HISTORY OF COURTS AND LEGISLATURES

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Introductory

A legal system is the meeting point of the past and the future of its locale. The past explains it, and it foretells the future. A slight variation, however, in the case of the Indian legal system is that its past is limited, stretching up to a particular milestone only. Accidents and incidents of history have been such that its present legal mechanics has virtually no link with the Hindu and the Muslim periods to which its source may be traced. Hindu law and its jurisprudence got stiffed and had waned, giving way to Islamic law, except in certain pockets, since the Muslim conquest of the country. The ruin of the Moghul empire, in turn, was completed with escalated speed after the death of Aurangazeb in 1707. In this state of political confusion and instability in the last days of the Moghul rule, law could hardly thrive and legal machinery survive the utter chaos and lawlessness which followed.

A little before this, the English traders had emerged on the scene as the most effective of the European who came to India in quest of trade or conquest. Wherever the Englishmen settled, except in Bombay, it was with specific permission from the local government. Their early settlements were in Surat (1612), Bombay (1668), Madras (1639) and Calcutta (1690). Normally the English should have been subjected to the authority of the local government and its law. But since the first settlement in Surat, the English somehow managed to get permission to be governed by their own laws in disputes amongst themselves. Many theories are advanced by historians to explain this concession, each failing to carry conviction. The only plausible explanation coule be that the local authorities failed to realize the implications and the gravity of the permission, at that time. However, this created a situation in which the initiation of measure for finding, applying and executing English law on the Indian soil became imminent. Further, since on the eve of the Mughal rule the central authority in Delhi was not sufficiently effective and the provincial Moghul deputies or other independent native rulers crucially suffered from lack of imagination, sense

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of responsibility, sheer indifference or acute inertia, it became easy for the English to fill in the nebulous state of administrative void. Their settlements soon assumed the character of floating English territories in the Indian subcontinent.

Without special effort or will or much hope, the English East India Company also found itself confronted with the task of administering the local population too. The port and island of Bombay was ceded with full sovereign rights to the British Crown in 1661 by the King of Portugal. It, therefore, became the personal responsibility of the English to administer the island. In Madras, the grant made by the local Hindu raja empowered the company to build a fort and factory and expected it to organize the governance and administration of the village Madraspatnam, on payment of half the customs and revenue to the raja. In Bengal, the Company purchased the zamindari (landlordship) of three villages around the area now known as Calcutta, and this implied the exercise of administrative and judicial authority over them. This became the starting point for the Company to combine political ambitions with its initial object of pure trade. The ambition got an impetus owing to the Company's military superiority, the rot in the Mughal power and the local conflicts amongst the lieutenants of the Moghul king.

The Company expanded its zamindari and in the confused state of affairs got the opportunity to be appointed as *diwan* of Bengal, Bihar and Orissa in 1765, by Shah Alam, the helpless Moghul ruler in Delhi. As *diwan*, the Company was to be the deputy of the Moghul ruler, responsible for collection of revenue and customs and for administration of justice in civil and revenue matters in return for a payment of a sum of twenty six lakhs of rupees. The criminal justice remained with the puppet nawab, another deputy of the king. Since the assumption of *diwani* in Bengal, this Presidency acted as the laboratory for the other settlements. Solutions to difficult problems were worked out in Bengal, a policy formulated, and then transferred to Madras and Bombay. Prior to that, each settlement was organized separately and individually according to the genius of its governor and the requirements of the area. It is to be noted that till 1857 when India was formally subjugated by the British, the *de jure* status of the English in the country remained that of an ordinary foreign merchant at the pleasure of the Indian authority. Of course, the *de facto* position was quire otherwise.

This period, particularly till late eighteenth century, was marked by military struggle and civil disorder, with sporadic efforts to organize matters. The East India Company started as a trading concern: its charters, issued by the Crown, did not provide for any authority resembling functions of a proper or even a semi-proper government. Absence (or abeyance) of a proper and smoothly operating indigenous legal order made matters worse. Consequently, the Company very often had to find, interpret, at times even

improvise law, and institute appropriate applicatory and executory agencies. It functioned most haphazardly when faced with the task of administration.

The history of the courts and the legislature during this period is intermixed with the history of the executive. The executive was the Governor and his Council appointed by the Company in each settlement. These were Englishmen who, though not legal specialist or even lawyers by profession, were generally acquainted with their own legal system. Their attempts at formulating a process of law and order were bound to be oriented and directed by the only law they were familiar with.[1] This is the turning point in the history of Indian law when a break with the indigenous system began. The process was familiar and stepped up into full gear after the Indian mutiny was quelled and the country declared a British possession. A legal pattern thus emerged in India which is more British than Indian. At best it may be termed Anglo-Indian or Indo-Anglian. This as a legacy was left by the British when they departed in 1947. The Hindu shastric and the Muslim quranic laws and jurisprudence have a feelble eco in it in the lone pocket of family law. No effort was made after independence to ignore the reality and attempt compulsive Indianisation of the system. As a consequence, the original Indian law is much more alien to Indians today than the imported alien forms of the English common law system. It is, therefore, futile to go beyond the seventeenth century for any appreciation or understanding of the existing Indian legal institutions or concepts. Again, here also, the relevant source material is to be searched not in the then tottering indigenous system but in the British attempts at improvisation.

