurisdictions subject, where necessary, to modifications. It will be an interesting study, it is believed, to refer to a few judicial decisions to illustrate the position. Sir William Blackstone in his *Commentaries on the Laws of England*, London, 1876, 4th ed., vol. 1, pages 81-82, observed :

" Colonists carry with them only so much of the English law, as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injures. The artificial refinements and distinctions.....are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times and under what restrictions, must in case of dispute be decided in the first instance by their own provincial judicature, subject to the revision and control of the sovereign in council.

In conquered or ceded countries, again, that have already laws of their own, the sovereign may indeed alter and change those laws; but till he does actually change them, the ancient laws of the country remain.....the Hindoo and Muhammedan laws in British Hindostan were retained.

Nor are there wanting instances in which the laws and usages of ceded and conquered territories, though inconsistent with or even

52. See the Charter of 1753 ; 21 Geo. III. c. 70; 37 Geo. III. c. 142 ; Charter of Justice of the Supreme Court at Madras ; Charter of Justice of the Supreme Court at Bombay.

53. See *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee* (1861-4) 9 Moo. I.A. 387, 426-427 ; *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1859-61) 8 Moo. I.A. 500, 525-27 ; see also *ibid.*, 529.

repugnant to those of the parent State have been permitted to survive their annexation to the British empire."

Even though the Courts at the Presidencies in the earlier days had not always had so clear a view of the position of the English law there as expressed in Sir William Blackstone, *op. cit.*, the law at the Presidencies gradually settled itself to be as expounded by Blackstone and others. Thus Lord Brougham in *Mayor of Lyons* v. *East-India Company*, (1836-37) 1 Moo. I.A. 175, at pages 270-271, cites Blackstone[54] with approval and observes that " It is agreed, on all hands, that a foreign settlement, obtained in an inhabited country, by conquest, or by cession from another Power, stands in a different relation..... from a settlement made by colonizing, that is, peopling an uninhabited country.

" In the latter case,.....the subjects of the Crown carry with them the laws of England, there being, of course, no *lex loci*. In the former case, it is allowed, that the law of the country continues until the Crown, or the legislature, change it. This distinction, to this extent, is taken in all the books....." ".....it is allowed on all hands ", His Lordship continues, at page 282, " that many parts of the English law are still unknown in our Indian territories ". That is to say, the introduction of the English law into the conquered or ceded territories of India was only *sub modo*. In *Mayor of Lyons* v. *East-India Company* (1836–37) 1 Moo. I.A. 175, the English Statute of Mortmain was not held as extended to the British territories in the East-Indies. In *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee* (1861-4) 9 Moo. I.A. 387, the Right Hon'ble Lord Kingsdown, at pages 426-27, was of the view that " The English law, Civil and Criminal, has been usually considered to have been made applicable to Natives, within the limits of Calcutta in the year 1726, by the Charter, 13 Geo. 1. Neither that nor the subsequent Charters expressly declare that the English law shall be so applied but it seems to have been held to be the necessary consequence of the provisions contained in them.....the execution of the English law without qualifications would have been attended with intolerable injustice and cruelty." In the same case it was held that the English law of *felo de se*, and forfeiture of goods and chattels, did not extend to a native Hindoo, though a British subject, committing suicide at Calcutta. Where Englishmen established themselves in an uninhabited, or barbarous country they carried with them not only

54. His Lordship cited 1 Bl. Com. 106, of earlier edition.

the laws, but the sovereignty of their own State; and those who lived amongst them and became members of their community, became partakers of and subject to the same laws. India having been a highly civilised country, this rule was held as not to have applied to the early settlement of the English in India, as the permission to the settlers to use their own laws within the factories, did not extend those laws to the Natives associated with them within the same limits. In *Param Shook Doss* v *Rasheed Ood Dowlah* (1871–74) 7 Mad. H.C.R. 285, Kernan, J., held, at page 287, that the Lord's Day Act (XXIX Car. 2. c. 7) did not apply as between natives of India. In *Juttendromohun Tagore* v. *Ganendromohun Tagore,* and *vice versa* (1872-73) I.A. Supplemental 47, Mr. Justice Willes recognised, at page 64, the principles of Hindu law of property as distinct from those of the English Law. In *Khusalchand* v. *Mahadevgiri* (1875) 12 Bom. H.C.R. 214, 216, the English law relating to superstitious uses was held as not to apply in the case of Hindu religious endowments. In *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1859-61) 8 Moo. I.A. 500, Knight Bruce, L.J., at page 527, however, held that the general right of the Government by escheat had been established. *See* also the second appeal as between the same parties, at page 529 of the 8 Moo. I.A. In *Lopez* v. *Lopez* (1886) 12 Cal. 706 the customary law of India was allowed to prevail over the English law of prohibited degrees in marriage.

Though generally, in deciding a case, in the absence of specific law and usage, according to justice, equity and good conscience, the Courts in practice were guided by the principles of English law applicable to a similar state of circumstances,[55] they sometimes followed their own conscience and concept of justice and equity[56] and took the circumstances of the country into consideration [57] Thus the English distinction between law and equity was not recognised in India.[58] Similarly, it was held that the Indian law did not recognise legal and equitable estates.[59] Apart from the Indian circumstances,

55. Bom. Reg. IV of 1827, Section 26. *Webbe* v. *Lester* (1864-66) Bom. H.C.R. vol. 2 (2d ed.), 52, 56 (*per* Couch, J.). *Mithibai* v. *Limji Nowroji Banaji* (1881) 5 Bom. 506.

56. *Debnarayan Dutt* v. *Chunilal Ghose* (1914) 41 Cal. 137. *Kshirodebihari Datta* v. *Mangobinda Panda* (1934) 61 Cal. 841.

57. *Mithibai* v. *Limji Nowroji Banaji* (1881) 5 Bom. 506. *Waghela Rajsanji* v. *Shekh Masludin* (1886-87) 14 I.A. 89, 96 (Lord Hobhouse, at p. 96).

58. *Webbe* v. *Lester* (1864-66) Bom. H.C.R. vol. 2 (2d ed.), 52, 60 (Couch, J.).

59. *Chhatra Kumari Devi* v. *Mohan Bikram Shah* (1930-31) 58 I.A. 279 (Sir George Lowndes at p. 297).

the English common law was not always considered as reasonable and the judges in British India occasionally declined to follow the said law in given circumstances. In *Parvathi* v. *Mannar* (1885) 8 Mad. 175, the rules of English law regarding slander and defamation were not found to have been founded on a reasonable basis, and Turner, C.J., at page 178, did not adopt the English law on the subject in deciding an Indian case. The Hindu[60] and Mahomedan[61] principles of equity, as distinguished from the English, were given their due consideration. In *Dorab Ally Khan* v. *Abdool Azeez* (1877-78) 5 I.A. 116, it was observed that there was not in India the difference between real and personal estate which obtained in England.[62] The English law as to maintenance and champerty was not applicable to India.[63]. In *Mahomed Musa* v. *Aghore Kumar Ganguli* (1914–15) 42 I.A. 1, equity, that is, the conduct of parties in the instant case, was held as to have cured the defects of form.[64] The rules of Courts of Equity in England as to allowance to a mortgagee in possession were not applied in India.[65] The law applied by the Court of Chancery in England was however considered, *prima facie*, applicable in India but for the establishment of a contrary intention. The presumption of the introduction of the said law in India was rebuttable.[66] The common law rights of Muslims in India was recognised. The distinction between indictment and action as in the English law was held inapplicable in India.[67]

Subject to above, it may be observed that the Courts established under the Charter of 24 September, 1726, while giving judgment and sentence according to justice and right could not, broadly speaking, pronounce judgments contrary to reason or contrary or repugnant

60. *Ram Gholam Singh* v. *Keerut Singh* (1825) 4 S.D.A. Rep. 12. *Baboo Brijnerain Singh* v. *Raja Teknerain Singh* (1836) 6 S.D.A. Rep. 131. *Mt. Zuhooroonnissa Khanum* v. *Raseek Lal Mitter* (1840) 6 S.D.A. Rep. 298.

61. *Moulovee Syud Ashruf Ali* v. *Mirza Kasim* (1820) 3 S.D.A. Rep. 49. *Mirza Beebee* v. *Toola Beebee* (1829) 4 S.D.A. Rep 334. *Mt. Hingoo* v. *Meer Furzund Ali* (1828) 4 S.D.A. Rep. 307. *Hidaiet Ali Khan* v. *Hissam Ali Khan* (1839) 6 S.D.A. Rep. 257.

62. Sir James W. Colvile, at page 126.

63. *Bhagwat Dayal* v. *Debi Dayal* (1907-8) 35 I.A. 48 (Sir Arthur Wilson, at p. 56).

64. Lord Shaw of Dunfermline, at page 8.

65. *Anandrav* v. *Ravji Dashrath* (1864-66) 2 Bom. H.C.R. 214 (Newton, J. p. 218).

66. *Kerwick* v. *Kerwick* (1919-20) 47 I.A. 275.