THE JUDICIARY

Informal, rough and ready justice (1600-1726)

Soon after their arrival the English realized the need and strategic relevance of organizing a working judicial system in the areas under their supervision. Without much delay some sort of dispute- deciding machinery was begun in the presidency towns of Bombay, Madras and Calcutta.

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1. There was, however, no deliberate intention to force English law upon India. All innovations were to fill gaps, not to supplant what existed and functioned. But the 'indegenous' was in need of much repair. Legal institutions were decrepit bodies, normally not in action. Native law sprawling over two sets of religious text (*dharamsastra* and *Quran*), innumerable and conflicting interpretations, and punctuations of custom, was not easily ascertainable. Not motivated by a zeal for reform, but as administrators requiring guidance, the English were compelled to formulate something workable. Both legislation and judicial opinions were used to meet the situation. Legal institutions, techniques and prescriptions that followed were strongly influenced by English law. It was English legal mechanics toned down to suit local climate and purpose.

The East India Company as a trading concern was not furnished with any judicial powers other than those required for maintaining discipline over its men. As an alien body it could hardly possess judicial authority over the local population. But owing to the unsteady political and administrative situation in the country, the Company found it difficult to carry on its business properly without permission to settle disputes amongst its own members and people around it. Upon request from the Company in 1661, the British Crown authorized the Governor and Council in each factory to judge all persons, whether belonging to the Company or living under them, in both civil and criminal matters. The Charter of Charles II in 1661 can be treated as the first provision enabling the Company to exercise judicial powers on the Indian soil. This was a great leap from the initial Charter of 1600 whereunder the Company had neither the right to decide important issues like murder, nor had any authority to decide matters not related to the members of the Company. Since the inception of the factory at Surat, wherever the English settled on the Indian soil, they managed to be allowed to be adjudged according to English law by their own people. Still, this did not explain the legal validity of the 1661 Charter as regards judicial administration over persons other than Englishmen residing in the Company's settlements.

In pursuance of the 1661 Charter each presidency town formulated separate and independent judicial system depending upon the genius and imagination of the local Governor and Council. Scanty records available of the period show that the Governor and Council functioned as a court for all civil, criminal and other matters. Not too sure for their judicial authority, deficient in legal training and more interested in business than judicial administration, they generally hesitated in deciding serious cases like murder, preferring to refer such matters to the Company authorities in England. An attempt was made in each presidency to have subordinate judicial units also, which mostly meant mere continuance or slight modification in the indigenous system. At times it meant innovation too. Decisions from these subordinate judicial units were always appelable in the court of the Governor and Council.

But the Governor and Council acutely felt the need of trained legal expertise and positive judicial authority to manage the task of handing down decisions. One major problem was to tackle the 'interlopers' interfering unauthorizedly with the trade monopoly of the Company. Upon request, the Crown authorized the Company in 1683 to establish an Admiralty court in all proper places to try all cases of trespass, injuries and wrong, done or committed on the high seas, or within the charter limits cases of forfeitures and seizures of ships of goods which came for trade within the Company's monopoly area. The composition of the court was to be a person learned in civil law and two merchants appointed by the Company. Admiralty Court

when established in Madras functioned well for a while, and it actually carried on all judicial work including civil and criminal cases, though by virtue of its charter it was to be exclusively a maritime and Admiralty Court. The situation changed soon as the Company directors at home were in no mood to foot the bill for a legal expert to preside over the court. One of the councilors who had no legal training was thereafter expected to preside over the Admiralty Court. Events in Bombay so conspired that there too the Admiralty Court was initially entrusted with all judicial work. But soon it became the object of jealousy of the Council which could not tolerate any person or institution as superior to itself in any matter whatsoever. It reduced the Admiralty Court to the minimum in its independence, jurisdiction and authority. Calcutta never got an Admiralty Court. Thus, the judicial power again got concentrated in the executive, *i.e.*, the Governor and Council.

During this period, that is, up to 1726, Madras saw the continuation of the indigenous judicial system and a few innovations. Bombay went through successive judicial plans, none too effective.

In Calcutta, besides the court of the Governor and Council, there was the collector's court with one of the councilors appointed as the collector. He dispensed justice in all matters civil, criminal and revenue pertaining to the Indians residing in the settlement. Pronouncement of a death sentence by it had to be confirmed by the Governor and Council, and appeals from it also lay to the latter. Collector's court existed by virtue of the Company being a zamindar. The other zamindars, however, sent their appeals to the Moghul courts at Murshidabad and sought confirmation of the death sentence from the nawab, the deputy of the emperor in Delhi. It was a momentous but illegal deviation from the settled practice of the collector to look up to the Governor and Council for final order instead of seeking the approval of the Indian authority.

The period is marked for its unmethodical and raw administration of justice. It neither had a systematic pattern of courts nor a well-defined and definite law or procedure. The Company authorities were essentially traders without any legal training, considering judicial work as subservient to their administrative authority and ambition. Whatever existed in the name of courts imparted justice in a rough and ready manner according to common sense and invariably depending upon the importance of the litigants and nationality of the party. As a rule the courts were manned by senior members of the Company. There are instances when persons other than Englishmen were also associated with the judicial work. Records show that these 'others' did not mean much as for all practical purposes their status was that of inferior 'black justice'.

Authoritative and uniform judicial pattern (1726-1773)

After a century since its inception, dimensions and needs of the Company changed considerably. Its flourishing trade increased business transactions and added to the population in each settlement. The disorganized and informal mode of administering justice was no more suitable.

But it took about two decades for the Company's Controlling Board in London to realize the unsatisfactory arrangement and quality of justice. On petition presented by the Company, George I granted the Charter of 1726. It purported to meet the want of a proper and competent authority for the more speedy, effectual, and appropriate administration of justice. Thereupon the existing courts whatever they might have been, were superseded, and in the year 1726 the Crown by letters patent created a corporation in the three settlements—Madras, Bombay and Fort William (Calcutta)- and established a Mayor's Court at each. Its composition was to be mayor and nine alderman, seven of whom with the Mayor were required to be natural born British subjects. They were removable on proof of sufficient cause by the Governor and Council. The court could hear and decide all civil causes arising within the Presidency town and in its subordinate factories. First appeals from it lay to the Governor and Council and second appeals to the King-in-Council. To safeguard the interest of the heirs of Englishmen dying intestate in India, the court was empowered with testamentary jurisdiction also. The court was to administer justice according to 'justice and right'. 'Justice and right' in the then existing context was taken to mean English law. For criminal jurisdiction in each presidency town, the Governor and five senior councilors were to act individually as Justices of the Peace, and to enjoy the same powers as the Justices of the Peace of England at that time. A Justice of the Peace was more of a committing magistrate than a trial judge. Three Justices of the Peace together were to form a Court of oyer and terminer and gaol delivery. It had authority to punish every criminal wrong except high treason. Trial was to be conducted with the help of grand and petty jury. This initiated English criminal law and procedure on the Indian soil.

The Charter of 1726 is referred to as the first judicial charter in the sense that in spite of its inherent limitations it initiated uniformity and authenticity in the judicial administration. It was the first time when courts started drawing authority from the Crown instead of from a mere trading company, implying formalization of judicial authority. Each presidency got similar judicial pattern terminating the period of individual diverse judicial experimentation. In initiating a system of appeals from India to the Privy Council of England it laid a very important milestone in the history of Indian courts. The Privy Council remained the last court of appeal for India for more than two hundred years. The effective contribution of the Privy

Council in developing Indian Law and establishing sound precedent for Indian judiciary is unparalleled.

But the plan of 1726 did not prove to be any imminent success. In the prevailing circumstances, persons manning the court were connected with the Company, and in one way or the other, under the influence of the Governor and Council. The latter also had the power to order their removal. The Governor and Council was also given complete control over administration of criminal justice. There was no provision for judges to be legally trained. It implied repetition of the old evil, namely, an executive-ridden judiciary, possessing little legal attainments and biased in favour of the interests of the Company.

Further, the charter made no provision for the natives. Justice administered by the Mayor's Court was in accordance with English law which was, more often than not, contrary to the legal and social tradition of the natives, causing them immense hardship and dissatisfaction. It resulted in resentment against the court. In no mood to enter into local troubles, the Crown formally exempted them in 1753 from the court's jurisdiction unless both the parties agreed to come to it. But the non-availability of any other court in the presidency areas made the exemption meaningless.

The territorial jurisdiction both of the civil and criminal courts under the charter was restricted to the limits of the respective presidency towns. In the case of Bengal at least Englishmen had spread into the interior also. They fell beyond the jurisdiction of the Mayor's Court in Calcutta. With the weakening of the nawab's authority, they declared themselves immune from local tribunals also. Immune from any judicial control they were free to indulge in all sorts of wrongful conduct without fear.

Justice in the interior (mofussil)

With the passage of time political ambitions of the Company gained momentum and large areas beyond the limits of the presidency towns were brought under its control. These, referred to as the 'mofussil', were distinct from the 'presidency areas' for purposes of administration. The 'mofussil' was completely under the Company's jurisdiction with no relation with the Crown. Judicial organization provided by the Company in the 'mofussil' was called the *adalat* system, whose initial milestone were laid in Bengal. Defeating the Muslim Governor at Plassey in 1757, formally receiving from the Mughal emperor the status of *diwan* in 1765, and extracting the essence of the office of nawab by a private arrangement with him, made the Company the virtual authority in Bengal. These developments were a fact without any blessing or recognition from England. The Company now held the reins of the entire administration of Bengal, Bihar and Orissa, including collection of revenue and the administration of civil and criminal justice.