67. *Manzur Hasan* v. *Muhammad Zaman* (1924-25) 52 I.A. 61 (Lord Dunedin, p. 67).

to the English case, common, civil and statute law or customs. Functionally speaking, whatever was introduced as the law by the authorities or accepted by the Courts as the law, continued to be the law of the land. The law stayed on where it had once fallen, unless impliedly or expressly modified[68] or removed by laws subsequently enacted by competent authorities, inclusive of courts. The High Courts of Judicature as well as the Judicial Committee of the Privy Council, the Federal Court of India, and the Supreme Court of India could and can ascertain, or alter the common law of the land by their judicial pronouncements. In the realm of common law, judicial precedents will prevail against statements of jurists. In cases of conflict in *rationes*, subject to the rules of hierarchy of courts, the statements that are posterior will prevail. The pronouncements made by the Privy Council till its jurisdiction in respect of Indian appeals and petitions was abolished under the Abolition of Privy Council Jurisdiction Act, 1949,[69] continue to be binding over the High Courts and other Courts of India.[70] Only the Supreme Court of the land can override them, the Supreme Court of India being the highest Court of law of the land and in view of the declaration under Article 141 of the Constitution of India to the effect that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

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68. As to the modification of the law to be administered in the three Presidencies, *see* Charter of 1753 ; 21 Geo. III. c. 70 ; 37 Geo. III. c. 142 ; Charter of Justice of the Supreme Court at Madras ; and the Charter of Justice of the Supreme Court at Bombay. As to the laws for the mofussil, *see* Rule 23 of the Hastings's Plan of 1772 ; the first Regulation as was passed on 17 April, 1780 ; Bengal Judicial Regulation VI of 1781 ; Regulation IV of the Bengal Code, 1793 ; Regulation VIII of 1795 ; Regulation III of 1803 ; Regulation VII of 1832 ; Bombay Regulation IV of 1799 ; Bombay Regulation II of 1800 ; and Bombay Regulation IV of 1827, for examples.

It will be recalled that Section 18 of the East-India Company Act, 1780 (21 Geo. 3. c. 70) and Section 12 of the East-India Act, 1797 (37 Geo. 3. c. 142), containing savings for native law and custom, though rendered obsolete by subsequent laws, were repealed as late as in 1935, under Section 301 of the Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8. c. 2). As to the large number of British Statutes forming, till recently, a part of the statutory law of India, *see* the British Statutes (Application to India) Repeal Act, 1960, *schedule*.

69. See the Abolition of Privy Council Jurisdiction Act, 1949 (Constituent Assembly Act No. 5 of 1949), Sections 2 and 4. As to the Judicial Committee of Her Majesty's Privy Council, see *post*.

70. It is submitted that the observation of M.C. Setalvad, *The Common Law in India*, Hamlyn Lectures, 1960, page 49, to the effect that "*.....the decisions of the Privy Council are no longer binding authority after the Constitution of 1950*" is not correct. See

1765—1858

The Emperor Shah Alum on 12 August, 1765, made over to the Company the dewannee of the provinces of Bengal, Bihar and Orissa from the beginning of the Fussal Rubby of the Bengal Year 1172 as a free gift and ultumgan without the association of any other person, and with an exemption from the payment of the customs of the Dewannee, which used to be paid to the Court.[71] It will be however recalled that the Shah Alum's *firman* dated 12 August, 1765, said :

" .....it is requisite that the said Company engage to the security for the sum of 26 lakhs of rupees a year for our royal revenue, which sum has been appointed from the Nawab Nudjamat-dowla Bahadur and regularly remit the same to the royal sircar ; and in this case, as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal etc., we have granted to them whatsoever may remain out of the revenues of the said provinces, after remitting the sum of 26 lakhs of rupees to the royal sircar, and providing for the expenses of Nizamut....."

As has been noted before, this obligation to the Shah Alum was repudiated by the Hon. the East-India Company as soon as they were in a position to do so.

Constitutional questions were raised in England, as to the right of a trading company to acquire on its own account powers of territorial sovereignty. On 25 November, 1766, the House of Commons resolved to appoint a committee of the whole house to inquire into the state and condition of the East-India Company. The proceedings of this committee led to the passage, in 1767, of five Acts[72] with reference to Indian affairs. The Company were required to pay into

Section 212 of the Government of India Act, 1935, and Section 18 of the Indian Independence Act, 1947. The position is that the decisions of the Privy Council like those of the Federal Court continue to be binding on the High Courts and other lower Courts in India until such decisions are overridden directly or impliedly by pronouncements of the Supreme Court of India or by legislation by competent authorities. Article 372 of the Constitution of India provides for the continuance in force of existing laws, including common law, in given circumstances. See also Article 13 of the Constitution of India.

71. As to the obligation of the Company to the Emperor Shah Alam, *see* Firminger's Introduction to the *Fifth Report from the Select Committee on the Affairs of the East India Company*, dated 28 July, 1812, See also Panchanandas Mukherji, *Indian Constitutional Documents*, Vol. I, 1918, pp. x-xi.

72. 7 Geo. III. cc. 48, 49, 56, 57 and 8 Geo. III. c. 11.

the Exchequer an annual sum of £400,000 for two years from 1 February, 1767, and in consideration of this payment were allowed to retain their territorial acquisitions and revenues for the same period.[73] The State of England thus claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories. In 1769 an agreement was made by Parliament with the East-India Company for five years, during which time the Company were guaranteed the territorial revenues, but were bound to pay an annuity of £400,000, and to export a specified quantity of British goods.[74] 13 Geo. III. c. 64 also required the Company to export to the British settlements within their limits British goods of a specified value. In the spring session of 1772 a select committee of inquiry was appointed by the House of Commons. In November, 1772, Parliament appointed a new committee with instructions to hold a secret inquiry into the Company's affairs.

In spite of a vehement opposition, the Regulating Act [75] (13 Geo. III. c. 63) was passed through Parliament by an enormous majority.

By the time when the Regulating Act, 1773, was passed, the Company in England were still governed in accordance with the Charter of 1698, subject to a few modifications of detail made by the legislation of 1767. In India each of the three presidencies was under a president or governor and Council, appointed by commission of the Company, and consisting of its superior servants. The numbers of the council varied, usually from twelve to sixteen, and some of its members were often absent from the presidency town, being chiefs of subordinate factories in the interior of the country. In Bengal, Clive delegated the functions of the council to a select committee.

The presidencies were independent of each other. The Government of each was absolute within its own limits, and responsible only to the Company in England.

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73. *See* Peter Auber, *Analysis of the Constitution of the East-India Company*, 1826, 713-715.

74. 1772-73.

75. Under the (English) Short Titles Act, 1896, this Act has been given the title of The East India Company Act, 1772. This Act of 1773 is described in its 'short title' as an Act of 1772 because Acts then dated from the beginning of the session in which they were passed. *See* The Short Titles Act, 1896 (59 and 60 Vict. c. 14), First Schedule.

Under the Regulating Act, 1773, a governor-general and four counsellors were appointed for the government of the Presidency of Fort William in Bengal. Warren Hastings, who had been appointed Governor of Bengal in 1772, was to be the first governor-general. The governor-general and council were to have power of superintending and controlling the government and management of the presidencies of Madras, Bombay, and Bencoolen (otherwise Fort Marlborough in Sumatra), so far and in so much as that it should not be lawful for any Government of the minor presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or powers, or for negotiating or concluding any treaty with any such prince or power without the previous consent of the governor-general and council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in cases where special orders had been received from the Company. A president and a council offending against these provisions might be suspended by order of the governor-general and council. The governors of the minor presidencies were to obey the order of the governor-general and council, and constantly and dutifully to transmit to them advice and intelligence of all transactions and matters relating to the government, revenues, or interest of the Company.

Provisions followed for regulating the relations of the governor-general and his council to the Court of Directors and of the Directors to the Crown.

On May 10, 1773, the House of Commons, on the motion of General Burgoyne, passed two resolutions, namely, (1) that all acquisitions made by military force or by treaty with foreign powers do of right belong to the State; (2) that to appropriate such acquisitions to private use is illegal. In 1773 the Indian operations of the East-India Company were placed directly under the control of a governor-general *appointed by the Crown*, and in 1784 the Court of Directors in England were made directly subordinate to the Board of Control, that is, to a minister of the Crown.

Under the Regulating Act, 1773, the governor-general and council were to have powers to make and issue such rules, ordinances, and regulations for the good order and civil government of the Company's settlement at Fort William and the subordinate factories and places, as should be deemed just and reasonable, and should not be repugnant

to the laws of the English realm, and to set, impose, inflict, and levy reasonable fines and forfeitures for their breach. But these rules and regulations were not to be valid until duly registered and published in the Supreme Court at Calcutta,[76] with the assent and approbation of the Court, and they might, in effect, be set aside by the King in Council. A copy of them was to be kept affixed conspicuously in the India House, and copies were also to be sent to a Secretary of State.