The civil administration of justice was, by and large, left under the immediate management of the two native *diwans*, the Company considering it not prudent to entrust it immediately to Europeans unfamiliar with the local law and society. An exception was made in the case of districts close to Calcutta where English covenanted servants were appointed for the task.

Similarly, the administration of criminal justice was left in the hands of the native authorities. It meant continuation of the local decrepit zamindar's courts, with the additional confusion of having two masters-the Company and the Moghul authority almost breathing its last.

Separation of judicial and executive powers (1773 onwards)

In the absence of any steady and appropriate judicial order, Company rule in Bengal became a terror. The tales of cruelty and oppression committed by the Company servants got confirmed by the show of unusual wealth of its personnel returning home. English public opinion was roused, and upon the insistence of parliamentarians like Burke, the British government decided to interfere. It was specially concerned about the administration of justice. Parliament passed the Regulating Act in 1773 to regulate matters in Bengal.

Beside other provisions, it provided for the establishment of a Supreme Court replacing the Mayor's Court. The attempt was to separate the judicial entirely from the executive limb and to place it under the direct authority of the King instead of the Company. The court was consist of a Chief Justice and two or three puisne judges who were to be trained English lawyers, directly appointed by the Crown. Its jurisdictional powers were to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction, and to establish rules of practice and process, and do all things necessary for the administration of justice. In criminal matters it was to act as the court of oyer and terminer and goal delivery as in England, for the town of Calcutta, the factory of Fort William and other factories subordinate to it. It was also to act as court of equity like the Court of Chancery in England. Appeals from it, both in civil and criminal matters, lay to the Privy Council. Territorially its jurisdiction did not include the entire population of the province. It covered the presidency town and extended over British subjects and His Majesty's subjects residing anywhere in the province, persons, directly or indirectly, in the employment of the company or any of His Majesty's subjects, any resident of the province agreeing to be subject to the court in a contract with the other party if the latter was one of His Majesty's subjects.

It was a decided improvement upon the Mayor's Court. However, certain ambiguities in the charter created difficulties. Many expressions and situations were left undefined in the charter, *e.g.*, 'His Majesty's subjects' 'British subjects', 'in the employment of the Company', Company's status and actions as *diwan*, the executive-judicial relationship, and the relationship

between the Supreme Court and the Company's courts. To cap it all, the law to be applied by the court was not stated. A tornado of anger and resentment gathered against the court. The executive disliked the court's interference in its administrative actions. Company personnel could not tolerate court's sanction and scrutiny over their *diwani* pursuits which they thought to be a relationship exclusively between them and the Moghul authority. Indians were none too pleased and dreaded the court's alien laws and procedure. Its worst feature was illustrated in the famous trial of *Nandkumar* who was awarded death sentence for forgery in accordance with English law. Penal sanction for forgery in Indian law was much simpler.

The Regulating Act was well-intentioned but ill-planned and rashly and ignorantly executed. Attempt was to initiate the concept of justiciability of executive action. Undoubtedly a bold step, but it was politically motivated to check the unbridled might and affluence of the Company in Bengal. It was, however, ill-timed since excessive judicial scrutiny hindered the Company in establishing effective administration in its early phases, particularly the collection of revenue. Unwittingly it established two independent rival powers - the Council and the Supreme Court, with utterly undefined boundaries between the two. The conflict raged for seven years till parliament intervened by passing the amending Act of 1781. It expressly exempted the executive in its official capacity from the jurisdiction of the court. It was a retrograde step but obligedly taken owing to practical reasons. Further, the *adalat* courts, matter of revenue collection, farmers and other land holders, and persons in the employment of the Company or of any British subject were also made immune from the jurisdiction of the Supreme Court. To remove the inconvenience of native residents of the city of Calcutta who were still within the jurisdiction of the court, the act of 1781 provided that their personal laws may be applied to them and in case the two parties belonged to different legal systems, law of the defendant was to prevail. The most noteworthy provision in the 1781 Act was to allow an appeal to His Majesty from the *Sardar Diwani Adalat*, the highest civil court on the *adalat* side. It meant positive recognition of the *adalat* system (judicial authority of the Company as *diwan*) as independent of and equal to the Supreme Court. It fully perpetuated two distinct judicial orders - one for the presidency town and the other for the mofussil. The scene in Madras and Bombay was generally the same as in Calcutta.

Adalat system improves

The *adalat* system of the Company started with haphazard attempts to solve disputes, gradually assumed method and appropriate judicial character.

To restore order in Bengal, Hastings had determinedly started organizing courts in the mofussil. Each district was given a *mofussil diwani* (civil) and a *mofussil foujdari* (criminal) court. The collector of the district,

invariably an Englishman and administrative and executive officer for the area, presided over the former and supervised the latter which had Muslim officers. Appeals from mofussil diwani adalat lay to the *Sardar Diwani Adalat* composed of the Governor and Council. Appeals from the *mofussil foujdari adalat* lay to the *Sardar Foujdari Adalat* manned by Muslim judges but supervised by the Governor and Council. A few small causes courts were also set up for quick disposal for petty cases.

Cornwallis arriving on the scene resented the policy of over concentration of authority in the collector. By the eve of the eighteenth century, the collector was stripped of all judicial powers and was confined to revenue collection and administrative duties. Cornwallis also introduced two additional judicial rungs, namely, one, the Provincial Court of Appeal immediately below the *Sardar Diwani Adalat;* and two, the *Munsiff's* courts below the *Mofussil Diwani Adalat*. Integration of civil and criminal courts was attempted. The higher judiciary was completely separated from the executive. The *Sadar Diwani Adalat* and *Sadar Foujdari Adalat* were separated from the Council and exclusively entrusted with judicial work at the beginning of the nineteenth century.

This tempo, however, did not last long. Excessive pressure of work on judicial bodies added with practical considerations of strengthening the hands of the English executive officers, resulted in reinvesting the executive with judicial powers in revenue and criminal matters. In 1829 commissioners, the administrative officers above the district level, were invested with criminal judicial authority, and in 1832 collectors were allowed to try revenue cases. Magisterial powers at the district level and below were transferred to the collector and his assistants a little later. The achievement of Cornwallis was thus somewhat undone in the interest of administrative convenience and for ease in revenue collection, the primary interest of the English.

By mid-nineteenth century a regular hierarchy of courts, separation of the judiciary from the executive at least in civil matters, classification of civil, revenue and criminal jurisdictions, and sound procedural practice had evolved. The law applied in these tribunals was native personal law tempered with equity and retouched by Regulations formulated in each province. Initially natives were only associated as legal advisers for expounding native law. In course of time they were appointed judges at the lower rungs of the *adalat* ladder. *Munsiff* or *amin* for civil, and collector magistrate for the revenue and criminal matters, stood at the base, then came the district courts, and finally the Sadar Diwani and the Sadar Nizamat respectively for civil and criminal work. The Sadar Adalats were primarily appellate bodies.

A policy of racial discrimination initially exempted the British totally from the jurisdiction of the *adalat* courts. Later the exemption was curtailed

and extended only to the very subordinate *adalat* courts with the reservation that in case of appeal a Britisher should move the Supreme Court instead of the *Sadar Diwani* or *Sadar Foujdari Adalat*. With a few procedural reservations in criminal cases, for all practical purposes the exemption was ended by 1850 in all presidencies.

Judicial duality ends

Queen Victoria's declaration making India a British dependency in 1858 meant absolute control and responsibility of England for administering India. Sense of responsibility and obvious futility, even incongruity, in running two parallel judicial systems in India led to the amalgamation of the Crown courts with the Company courts. It materialized in 1861 by the passing of the Indian High Courts Act. The Act abolished the Supreme Courts and the *Sadar Adalats* and established a High Court of Judicature in each presidency. The High Court was Her Majesty's court superceding and inheriting the jurisdictions of the courts abolished. It was to regulate and supervise procedure and practice of all subordinate courts. Provision for establishing more High Courts was made in the Act. In course of time a High Court was established practically in each province. The creation of High Courts was a momentous progressive step in developing a unified system of law and administration of justice in the country. In the presidency High Courts, however, the fusion appeared more of two courts than of laws. For quite some time these High Courts continued to follow two sets of law, one inherited from the Supreme Court and the other from the *adalats*. The two sets of law were applied not because of the nationality of the litigant but because of territorial differences, that is, whether he was from the town of Calcutta or from outside.

Progressive legislation gradually establishing in course of time a body of Anglo-Indian law applicable by the High Court ended the duality, finalizing the initially contemplated fusion. Other High Courts which were created later enjoyed the same powers, jurisdiction and authority as the presidency High Courts, except that generally the former did not enjoy jurisdiction over insolvency matters, admiralty and ordinary original civil jurisdiction (that is, the old Supreme Court's jurisdictional powers and authority as inherited by the presidency High Courts). High Courts in each province acted as the highest court of appeal. Appeals from them went to the Privy Council.

Federal polity initiates a federal court

Under the Government of India Act 1935, the attempt to initiate a federal policy in India necessitated the creation of a federal court. To interpret provision of the Act objectively and determine disputed issues arising between the federation and the units or the units *inter se*, a Federal Court

was established in 1937. As an appellate body it could hear appeals from the High Courts on a certificate that the issue involved a substantial question of law as to the interpretation of the 1935 Act. In its advisory jurisdiction it could render advice to the Governor General on any legal matter of public importance. The Federal Court actually left the domain and authority of the High Courts untouched. Barring a limited sphere, appeals from the High Courts also continued to go to the Privy Council as before. Decisions of the Federal Court were also appealable in the Privy Council.