Two Parliamentary Committees on Indian affairs were appointed in the year 1781. The object of the first, of which Burke was the most prominent member, was to consider the administration of justice in India. The other Committee which sat in secret, was instructed to inquire into the cause of the war in Carnatic and the state of the British government on the coast. The reports of both committees were highly adverse to the system of administration in India, and to the persons responsible for that administration, and led to the passing of resolutions by the House of Commons requiring the recall of Hastings and Impey, and declaring that the powers given by the Act of 1773 to the governor-general and council ought to be more distinctly ascertained. But the Court of Proprietors of the Company persisted in retaining Hastings in office in defiance both of their directors and of the House of Commons.

The Act of 1781 (21 Geo. III. c. 70) empowered the governor-general and council 'from time to time to frame regulations for the provincial courts and councils. Copies of these regulations were to be sent to the Court of Directors and to the Secretary of State. They might be disallowed or amended by the King in Council, but were to remain in force unless disallowed within two years.

The Act of 1784 (24 Geo. III. Sess. 2, c. 24) established a board of six commissioners, who were formally styled the 'Commissioners for the Affairs of India' but were popularly known as the Board of

76. The Supreme Court at Calcutta was constituted under the Charter of Justice dated 26 March, 1774. The Supreme Courts at Madras and Bombay were respectively established under 39 & 40 Geo. III. c. 79 and 4 Geo. IV. c. 71. The Charter for Madras, Supreme Court was granted in December, 1801. The Indian Bishops and Courts Act, 1823 (4 Geo. IV, c. 71). S. 7, authorised His Majesty, by Charter of Letters Patent, to erect and establish a Supreme Court of Judicature at Bombay. Earlier, the Recorder's Courts at Madras and Bombay were constituted under 37 Geo, III, c. 142. The High Courts at Calcutta, Madras and Bombay were constituted in 1862 under 24 and 25 Vict. c. 104.

Control. They were to superintend, direct and control all acts, operations, and concerns which in anywise related to the civil or military government or revenues of the British territorial possessions in the East-Indies. The number of members of the governor-general's Council was reduced to three, of whom the commander-in-chief of the Company's forces in India was to be one and to have precedence next to the governor-general. The Government of each of the Presidencies of Madras and Bombay was to consist of a governor and three counsellors, of whom the commander-in-chief in the presidency was to be one. The Governor-general or governor was to have a casting vote. The governor-general, governors, commanders-in-chief, and members of council were to be appointed by the Court of Directors. They, and any other person holding office under the Company in India, might be removed from office either by the Crown or by the directors. The control of the governor-general and council over the government of the minor presidencies was enlarged, and was declared to extend to "all such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in time of war". A similar control over the military and political operations of the governor-general and council was reserved to the Court of Directors.

Many of the provisions of the Act of 1784 (24 Geo. III sess. 2, c. 25) were re-enacted in the subsequent Acts of 1793, 1813 and 1833. The elaborate system of checks and counter checks as introduced by the Act of 1784, though modified in details, remained substantially in force until 1858.

In 1786 an Act (26 Geo. III. c. 16) was passed empowering the governor-general in special cases to override the majority of his council and act on his own responsibility, and enabling the offices of governor-general and commander-in-chief to be united in the same person. The exceptional powers given to the governor-general by the Act of 1786 were reproduced in the Act of 1793 (33 Geo. III. c. 52). By another Act of 1786 (26 Geo. III. c. 25) the provision requiring the approbation of the King for the choice of governor-general was repealed. The Crown however still retained the power of recall. A third Act of 1786 (26 Geo. III. c. 57) repealed the provisions requiring servants of the Company to disclose the amount of property brought home by them.

By 28 Geo. III. c. 8, the directors were required to lay annually before Parliament an account of the Company's receipts and disbursements.

The Act of 1793 (33 Geo. III. c. 52) was a measure of consolidation, repealing several previous enactments. Under the Act of 1793, the procedure in the councils of the three presidencies was regulated, the powers of control exercisable by the governor-general were emphasised and explained, and the power of governor-general to override the majority of his council was repeated[77] and extended to the governors of Madras and Bombay. A series of elaborate provisions continued the Company's exclusive privileges of trade for a further term of twenty years, subject to modifications of detail. Another equally elaborate set of sections regulated the application of the Company's finances.

A few Parliamentary enactments of constitutional importance were passed during the interval between the Charters Act of 1793 and 1813.

An Act of 1807 (47 Geo. III, sess. 2, c. 68) gave the governors and councils at Madras and Bombay the same powers of making regulations, subject to approval and registration by the Supreme Court at Madras and the Recorder's Court at Bombay, as had been previously vested in the Government of Bengal.

The vigorous policy of annexation carried on by Lord Wellesley during his seven years' tenure of office (1798-1805) had involved the Company in financial difficulties, and in 1808 a committee of the House of Commons was appointed to inquire, amongst other things, into the conditions on which relief should be granted. When the time arrived for taking steps to renew the Company's charter, the Government of England submitted to Parliament in 1813 proposals embodied in thirteen resolutions. The first of these resolutions affirmed the expediency of extending the Company's privileges, subject to modifications, for a further term of twenty years. The third threw open to all British subjects the export and import trade with India, subject to the exception of tea, and to certain safeguards as to warehousing and the like. The seventh required the Company to keep their accounts in such manner as to distinguish clearly those relating to the territorial and political departments from those relating to the commercial branch of their affairs. The ninth reserved to the Court

77. The overriding power was, in 1786, given to the Governor-General, as noted before, under 26 Geo. III. c. 16.

of Directors the right of appointment to the offices of the governor-general, governor, and commander-in-chief, subject to the approbation of the Crown.

The principles embodied in the Resolutions of 1813 were developed in the Act of the same year (53 Geo. III. c. 155). The Act of 1813 recited in its preamble the expediency of continuing to the Company for a further term the possession of the territorial acquisitions in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same.[78] The Act of 1813 thus granted the Indian possessions and revenues to the Company for a further term of twenty years and threw open the general Indian trade, subject to various restrictive conditions. The Local Governments were also empowered to impose taxes on persons subject to the jurisdiction of the Supreme Court, and to punish for non-payment. An Act of 1814 (54 Geo. III. c. 105) removed doubts as to the powers of the Indian Government to levy duties of customs and other taxes. Restrictions on Indian trade were gradually removed, and a consolidating Act of 1823 (4 Geo. IV. c. 80) expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's Charter except China.

The Charter Act of 1833 (3 & 4 Will. IV. c. 85), like that of 1813, was preceded by careful inquiries into the administration of India. It introduced important changes into the constitution of the East-India Company and the system of Indian administration. The territorial possessions of the Company were allowed to remain under their government for another term of twenty years; but were to be held by the Company 'in trust for His Majesty, his heirs and successors for the service of the Government of India.'[79] The Company's monopoly of the China trade, and of the tea trade, was finally taken away. The Act of 1833 terminated altogether the trading functions of the Company. Agra was to be separated as a presidency from that of the Fort William in Bengal[79a]. The provisions of 3 & 4 Will. IV. c. 85 for creating a Presidency of Agra, which were suspended by the India

78. Articles 1 and 95 of the 53 Geo. 3, c. 155. The sovereignty of the Crown had also been clearly reserved in the Charter of 1698.

79. The Act of 1833 expressly enabled any natural-born subject of the Crown to acquire and hold lands in India.

79-a. The Charter Act, 1383, Section 38.

(North-West Provinces) Act, 1835 (5 & 6 Will. IV. c. 52), were to remain so until the Court of Directors, under the Direction and Control of the Board of Commissioners for the Affairs of India, should otherwise direct. [79b].

The Charter Act of 1833 simplified, as noted before, the formal title of the Company by authorizing it to be called the East-India Company. The superintendence, direction, and control of the whole civil and military government were expressly vested in a governor-general and counsellors, who were to be styled 'the Governor-General of India in Council.' The governor-general had been previously, that is, during 1774-1834, the Governor-General of Bengal in Council.

The Act of 1833 vested the legislative power of the Indian Government exclusively in the Governor-General in Council who had been reinforced by the addition of a fourth legislative member. The Presidential Governments were merely authorized to submit to the Governor-General in Council 'drafts or projects of any laws or regulations which they might think expedient', and the Governor-General in Council was required to take these drafts and projects into consideration and to communicate his resolutions thereon to the Government proposing them. Legislative power was restored to the Local Governments of Bombay and Madras in 1861. The Bengal Legislative Council was also constituted under a Proclamation on 17th January, 1862.[80]

Under the Charter Act of 1833, the Governor-General in Council had no power to make any laws and regulations which should repeal, vary, or suspend any of the provisions of the Act of 1833 or which should affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the Company, or any part of the unwritten laws or constitutions of the United Kingdom, whereon might depend the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over the Indian territories.

79-b. The Charter Act, 1853 (16 and 17 Vict. c. 95), S. 15.