Independence and the establishment of the Supreme Court of India

Since India became a republic after independence the Supreme Court of India has been established as the highest court in the country. It has replaced the combined jurisdiction and authority of its predecessors, the Federal Court and the Privy Council. The last link with the Privy Council was severed in 1949 in anticipation of India attaining the status of a full republic in 1950. The Supreme Court has a wide appellate jurisdiction in constitutional, civil, criminal and other matters. In the normal course a decision of the high court is only appealable when the High Court certifies that the cases satisfy the conditions prescribed for appeal in the Constitution. But the court enjoys further overriding discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter made by any court or tribunal in the country. This is to cover all instances of gross miscarriage of justice anywhere in any form. It strengthens the authority and ability of the highest court in the country to rectify all deviations from norms of sound administration of justice. On the original side it repeats the role of the Federal Court to decide disputes between the centre and the states or amongst the states. Its original jurisdiction also further encompasses the important sphere of fundamental rights as enshrined in the Constitution. The enforcement of these rights can itself be claimed as a fundamental right, through writs issuable by the Supreme Court. Its advisory role is to give opinion on any important issue referred to it by the President of India. The Constitution has ensured the independence of the Supreme Court in many ways. Law declared by the Supreme Court is constitutionally binding on all the courts in India. The court itself is, however, free to change its views by overruling its earlier decision.

The lower judicial structure

The remaining judicial structure is materially the same as left by the British. It is a correlated hierarchy resulting in a pyramid with the Supreme Court at the apex. The immediate successive rung is of the High Courts, one of each state. This is the highest state forum of appeal and revision for both civil and criminal matters; it is also invested with writ jurisdiction.

Next appear several lower judicial units organized by each state in its territory. This individual arrangement, far from being diverse, is by and large similar to character. Before independence certain pockets, like the areas under the control of native princes had different and individual patterns of courts for administering justice. Now they are part of the Indian republic and their judicial scheme is the same as of any other state in the country.

For administration of civil justice each state is divided into several districts. Every district has a District Court as the principal civil court of original jurisdiction. It is a court of appeal and has power of supervision over the courts below. Under it there are arranged a number of lower courts whose details vary from state to state. But the lowest unit is invariably the rural *panchayat* court. It is an elected body with extremely limited civil and criminal jurisdiction, and free from procedural technicalities. It helps to bring justice speedily to one's door in the village. *Panchayat* courts are an ancient tradition in the country. In criminal matters subordinate courts are organized under the provision of the Code of Criminal Procedure, 1973 applicable to the entire country. Taken in an ascending order the system starts with the village *panchayat*, then come the first, second and third class magistrates' courts, and finally the Sessions Court which is usually the District (civil) Court mentioned above. Some honorary magistrates are also appointed to lighten the load of the regular magistrates. As the system is a composite whole, appeals lie from each lower unit to the court above it.

Separation of the judiciary from the executive in India gives ample opportunity to be objective, independent and be an effective instrument to check arbitrary action of both the states and the individual. Administration of criminal justice at the subordinate level still generally lacks complete separation of judicial authority from the executive. Magistrates as the executive officers apprehends as well as judge the accused. Combining the police and the deciding authority is anomalous and contrary to all principles of good administration of justice. The tradition of collector-judges is a legacy of the British. The district collector responsible for the administration represented the governmental authority in the old days. To furnish him with the power of punishing the offender was the most direct way of emphasizing his authority. The Constitution now provides for a complete separation of the judiciary and the executive, as one of the directive principles of state policy. In response some states have appointed judicial magistrates to try minor criminal cases, others have conferred similar powers upon *munsiffs* who are subordinate judicial officers on the civil side.

Indian judiciary has traveled a long way since the early days of the Company rule in the three presidencies. Its present shape is unrecognizably distinct from its early phase. But beneath the surface there is a strain of continuity. Further, even a superficial glance is sufficient to show its close resemblance to the English legal system. The rule of law, doctrine of binding

precedent and integrated judicial pattern are some, amongst many, English influences to be found in the Indian judicial fabric.

THE LEGISLATURE

Early days of the Company (1600-1726)

Legislative authority granted to the Company initially did not differ in form or character from the power of framing by-laws usually exercised by any municipal or commercial corporation. But it is the germ which later sprouted and assumed dimensions of a full-sized legislature. Such authority was intended to make rules for maintaining discipline among the Company servants and for preserving trade interests. As a trading concern settled in foreign territory it did not need expansive legislative power. But in the context of the Indian political scene in the seventeenth century, wider legislative authority was considered necessary. However, till 1726 not much change is evidenced. The limited rule-making power vested in the Company was exercisable by its General Court (managing body) sitting in England.

Beginnings of legislative authority on Indian soil (1726 onwards)

Expansion of trade and the creation of a corporation in each presidency in 1726 involved increased activity in making rules. As distant authority, unaware of the exact nature of problems and situations in the Indian settlements, appeared insufficient and incapable of meeting the task, it was considered prudent to locate the authority locally to feel the pulse from close quarters and formulate prescriptions accordingly. In 1726 the Crown empowered the Governor and Council of each presidency to make by-laws, rules and ordinances for the good government and regulation of the corporation and the residents of the settlement. Final written approval and confirmation by the Company in England was preserved as an essential condition. It thus established a subordinate power of legislation in India itself which was destined to supersede similar authority earlier vested in the Company. These legislative bodies, one in each presidency, independent of each other, were expected to make rules not contrary to 'reason' and 'English Law'.

Apprehensive of financial instability of the Company and certain of its gross mismanagement in Bengal, the British Parliament decided to mend matters through direct interference by passing the Regulating Act of 1773. It raised the status of the Governor of Calcutta to that of Governor-General. The Governor-General and Council, besides being the chief executive of the three presidencies, was also to be the legislative body for Calcutta and its subordinate factories. Matters were decided by majority vote, but a power of veto was vested in the Supreme Court created under the Act. Provision was

also made for publication of ordinances and regulations. A right of appeal to the King and Council against the propriety of these rules was provided for the King-in-Council had the power of repeal. It amounted to empowering the Governor-General and Council with legislative authority subject to judicial and Crown control. In 1781 authority was extended to include the *mofussil* area without the controlling veto of the Supreme Court.

In practice, however, the Governor-General found himself impotent before the majority in the council and the veto of the Supreme Court. To improve his position, power of veto to overrule the majority opinion in the council was transferred to the Governor-General himself in 1789. The Governor-General, thus fortified, appropriately passed most of the regulations in Bengal. Within a couple of decades the Governor and Council at Madras and Bombay were also empowered to make regulations for their presidencies. Madras and Bombay councils were independent of Calcutta in their legislative functions. But a copy of all the regulations made in the two presidencies had to be sent to Calcutta for approval without further scrutiny. It meant decentralized legislative authority located at three places.

Centralization of legislative authority

1813 saw public assertion by England of its sovereign authority over territories held by the Company in India. Stricter supervision and scrutiny from the British Parliament followed as a natural course.

In 1833 the embryonic all India legislature was created. Prior to it there was a network of laws differing from presidency to presidency and from the presidency town to the *mofussil* area. To get over these discrepancies, the Governor-General, newly designated the Governor-General of India in Council, was made the sole legislative authority. The forth member of the council was to be the law member who dealt exclusively with matters pertaining to legislation. The legislative authority of the Madras and Bombay councils was automatically withdrawn or superseded. The Governor-General and Council was to make laws for all persons relating to all matters,[2] applicable in all courts in the entire area in the possession of the Company. Laws thus made were called 'Acts' instead of regulations. British Parliament, however, expressly reserved the right to repeal Indian Acts. For purposes of effective scrutiny, Indian laws were to be laid before Parliament. It was a momentous step in Indian legislative history.

Authority, clarity and propriety were not associated with and recognized in the legislative power. It initiated growth of Indian law in a uniform manner, eventually ushering in an era of codification. Achievements of

2. Excepting a few specifically mentioned in the Act, *e.g.*, the provision of the 1833 Act itself, Mutiny Acts, prerogatives of the Crown, *etc.*

codification are the base and backbone of present Indian legal concepts and institutions.

Further separation of the legislature and decentralization (1853-1858)

Attempts begun in 1853 to locate the legislative authority separately were actually completed in 1853. The Act of 1853 provided for enlargement of the council while performing legislative functions. Six additional members as 'legislative members' were to be two judges of the Calcutta Supreme Court and four officials individually appointed by the provincial Governors of Madras, Bombay and Bengal and North-Western provinces (now Uttar Pradesh). No law could be promulgated until assented to by the Governor-General. These were decisive changes in more than one way. It certainly made the legislative limb recognizably distinct from the executive and somewhat representative of provincial interests. It also initiated the practice of transacting legislative business in public which was not done earlier. These progressive measures were, however, punctuated by the effective veto power allotted to the Governor-General who was primarily the chief executive.

Drastic changes in the legislature after 1858

After the mutiny of 1857 the Company was wound up and India came under the direct control of the Crown through the Secretary of State in England.

In 1861 the India Councils Act was passed which restored legislative powers to the councils in the presidencies and empowered the new provinces to establish provincial legislatures by adding legislative members to the provincial executive councils.

The Governor-General's council was expanded by not less than six and not more than twelve persons nominated by the Governor-General for two years; one half at least of them were not to hold any office. The Act did not make it imperative that these would be Indians, but an assurance was given in Parliament that Indians would be appointed. It is believed that the expansion was in response to the complaints received from the provinces that under the prevailing set-up, Bengal was disproportionately represented affecting the interest of other provinces adversely. Sanction of the Governor-General was made essential for introducing any measures affecting revenue or debt, religion, defense and foreign affairs. He had the right to assent, reserve or refuse assent to any measure passed. The Crown through the Secretary of State, however, had the ultimate power to disallowed a bill already assented to by the Governor-General, or assent to a *reserved bill.* The Governor-General, in addition, was empowered to issue personally ordinances effective for a period of six months.

Provincial legislative councils were made subordinate to the Governor-General as his assent was necessary for validating laws passed in these councils. The Governor-General also enjoyed the power to pass certain provincial laws otherwise than in a meeting of his legislative council.