80. The provisions of the *Indian Council's Act, 1861*, touching the making of Laws and Regulations for the peace and good Government of the Presidencies of Fort St. George and Bombay, were extended to the Bengal Division of the Presidency of Fort William with effect from the 18th day of January, 1862. *See* Calcutta Gazette, dated, 18 January, 1862. The first meeting of the Council of the Governor of Bengal took place on 1 February, 1862. *See* Calcutta Gazette, Extraordinary, Friday, the 31 January, 1862.

There was also an express saving of the right of Parliament to legislate for India and to repeal Indian Acts, and, the better to enable Parliament to exercise this power, all Indian laws were to be laid before Parliament. Laws made under the powers given by the Act were to be subject to disallowance by the Court of Directors, acting under the Board of Control, but when made, were to have effect as Acts of Parliament, and were not to require registration or publication in any court of justice.

The laws made under the Act of 1833 were known as Acts, and took the place of the 'regulations' made under previous Acts of Parliament.

The Act of 1833 directed the Governor-General in Council to issue a commission, to be known as the 'Indian Law Commission',[81] which was to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the Indian territories, and all the then existing forms of 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 Indian territories, to which any inhabitants of those territories were then subject. The commissioners were to report to the Governor-General in Council, setting forth the results of their enquiries, and these reports were to be laid before Parliament.

By virtue of this Act as well as subsequent ones Law Commissioners were appointed respectively in 1834, as noted before, 1853,[82] 1861 and 1879. Of these four Commissions the first and the last worked in India while the second and the third had their sittings in England. No Indians were employed as Commissioners, and the law of England was used as the basis.[83] The Fifth Indian Law Commission

81. Section 53 of the Charter Act of 1833. The members of the Commission were known as Indian Law Commissioners; their Chairman was known as the President. T. B. Macaulay was the first president of the first Indian Law Commission. The advocates-general of the Hon. the East-India Company in the three Presidencies were given statutory recognition under 53 Geo. III. c. 155, later, under the Short Titles Act, 1896 (59 & 60 Vict. c. 14), known as the East India Act, 1813. See *ibid.*, Sections 100 and 111. Under the Government of India Act, 1858, appointments to the offices of Advocates-General were to be made direct by the Crown.

82. Section 28 of the Charter Act of 1853.

83. Page 8 of the Second Report of the Second Law Commission dated 13 December, 1855; Instructions of the British Government to the Third Law Commission.

was constituted by the Government of India in 1955. The second Law Commission, appointed under the Act of 1853 (16 and 17 Vict. c. 95), was instructed by the Board of Control to consider the preparation of a simple and uniform code of procedure for the Indian courts.[84]

An Act of 1835 (5 & 6 Will. IV. c. 52) authorized the appointment of a lieutenant-governor for the North-Western Provinces. The North-Western Provinces and Oudh[85] were renamed 'United Provinces of Agra and Oudh' in 1902 and 'Uttar Pradesh' in 1950.

The last of the Charter Act was passed in 1853.[86] The Act did not fix any definite term for the continuance of the powers of the Company, but simply provided that the Indian territories should remain under the government of the Company in trust for the Crown until Parliament should otherwise direct.[87]

Under the Act of 1833, the Governor-General of India was also Governor of Bengal. The Act of 1853 authorized the appointment of a separate governor for the Bengal Presidency, as distinct from the Governor-General. The Act of 1853 also provided that, unless and until this separate governor was appointed, the Court of Directors and Board of Control might authorize the appointment of a lieutenant-governor of Bengal. The power of appointing a separate governor was not brought into operation until the year 1912, but the power of appointing a lieutenant-governor was exercised in 1854, and continued until 1912.

Some alterations were made by the Act of 1853 in the machinery for Indian legislation. The 'fourth' or legislative member of the governor-general's council was placed on the same footing with the older or 'ordinary' members of the council by being given a right to sit and vote at executive meetings. The council was at the same time also enlarged for legislative purposes by the addition of legislative

84. Letter of 30 November, 1853, from the Board of Control to the Indian Law Commission.

85. Oudh was annexed in 1856.

86. 16 and 17 Vict. c. 95.

87. The Act of 1853 reduced the number of the directors of the Company from twenty-four to eighteen, and provided that six of these should be appointed by the Crown.

members, of whom two were the Chief Justice of Bengal and one other Supreme Court Judge, and the others were Company's servants of ten years' standing appointed by the several local Governments. The council as constituted for legislative purposes under the Act of 1853 consisted of twelve members, namely:

The governor-general.

The commander-in-chief.

The four ordinary members of the governor-general's council.

The Chief Justice of Bengal.

A puisne judge.

Four representative members from Bengal, Madras, Bombay, and the North-Western Provinces.

The Local Governments, after 1854, got their legislative proposals introduced in the legislative council through their respective representatives.[88]

The sittings of the legislative council were made public and their proceedings were officially published.

The right of patronage to Indian appointments was by the Act of 1853 taken away from the Court of Directors and directed to be exercised in accordance with regulations framed by the Board of Control.[89] These regulations threw the covenanted civil service open to general competition.

Provision was made by the Act of 1854 (17 and 18 Vict. c. 77) empowering the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in the possession or under the government of the East-India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration. In exercise of this power, the Governor-General of India in Council appointed Chief

88. As noted before, legislative power was restored to the Governments of Bombay, Madras and Bengal under the Indian Councils Act, 1861. See *post*.

89. The regulations were prepared in 1854 by a committee under the presidency of Lord Macaulay.

Commissioners[90] for the Chief Commissionerships established for Assam,[91] the Central Provinces,[92] Burma[93] and other parts of India. The Governor-General of India in Council could delegate to the Chief Commissioners such powers as need not be reserved to the Central Government. The territories under the administration of chief commissioners were technically under the immediate authority and management of the Governor-General in Council within the meaning of the Act of 1854.

The Act of 1854 empowered the Government of India, with the sanction of the 'Home' authorities, to define the limits of the several provinces in India. The Governor-General was no longer to bear the title of Governor of the Presidency of Bengal.

As an immediate consequence of the war of Indian Independence of 1857, the remaining powers of the East-India Company were transferred to the Crown. In 1858, the Government of India Act (21 & 22 Vict. c. 106) was passed for the better government of India. This Act declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State, to whom were to be transferred the powers formerly exercised either by the Court of Directors or by the Board of Control.[94] Power was given to appoint a fifth principal Secretary of State for this purpose. The Secretary of State was to be aided by a council of fifteen members, of whom eight were to be appointed by the Crown and seven elected by the directors of the East-India Company. The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be under the control of the Secretary of State in Council, but was to be charged with a dividend on the Company's stock and with their debts, and the Indian revenues remitted to

90. The title of Chief Commissioner was directly recognised by an Act of 1870 (33 and 34 Vict. c. 3, ss. 1, 3).

91. The Chief Commissionership of Assam was abolished in 1908, but restored in 1912.

92. Jhansi, the Bearars, and Nagpur were annexed in 1853.

93. Rangoon was taken in 1824. Pegu was annexed in 1852. The Chief-Commissionership of British Burmah was constituted on 31 January, 1862. Upper Burma was annexed in 1886. Burma was constituted a Lieutenant-Governorship, with a Legislative Council, in 1897. Burma was separated from India in 1935.

94. The Board of Control established in 1784 under Pitt's Act (24 Geo. III. sess. 2, c. 25) was formally abolished under the Act of 1858. The Pitt's Act of 1784 was officially known as the East-India Act, 1784.

Great Britain were to be paid to the Secretary of State in Council and applied for Indian purposes. With respect to contracts and legal proceedings, the Secretary of State in Council was given a quasi-corporate character for the purpose of enabling him to assert the rights and discharge the liabilities devolving upon him as successor to the East-India Company.[95]

The change effected by the Government of India Act, 1858, was formally announced in India by the Queen's Proclamation of 1 November, 1858.

The Legislative Council established under the Act of 1853 had modelled its procedure on that of Parliament. It could ask questions as to, and discuss the propriety of, measures of the Executive Government. The Indian Councils Act, 1861 (24 & 25 Vict. c. 67), modified the constitution of the governor-general's executive council and remodelled the Indian legislatures. The functions of the new Legislative Council were limited strictly to legislation, and it was expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill, or having reference to a Bill actually introduced. The restrictions thus imposed in 1861 were relaxed in 1892 (55 and 56 Vict. c. 14. s. 2), and were further relaxed thereafter.

Measures relating to the public revenue or debt, religion, military or naval matters, or foreign relations, were not to be introduced without the governor-general's sanction. The assent of the governor-general was required to every Act passed by the council, and any such Act might be disallowed by the Queen, acting through the Secretary of State. The legislative power of the Governor-General in Council was declared to extend to making laws and regulations for repealing, amending, or altering any laws or regulations for the time being in force in the 'Indian territories now' under the dominion of Her Majesty, and to making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things within the said territories and for all servants of the government of India within the dominions of princes and States

95. In 1859, the Government of India Act, 1859 (22 and 23 Vict. c. 41), was passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India.

in alliance with Her Majesty. But there were express savings for certain Parliamentary enactments, for the general authority of Parliament, and for any part of the unwritten laws or constitution of the United Kingdom whereon the allegiance of the subject or the sovereignty of the Crown might depend.

An exceptional power was given to the governor-general, in cases of emergency to make, without his council, ordinances, which were not to remain in force more than six months.

When Benares and the territories afterwards known as the North-Western Provinces were annexed, the course adopted was to extend to them, with some variations, the laws and regulations in force in the older provinces of Bengal, Bihar and Orissa. But when the Saugor and Nerbudda territories were acquired from the Marathas by Lord Hastings, and when Assam, Arakan, and Tenasserim were conquered in 1824, and Pegu in 1852, these regions were specially exempted from the Bengal Regulations, instructions, however, being given to the officers administering them to conduct their procedure in accordance with the spirit of the regulations, so far as they were suitable to the circumstances of the country. And when the Punjab was annexed [96] the view taken was that the Governor-General in Council had power to make laws for the new territory, not in accordance with the forms prescribed by the Charter Acts for legislation, but by executive orders, corresponding to the Orders in Council made by the Crown for what were called the Crown Colonies. Provinces in which this power was exercised were called ' non-regulation provinces ' to distinguish them from the 'regulation provinces', which were governed by regulations formally made under the Charter Acts. A large book of laws had been passed under this power or assumed power, and in order to remove any doubts as to their validity a section was introduced into the Indian Councils Act, 1861, declaring that no rule, law or regulation made before the passing of the Act by the Governor-General or certain other authorities should be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts.

The power of legislation which had been taken away from the Governments of Madras and Bombay by the Charter Act of 1833 was restored, as noted before, to them by the Act of 1861. The councils of the governors of Madras and Bombay were expanded for legislative

96. The Punjab was annexed in 1849.

purposes. No line of demarcation was drawn between the subjects reserved for the central and the local legislatures respectively; but the previous sanction of the governor-general was made requisite for legislation by the local legislature in certain cases, and all Acts of the local legislature required the subsequent assent of the governor-general in addition to that of the Governor, and were made subject to disallowance by the Crown, as in the case of Acts of the governor-general's council. There were, again, the same restrictions on the proceedings of the local legislatures.

The governor-general was directed to establish, by proclamation, a legislative council for Bengal, and was empowered to establish similar councils for the North-Western Provinces and for the Punjab. These councils were to consist of the lieutenant-governor and of a certain number of nominated councillors, and were to be subject to the same provisions as the local legislatures for Madras and Bombay.

A legislative council for Bengal was established with effect from 18 January, 1862, by a proclamation of January 17 of the same year. The legislative council for the North–Western Provinces and Oudh, later known as the United Provinces of Agra and Oudh, was established in 1886, and for the Punjab in 1897.

The Act also gave power to constitute new provinces for legislative purposes and appoint new lieutenant-governors, and to alter the boundaries of existing provinces. The Government of India Act, 1865 (28 and 29 Vict. c. 17) also enabled the Governor-General in Council to define and alter, by proclamation, the territorial limits of the various presidencies and lieutenant governorship. The Indian Councils Act, 1869, (32 & 33 Vict. c. 98) still further extended the legislative powers of the governor-general's council by enabling it to make laws for all native Indian subjects of Her Majesty in any part of the world, whether in India or not.

The Indian Councils Act of 1861, whilst validating rules made by the Governor-General in the past, took away the power for the future. The Government of India Act, 1870 (33 & 34 Vict. c. 3) practically restored this power by enabling the governor-general to legislate in a summary manner for the less advanced parts of India. The machinery provided was as follows: The Secretary of State in Council, by resolution, declared the provisions of Section 1 of the Act of 1870 applicable to some particular part of a British Indian province.

Thereupon the Governor in Council, Lieutenant-governor, lieutenant-governor in Council, or chief commissioner of the province, might at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part, and these drafts when approved and assented to by the Governor-General in Council, and duly gazetted, would have the same force of law as if they had been formally passed at sittings of the Legislative Council.

Section 5 of the Act of 1870 repeated and strengthened the power of the governor-general to override his council. By Sec. 6 of the same Act natives of India of proved merit and ability were enabled to be appointed to any office, place or employment in the civil service of Her Majesty in India, though they had not been admitted to that service by competition in England.

The Indian Councils Act, 1871 (34 & 35 Vict. c. 34) made slight extensions of the powers of local legislatures.

An Act of 1873 (36 & 37 Vict. c. 17) formally dissolved the East-India Company, as noted before, as from January 1, 1874.

In 1876 was passed the Royal Titles Act, 1876 (39 & 40 Vict. c. 10), which authorised the Queen to assume the title of Empress of India.

The Indian Councils Act, 1892 (55 & 56 Vict. c. 14),[97] authorised an increase in the number of the members of the Indian legislative councils, and empowered the Governor-General in Council, with the approval of the Secretary of State in Council, to make rules regulating the conditions under which these members were to be nominated. The Act of 1892 at the same time relaxed the restrictions imposed by the Act of 1861 on the proceedings of the legislative councils by enabling rules to be made authorising the discussion of the annual financial statement, and the asking of questions, under prescribed conditions and restrictions. The Act also enabled local legislatures, with the previous sanction of the Governor-General to repeal or alter Acts of the Governor-General's council affecting their province.

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), abolished the offices of commanders-in-chief of the Madras and

97. *See* also the Indian Councils Act, 1874 (37 & 38 Vict. c. 91); the Council of India Act, 1876 (39 & 40 Vict. c. 7); and the Council of India Reduction Act, 1889 (52 & 53 Vict. c. 65).

Bombay armies, and thus made possible a simplification of the Indian military system.

The Contracts (India Office) Act, 1903 (3 Edw. VII, c. 11), declared the mode in which certain contracts might be made by the Secretary of State in Council.

The Council of India Act, 1907 (7 Edw. VII, c. 35), modified the constitution of the Council of India.[98]

The Indian Councils Act, 1909 (9 Edw. VII, c. 4), made important changes in the constitution and functions of the Indian legislative councils, and gave power to make changes in the executive governments of the Indian provinces. The Act received the Royal Assent on May 25, 1909. Under Section 1 of the Act the 'additional' members of the Indian legislative councils, *i.e.*, those other than the members of the executive councils, would, instead of being all nominated, include elected members.

By Section 5 of the Act, the Governor-General in Council, the Governors in Council of Madras and Bombay, the lieutenant-governors or lieutenant-governors in council of other provinces were required to make rules authorizing at any meeting of their respective legislative-councils the discussion of the annual financial statement, and of any matter of general interest, and the asking of questions.

The regulations and rules required to give effect in the first instance to the Act of 1909 were to be found in a Blue Book which was laid before Parliament in pursuance of Section 7 of the Act. The Blue Book began with a notification fixing November 15, 1909, as the date at which the provisions of the Act were to come into operation. Under heading No. X of the Blue Book were to be found important rules regulating the business of the Governor-General's legislative council, and relating to (1) the discussion of the annual financial statement; (2) the discussion of matters of general public interest, and (3) the asking of questions. No. XI was a Home Department resolution of the Government of India, dated November 15, 1909, which described in general terms the nature of the changes made by the Act of 1909, and the regulations under it, and had appended to it a table showing the constitutions of the serveral legislative councils. This table was later suspended by a new table showing the constitution of the councils under the regulations as revised in 1912.

98. *See* also the Indian Councils Act, 1904 (4 Edw. VII, c. 26).

The constitution of the councils was changed in respects of (1) members, (2) proportion of official and non-official members, and (3) methods of appointment or election.[99] The functions of the legislative councils fell into three divisions, namely, (a) legislative, (b) deliberative, and (c) interrogatory.[100]

In October, 1905, the province under the Lieutenant-Governor of Bengal had been divided into two lieutenant-governorships. Of these the western retained the old name of Bengal and the old seat of government at Calcutta, whilst the eastern was augmented by the addition of Assam, previously under a Chief Commissioner, was called Eastern Bengal and Assam, and had for its seat of government Dacca.

The rearrangement effected in pursuance of the announcements made on December 12, 1911, at a Durbar at Delhi, by King George V, effected the following changes:

1. It reunited the five Bengali-speaking divisions of the old province of Bengal, and formed them into a presidency administered by a governor in council.

2. It created a lieutenant-governorship in council, consisting of Bihar, Chota Nagpur, and Orissa, with a legislative council, and a capital at Patna.

3. It detached Assam from Eastern Bengal and placed it again under a chief commissioner.

The Secretary of State for India in Council made a formal declaration that the Governor-General of India should no longer be the governor of the presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency. By a royal warrant dated March 21, 1912, Lord Carmichael, previously governor of Madras, was appointed governor of the presidency of Fort William in Bengal. By a proclamation notified on March 22, 1912, a new province was carved out of the previous lieutenant-governorship of Bengal, and was called Bihar and Orissa, and placed under a lieutenant-governor. By another proclamation of the same date the territories that were in future to constitute the Presidency of Fort William

99. The reasons of this revision, and the nature and effect of the changes made, were explained in a dispatch from the Government of India, dated January 23, 1913, and in an accompanying memorandum. *See* Blue Book (1913, Cd. 6714).

100. For details *see* Ilbert, *ibid.*, 113-126.

in Bengal were delimited. And by a third proclamation of the same date the territories which had before 1905 constituted the chief commissionership of Assam were taken under the immediate authority and management of the Governor-General in Council, and again formed into a chief commissionership, called the chief commissionership of Assam. The territorial redistributions made by the proclamations of March 22 took effect on the following April 1. The Government of India Act, 1912 (2 & 3 Geo. V. c. 6) receiving the Royal Assent on June 25, 1912, made legislative provisions, mostly of a technical character. Section 1 of the Act, declared and explained the powers and position of the new governor of Bengal and his council. Section 2 authorized the creation of an executive council for the new province of Bihar and Orissa. Section 3 authorized the establishment of legislative councils for provinces under chief commissioners.

In the past the transfer of territories for the purpose of forming a chief commissionership had been effected under the power given by Section 3 of the Government of India Act, 1854 (17 & 18 Vict. c. 77). This power was exercised in 1901 to transfer territories from the lieutenant-governorship of the Punjab to the chief commissionership of the North-West Frontier Province. In September, 1912, it was similarly exercised to transfer the city of Delhi and part of the Delhi district from the same lieutenant-governorship and take it under the immediate authority and management of the Governor-General in Council, and to form it into a chief commissionership to be known as the Province of Delhi. An Indian Act, namely, the Delhi Laws Act, 1912 (XIII of 1912), adapted the old laws to the new conditions. The state entry into Delhi for the inauguration of the new capital on December 23, 1912, was marred by an attempt on the life of the Governor-General Lord Hardinge of Penhurst by a Bengalee revolutionary.

The Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), was a consolidating measure repealing and re-enacting the numerous Parliamentary Statutes relating to the administration of British India which had been passed between the years 1770 and 1912. This Act was amended in certain minor respects by the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), which also contained certained substantive provisions not incorporated in the principal Act. In 1919 the Act again underwent amendment by the passing of the Government of India Act, 1919 (9 & 10 Geo. 5, c. 101), which was enacted for the purpose of bringing into effect the Indian constitutional reforms based on what is commonly known as the Montagu-Chelmsford Report. Section 45 of the Act of 1919 provided that the

amendments made by that Act and the Act of 1916 would be incorporated in the text of the Government of India Act, 1915, and that that Act as so amended would be known as the "Government of India Act". The "Government of India Act" was thus not a separate Parliamentary enactment but a properly certified version of the Act of 1915 as subsequently amended.[101]

The preamable to the Act of 1919 was based on the announcement made by His Majesty's Secretary of State for India in the House of Commons on the 20th August, 1917, declaring the new policy intended to be adopted in the development of self-governing institutions in British India.

Under the Government of India Act many of the details requisite for carrying into effect the constitutional changes made by the Act were to be provided for by rules made under the Act. The rules so made, were all published in the Gazette of India and for the most part were included in an India Office publication called "Rules under the Government of India Act" which was issued in 1921.[102]

**The Government of India Act, 1935**

It will be recalled that originally the Government of India Act, 1935 (25 & 26 Geo. 5, c. 42) as passed on 2 August, 1935, covered both India and Burma. Part XIV of this original Act, namely, 25 & 26 Geo. 5. c. 42, concerned the Government and administration of Burma.

101. A copy of the Government of India Act, 1915, with the amendments, whether by way of substitution, addition, or omission, required by the Government of India (Amendment) Act, 1916, and by Section 45 of the Government of India Act, 1919, and the Second Schedule thereto, had to be prepared and certified by the Clerk of the Parliaments, and deposited with the Rolls of Parliament, and His Majesty's printer printed, in accordance with the copy so certified, copies of the Government of India Act, 1915, that had to be printed after the passing of the Government of India Act, 1919 (9 and 10 Geo. 5. c. 101). The Government of India Act, 1915, as so amended, would be cited as "The Government of India Act". *See* Section 45 of the Government of India Act, 1919. *See* also Section 135 of *The Government of India Act.* It will be noted that this mode of correct citation of *The Government of India Act* is often lost sight of. For a confusion of the citations of the amending Act of 1919 and the resultant *The Government of India Act* see D. Basu's Works on Indian Constitution, his *Commentary on the Constitution of India,* 4th ed., 1961, Vol. 1, page 5, for Example.

102. See *The Government of India Act,* Calcutta, Government of India, Central Publication Branch, 1924, *Introductory Note.*

Under this Act Aden was to be separated from India.[103] But it was decided also to separate Burma from India. Accordingly, the Government of India (Reprinting) Act, 1935 (26 Geo. 5 & 1 Edw. 8, c. 1) was passed. It was an Act to divide the Government of India Act, 1935, into two portions and to make in the wording thereof certain changes which either were consequential on the division or remove minor errors; to provide for the certification, the deposit with the Rolls of Parliament, and the printing, of the said portions as if they were separate [104] Acts of Parliament; to secure that the said portions had effect in lieu of the said Government of India Act, 1935, as from the date [105] of the passing of that Act; and for purposes connected with the matters aforesaid.

Thereafter two statutes of a minor importance were passed, namely, the Commonwealth (India and Burma) (Miscellaneous Amendments) Act, 1940 (3 & 4 Geo. 6. c. 5), and the India and Burma (Postponement of Elections) Act, 1941 (4 & 5 Geo. 6, c. 44).

The Government of India Act, 1935, was a statute passed by the British Parliament (26 Geo. 5 & 1 Edw. 8, c. 2) in order to make further provision for the Government of India. As to the Government of India by the Crown, *see* Part I of the said Act, *Introductory*. As to the Federation of India envisaged under the said Act *see* Part II, chapters 1-V, *ibid*. Events moved faster than anticipated by the statesmen; and before the scheme of Federation could be given a trial under the Government of India Act, 1935, the two Dominions of India and Pakistan emerged from the 15th day of August, 1947, under the Indian Independence Act, 1947. Only Part II of the Government of India Act, 1935, was scheduled to come into force on such date as His Majesty might appoint by the proclamation establishing the Federation, which Federation, as seen above, could not come into being. The remainder of the Government of India Act, 1935, was, subject to any express provision to the contrary, to come into force on such date or dates as His Majesty *in Council* might appoint. As to the repeal of the earlier statutes,

103. Under Section 288 of the Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8 c. 2), the Chief Commissioner's Province of Aden ceased to be a part of British India. In 1963, it became a part of the Federation of South Arabia.

104. The resultant was the emergence of two Acts, namely, 26 Geo. 5 & 1 Edw. 8, c. 2 (cited as the Government of India Act, 1935) and 26 Geo. 5 & 1 Edw. 8, c. 3 (cited as the Government of Burma Act, 1935) ; see Section 1 of 26 Geo. 5 & 1 Edw. 8. c. 1.

105. 2 August, 1935.

*see* Section 321, *ibid.* The Government of India Act, that is, the Government of India Act of 1915 as amended in 1916 and 1919, was repealed. The preamble of the earlier Government of India Act, 1919, was however saved.

Two new Provinces of Sind and Orissa were created under Section 289 of the Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8, c. 2). Sind was separated from the Presidency of Bombay and formed a Governor's Province to be known as the Province of Sind. Orissa was separated from the Province of Bihar and Orissa. Certain areas were separated from the Presidency of Madras and Central Provinces respectively. Orissa and other areas, so separated, together formed a Governor's Province to be known as the Province of Orissa. The Province known as Bihar and Orissa became known as the Province of Bihar. An Order in Council made under Section 289 of the Act defined the boundaries of the Provinces of Sind and Orissa respectively.

*Amendment to the Government of India Act, 1935.*—The advent of India's independence under the Indian Independence Act, 1947, rendered many changes in the Government of India Act, 1935, necessary. The India (Provisional Constitution) Order, 1947, made on the 14th August, 1947, by the Governor-General in the exercise of the powers conferred on him by Sections 8 (2) and 9 (1)(c) of the Indian Independence Act, 1947, directed the making of numerous omissions, adaptations and modifications in the Government of India Act, 1935, with effect from 15th August, 1947. The Order was subsequently amended by the India Provisional Constitution (Amendment) Order, 1947, the India Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947, and the India Provisional Constitution (Second Amendment) Order, 1947, all with retrospective effect from 15th August, 1947.

The Government of India Act, 1935, was also amended by Governor-General's Orders Nos. 34 of 5 February, 1948, 35 of 10 February, 1948, 38 of 31 March, 1948, and by Constituent Assembly Acts Nos. 1, 2, 4 and 5 of 1949.

**The Federal Court**

The Federal Court of India as envisaged under Part IX, chapter 1, of the Government of India Act, 1935, was inaugurated on 6

December, 1937.[106] The jurisdiction of the Federal Court was enlarged by the Federal Court (Enlargement of Jurisdiction) Act, 1947 (Act I of 1948). Except for certain pending appeals and petitions, the Jurisdiction of His Majesty in Council to entertain appeals and petitions from India was abolished with effect from the 10th day of October, 1949, under the Abolition of Privy Council Jurisdiction Act, 1949 (Constituent Assembly Act No. 5 of 1949). The Federal Court of India became the highest court of the land with all the necessary powers conferred on it under the said Act.[107]

It will be recalled that in the realm of India's judicial administration the Privy Council of Her Majesty had been associated with India for about three centuries and a half. The jurisdiction of the British monarch in Council over British subjects even when abroad arose out of the English common law and the royal prerogative under the Constitution of England. As the fountain head of all justice throughout the dominions the sovereign has always exercised jurisdiction through the council who act in an advisory capacity to the Crown. Formerly the king often sat with his council to hear appeals within the kingdom; but as Parliament developed its power and influence the High Court of Parliament became the final appellate tribunal for appeals from the United Kingdom. Appeals from the Dominions and colonies and from certain other courts still continued to be heard by the Sovereign in council. These appeals came to be regulated by the Judicial Committee Act, 1833(3 & 4 Will. 4. c. 41.), whereby all appeals were to be heared by a special Committee of the Privy Council (namely, the Judicial Committee) who would advise the Crown upon the action to be taken. It may thus be said that the British monarch in Council had had both theoretical and applied judicial jurisdiction over the British possessions and subjects in India from the beginning of the seventeenth century till the middle of the twentieth when by Indian

106. For the proceedings at the inaugural sitting of the Federal Court in the Princes' Chamber, New Delhi, on December 6th, 1937, *see* Federal Court Reports [1939] F.C.R., 1-12.

107. Though not relevant under this head reference may herein be made to the Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952 (Act IX of 1952). This was an Act passed to render ineffective certain decrees and orders passed by Courts in Pakistan against a Government in India and to provide alternative remedy to persons who had secured such decrees or orders. The Indian Independence Pakistan Courts (Pending Proceedings) Ordinance, 1951 (Ordinance VI of 1951) was repealed.

Constitutent Assembly Act No. 5 of 1949 the said jurisdiction over India of the British monarch in Council was abolished.

*The Indian Independence Act, 1947.*—The Indian Independence Act, 1947, was a statute of the British Parliament. It was 10 & 11 Geo. VI, c. 30. The said statute was passed by the British Parliament in order to make provision for the setting up in India with effect from 15 August, 1947, two independent Dominions of India and Pakistan, to substitute other provisions for certain provisions of the Government of India Act, 1935, which applied outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

*The Constituent Assembly of India.*—The Constituent Assembly, the first sitting whereof was held on the ninth day of December, 1946, with modifications, became, under Section 19(3) of the Indian Independence Act, 1947, the Constituent Assembly for India.[108] A separate Constituent Assembly was set up for Pakistan under the authority of the Governor-General. The two Dominions would have no Central Government or Legislature common to them on and from 15 August, 1947. His Majesty's Government in the United Kingdom ceased to have any form of control over the affairs of the two Dominions of India and Pakistan from the said date. His Majesty's Government in the United Kingdom would have no responsibility as respects the Government of any of the territories which immediately before 15 August, 1947, were included in British India. Under Section 7 of the Indian Independence Act, 1947, the suzerainty of His Majesty over the Indian States lapsed with effect from 15 August, 1947, and with it, all treaties and agreements in force at the eighteenth day of July, 1947, between His Majesty and the rulers of Indian States. As to the details *see* Section 7 of the Indian Independence Act, 1947.

In the Constituent Assembly, the first sitting whereof was held on 9 December, 1946, Pandit Jawahar Lal Nehru, moved, on 13 December of the same year, the Resolution[109] re: Aims and Objects of the Constituent Assembly. This Resolution was adopted by the Assembly on 22 January, 1947. It may be herein mentioned that the Constitution of India, as it ultimately emerged, allotted residuary powers to the

108. The first meeting of the Constituent Assembly of India took place in the Constitution Hall, New Delhi, on Monday, the 9th December, 1946, at Eleven of the Clock. See, Constituent Assembly Debates, Official Report, Vol. 1.

109. For the Resolution, *see* Constituent Assembly Debates, Vols. I-III,page 303.

Union and not to the States as contemplated in the said Resolution re : Aims and Objects.

The Fifth Session of the Constituent Assembly of India commenced in the Constitution Hall at Eleven P. M. on 14 August, 1947, with Dr. Rajendra Prasad in the Chair (as the President). As the clock struck twelve (midnight), Mr. President and all the members stood up and took the pledge of dedication of the self to the service of the nation.[110] The Constituent Assembly of India thus assumed power, on the 15th day of August, 1947, for the governance of India.

A committee was appointed by the Constituent Assembly on 29 August, 1947, to *scrutinise* the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which were ancillary thereto or which had to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee. The Draft Constitution as settled by the Drafting Committee was introduced in the Assembly on 4 November, 1948, by Dr. B. R. Ambedkar.[111] The discussion that followed this First Reading of the Draft Constitution Bill continued for a few days.[112] The motion that "The Constituent Assembly do proceed to take into consideration the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947" was adopted by the Constituent Assembly on 9 November, 1948. The Second Reading of the Draft Constitution (Bill), thus commenced on 9 November, 1948, concluded on 17 October, 1949. The President of the Assembly by virtue of the powers vested in him under Rule 38-R as passed by the House later referred the Draft Constitution with the amendments to the Drafting Committee, in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes, and for recommending such formal or consequential or necessary amendments of the Constitution as might be required.[113]

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110. *See* Constituent Assembly Debates, Vols. V & VI, page 10

111. See also the Constituent Assembly Debates Vol. VII, pages 48-207, *Appendices*, being the Reports of the severel Committees.

112. See the proceedings of the Constituent Assembly on 5 November, and subsequent days.

113. Constituent Assembly Debates, Vol. X, p. 457.

The final consideration, that is, the Third Reading, of the Draft Constitution Bill began on 14 November, 1949. This Third Reading involved a consideration of the Report of the Drafting Committee together with the amendments made by the Drafting Committee *and* other amendments. The Constitution as settled by the Constituent Assembly was passed by it on 26 November, 1949.[114] The President of the Assembly, Dr. Rajendra Prasad, then formally signed the Bill which became an Act, by way of its authentication so that it might get authority and come into force immediately.[115]

Some of the articles of the Constitution came into force, as seen before, on the 26th day of November, 1949, and the others on the 26th day of January, 1950. Under the Constitution, India, that is, Bharat, is a sovereign democratic republic.[116]

**The Amendments to the Constitution of India**

*Amendment I.*—The Constitution (First Amendment) Act, 1951, was passed on 18 June, 1951, for the amendment of articles 15 and 19 of the Constitution and for the validation of certain laws; for the insertion of new articles 31A and 31B; for the amendment of articles 85, 87, 174, 176, 341, 342, 372, 376; and for the addition of a Ninth Schedule to the Constitution.

*Amendment II.*—The Constitution (Second Amendment) Act, 1952, was passed on 1 May, 1953, for the amendment of article 81 of the Constitution.

*Amendment III.*—The Constitution (Third Amendment) Act, 1954, was passed on 22 February, 1955, for the amendment of the Seventh Schedule to the Constitution.

*Amendment IV.*—The Constitution (Fourth Amendment) Act, 1955, was passed on 27 April, 1955, for the amendment of articles 31 and31A; for the substitution of a new article for article 305; and for the amendment of the Ninth Schedule to the Constitution.

*Amendment V.*—The Constitution (Fifth Amendment) Act, 1955, was passed on 24 December, 1955, for the Amendment of article 3 of the Constitution.

114. Constituent Assembly Debates, Vol. XII, p. 995.

115. *Ibid.*

116. As to the salient features of the Indian Constitution, as explained by Dr. B. R. Ambedkar in the Constituent Assembly, *see* Constituent Assembly Debates, Vol. VII, pages 31-44.

*Amendment VI.*—The Constitution (Sixth Amendment) Act, 1956, was passed on 11 September, 1956, for the amendment of the Seventh Schedule to the Constitution; and for the amendment of articles 269 and 286 of the Constitution.

*Amendment VII.*—The Constitution (Seventh Amendment) Act, 1956, was passed on 19 October, 1956, with effect from 1 November, 1956, for the amendment of article 1 and the First Schedule to the Constitution; the amendment of article 80 and the Fourth Schedule; the insertion of new articles for articles 81 and 82; the amendment of articles 131, 153, 158, 168; the substitution of new article for article 170; the amendment of articles 171, 216 and 217; the substitution of new article for article 220; the amendment of article 222; the substitution of new articles for articles 224, 230, 231 and 232 respectively; the amendment of Part VIII of the Constitution; the insertion of new articles 258A and 290A; the substitution of new article for article 298; the insertion of new articles 350A and 350B; the substitution of new article for article 371; the insertion of new articles 372A and 378A respectively; the amendment of the Second Schedule to the Constitution; the modification of entries in the Lists relating to acquisition and requisitioning of property; the amendment of certain provisions relating to ancient and historical monuments, etc., the amendment of entry 24 of State List; the consequential and minor amendments and repeals and savings.

*Amendment VIII.*—The Constitution (Eighth Amendment) Act, 1959, was passed on 5 January, 1960, for the amendment of article 334 of the Constitution.

*Amendment IX.*—The Constitution (Ninth Amendment) Act, 1960, was passed on 28 December, 1960, further to amend the Constitution of India to give effect to the transfer of certain territories to Pakistan in pursuance of the agreements entered into between the Government of India and Pakistan. As to the areas that were to be transferred under this amendment, see the First and Second Schedules to the Constitution (Ninth Amendment) Act, 1960.

*Amendment X.*—The Constitution (Tenth Amendment) Act, 1961, was passed on 16 August, 1961, with retrospective effect from 11 August, 1961, for the amendment of the First Schedule to the Constitution and for the amendment of article 240 thereof. Dadra and Nagar Haveli were made part of the Union Territories under the First Schedule to the Constitution. See also the Dadra and Nagar Haveli Act, 1961,

which was passed on 2 September, 1961, with retrospective effect from 11 August, 1961.

*Amendment XI.*—The Constitution (Eleventh Amendment)Act, 1961, was passed on 19 December, 1961, for the amendment of articles 66 and 71 of the Constitution respectively.

*Amendment XII.*—The Constitution (Twelfth Amendment) Act, 1962, was passed on 27 March, 1962, with retrospective effect from 20 December, 1961, for the amendment of the First Schedule to the Constitution. This Act made Goa, Daman and Diu part of the Union Territories under the First Schedule to the Constitution. See also the Goa, Daman and Diu (Administration) Act, 1962, which was passed on 27 March, 1962, with retrospective effect from 5 March, 1962.

*Amendment XIII.*—The Constitution (Thirteenth Amendment) Act, 1962, was passed on 28 December, 1962, for the amendment of Part XXI of the Constitution and to make special provision with respect to the State of Nagaland.

*Amendment XIV.*—The Constitution (Fourteenth Amendment) Act, 1962, was passed on 28 December, 1962, for the amendment of article 81 ; the amendment of the First Schedule to the Constitution ; the insertion of New article 239A ; the creation of local legislatures or Council of Ministers or both for certain Union Territories; the amendment of article 240 ; and the amendment of the Fourth Schedule to the Constitution. Section 3 and clause (a) of Section 5 of the Act came into force retrospectively on the 16th day of August, 1962.

**Jammu and Kashmir and the Constitution of India**

Article 370 of the Constitution embodies the temporary provisions with respect to the State of Jammu and Kashmir. In exercise of the powers conferred by this article, the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir declared that, as from the 17th day of November, 1952, the said article 370 shall be operative with some modification in the *Explanation* in clause (1) thereof. For the modified Explanation *see* Ministry of Law Order No. C.O. 44, dated the 15th November, 1952. As to the application of the articles of the Constitution to the State of Jammu and Kashmir *see* also the Constitution (Application to Jammu and Kashmir) Order, 1954, published with the Ministry of Law Order No. C.O. 48, dated the 14th May, 1954, Gazette of India, Extraordinary, Part II, Section 3, page 821. This Constitution (Application

to Jammu and Kashmir) Order, 1954, has been modified by the Constitution (Application to Jammu and Kashmir) Amendment Order 1, 1958 (C. O. 55), the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1958 (C.O. 56), the Constitution (Application to Jammu and Kashmir) Amendment Order, 1959 (C.O. 57), the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1959 (C.O. 59), the Constitution (Application to Jammu and Kashmir) Amendment Order, 1960 (C.O. 60), the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1960 (C.O. 61).

*See* also the Jammu and Kashmir (Extension of Laws) Act, 1956, which was passed on 25 September, 1956, to provide for the extension of certain laws to the State of Jammu and Kashmir.

**Some recent Acts**

*The Andhra State Act, 1953* (*Central Act 30 of 1953*).—This Act was passed on 14 September, 1953, to provide for the formation of the State of Andhra, later known as the State of Andhra Pradesh, the increasing of the area of the State of Mysore and the diminishing of the area of the State of Madras, and for matters connected therewith. Some Sections of the Act came into force on 14 September, 1953, and the others on 1 October, 1953.

*The Himachal Pradesh and Bilaspur* (*New State*) *Act, 1954*.—This Act was passed on 28 May, 1954, providing for the formation of the new State of Himachal Pradesh by uniting the then existing States of Himachal Pradesh and Bilaspur, and for matters connected therewith. This Act came into force on 1 July, 1954.

*The Chandernagore* (*Merger*) *Act, 1954*.—This Act provided for the merger of Chandernagore into the State of West Bengal and for matters connected therewith. The Act was passed on 29 September, 1954, and came into force on 2 October, 1954.

*The Citizenship Act, 1955*.—This Act was passed on 30 December, 1955, to provide for the acquisition and termination of Indian citizenship. See also the Citizenship (Amendment) Act, 1957, passed on 27 December, 1957.

*The Bihar and West Bengal* (*Transfer of Territories*) *Act, 1956*.—This Act was passed on 1 September, 1956, to provide for the transfer of certain territories from Bihar to West Bengal and for matters connected

therewith. The transfer of territories took effect from 1 November, 1956.

*The States Reorganisation Act, 1956.*—This was an Act passed on 31 August, 1956, to provide for the reorganisation of the States of India and for matters connected therewith. The territorial changes and formation of new States took effect from 1 November, 1956. See also the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959, and the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.

*The Territorial Councils Act, 1956.*—This Act was passed on 30 December, 1956, with effect from 1 January, 1957, to provide for the establishment of Territorial Councils in the Union Territories of Himachal Pradesh, Manipur and Tripura.

*The Naga Hills - Tuensang Area Act, 1957.*—This Act was passed on 29 November, 1957, to provide for the formation of the Naga Hills—Tuensang Area of Assam as an administrative unit within the State of Assam.

*The Legislative Councils Act, 1957.*—This Act was passed on 18 September, 1957, to provide for the creation of a Legislative Council for the State of Andhra Pradesh and increasing of the Legislative Councils of the States having such Councils and for matters connected therewith.

*The Geneva Conventions Act, 1960.*—This Act was passed on 12 March, 1960, to give effect to certain international Conventions done at Geneva on the twelfth day of August, 1949, to which India is a party, and for purposes connected therewith.

*The Bombay Reorganisation Act, 1960.*—This Act was passed on 25 April, 1960, with effect from 1 May, 1960, to provide for the reorganisation of the State of Bombay and for matters connected therewith. The State of Bombay was bifurcated into two new States, namely, the State of Gujarat and the State of Maharashtra, with effect from 1 May, 1960.

*The International Development Association (Status, Immunities and Privileges) Act, 1960.*—This Act was passed on 9 September, 1960, to implement the international agreement for the establishment and operation of the International Development Association in so far as it relates to the status, immunities and privileges of that Association, and for matters connected therewith.

*The British Statutes (Application to India) Repeal Act, 1960.*—This Act was passed on 26 December, 1960, to repeal certain British Statutes in their application to India. For the statutes repealed *see* the Schedule to the Act.

*The Acquired Territories (Merger) Act, 1960.*—This Act was passed on 28 December, 1960, to provide for the merger into the States of Assam, Punjab and West Bengal of certain territories acquired in pursuance of the agreements entered into between the Governments of India and Pakistan and for matters connected therewith.

*The Dadra and Nagar Haveli Act, 1961.*—This was passed on 2 September, 1961, to make provision for the representation of the Union Territory of Dadra and Nagar Haveli in Parliament and for the administration of that Union Territory and for matters connected therewith. The Act came into force retrospectively on the 11th day of August, 1961.

*The Goa, Daman and Diu (Administration) Act, 1962.*—This Act was passed on 27 March, 1962, with retrospective effect from 5 March, 1962, to provide for the administration of the Union Territory of Goa, Daman and Diu and for matters connected therewith. *See* also the Constitution (Twelfth Amendment) Act, 1962.

*The State of Nagaland Act, 1962.*—This Act was passed on 4 September, 1962, for the formation of the State of Nagaland and for matters connected therewith. *See* also the Constitution (Thirteenth Amendment) Act, 1962, and the Naga Hills—Tuensang Area Act, 1957.

*The Extradition Act, 1962.*—This Act was passed on 15 September, 1962, to consolidate and amend the law relating to the extradition of fugitive criminals.

*The Pondicherry (Administration) Act, 1962.*—This Act was passed on 5 December, 1962, with effect from 16 August, 1962, to provide for the administration of Pondicherry and for matters connected therewith. 'Pondicherry' in the context means the Union Territory comprising the territories of the former French Establishments in India known as Pondicherry, Karaikal, Mahe and Yanam. The treaty concluded between France and India on 28 May, 1956, established the cession of these French Establishments by France to India in full sovereignty.