The Governor-General thus headed and completely controlled the legislative authority in British India. It was also made clear that the legislature would be exclusively restricted to legislative drafting. Strict delimitation of the functions of the central and provincial legislatures meant that these were not deliberative bodies. They could not inquire into grievances, ask for information or question the conduct of the executive. Laws enacted by these legislatures were in reality orders of the government with an appearance of publicity and discussion. The entire scheme was politically motivated ensuring an unbridled executive power.

Principle of representation recognized (1892-1909)

Democratization of the composition of the legislative machinery was still a distant cry. But the discrimination against Indians for entering the services, undue restrictions upon the press and many other forms of injustice inflamed the mood of Indians. In 1885 the Indian National Congress was formed as a platform to ventilate and press their demands. It demanded, among other things, elected members in the legislature with a right to discuss the budget and ask questions.

As a response, the first concession was made through the Act of 1892. Supposedly it was to give further opportunity to the non-officials and natives to participate in the work of the government. It increased the number of 'additional' members in the central as well as in provincial councils. But the official majority was maintained. Four of the additional members at the centre were to be elected by the non-official members of the provincial legislatures, and some were to be nominated upon recommendation (which was decided by election) of municipalities, district boards, chambers of commerce and universities. The Act further authorized the discussion of the annual budget. Questioning of the executive, subject to careful limitations to avoid inconvenience to the government, was also allowed. These additional permissions were not materially important. But at least the principle of representation was recognized.

Indians remained unappeased. Presence of non-official Indians in the legislative bodies, emergence of Congress serving as a vocal organ and Liberals coming into power in England, helped a reconsideration of the situation. A plan of 1909 generally known as the Minto-Morley reforms came with a declared concern and sympathy for the Indian demands. It approved elected majority in the provincial legislatures, allowed some elective representation at the centre, but refused to abolish official majority

at the centre. The deliberative functions of the provincial councils were increased by permitting the moving of resolutions on the budget, and on any matter of public interest, except defense, foreign affairs and native states. Apparently assuming the character of 'grand inquests' they continued to be powerless, in the face of an irremovable executive not responsible to them. In the field of legislation too the official majority, the power of concurrent legislation of the central legislature and the continuance of the veto of the Governors and the Governor-General, left the situation practically unchanged.

The plan of 1909 was a masterpiece of political cunning to disarm the united unrest against the British in India. Landholders, Muslims, chambers of commerce and district corporations were declared to form electoral constituencies. It was planned wooing of the aristocracy and an important minority. The plan bore the intended results as these two sections, to protect their vested interests, constantly acted as a brake for any constitutional reform in future. The policy culminated in the partition of India in 1947 as demanded by Muslims.

Initiation of responsible executive (1917 onwards)

In spite of the split caused by the 1909 'communal award', political unrest in India did not cool down. Even the Muslim loyal to the government ensured by the 'communal award' stood momentarily shaken owing to British intervention in Persia and Turkey affecting Muslim power adversely in those areas.[3] Dissatisfaction no more remained confined to passive resistance advocated by Gandhi. It assumed revolutionary character in the Punjab and Bengal, threatening life of the British in India. The Congress under the leadership of extremists like Bal Gangadhar Tilak demanded 'Home Rule' in uncompromising terms. The contribution of Indian troops in winning the 1914-18 war was another ground to force their demand for a better deal. Circumstances thus combined to force the British Government to consider the Home-Rule demand. His Majesty's Government thereupon made a declaration in Parliament in 1917 that the future policy of the British Government was to grant responsible government to Indian people in stages.

Bicameral central legislature and limited responsible government in provinces (1919-1935)

As an immediate step, the Act of 1919 was passed initiating 'sort of responsible government' in the provinces. Provision was made for dual control in the provinces, popularly called 'dyarchy'. Matters of

3. The Anglo-Russian Treaty of 1907 contemplated carving out spheres of influence in Persia. British declared war against Turkey rejecting the claim of the Sultan of Turkey to be the Caliph.

administration were divided as central and provincial subjects. The latter were further bifurcated into 'transferred' and 'reserved' categories. 'Transferred subjects' were to be administered by the Governor with the aid of ministers responsible to the legislative council composed mainly of elected members. Responsible government was thus created in a limited area. The 'reserved' matters continued to be regulated by the Governor and his executive council, not responsible to the legislature.

At the centre, the legislature was made bicameral and elected majority was introduced in both the houses. Normal tenure for Legislative Assembly (the lower house) was set as three and for Council of States (the upper house) as five years. But the Governor-General could dissolve either house earlier or extend their tenure. No element of responsible government was introduced at the centre. The Governor-General-in-Council continued to be responsible as before to the British Parliament through the Secretary of State.

The scheme was neither federal in character nor representative and democratic in essence. Devolution of power to the province was by way of delegation from the centre, the latter thus retaining the competence to legislate on any matter throughout the country. Overriding powers of the Governor-General and the Governor in the legislative field counteracted all innovations for an authoritative legislature.

At the centre Governor-General's prior sanction was necessary for introducing a bill relating to defense, foreign relations, public debts and native states. He could return a passed bill to the legislature for reconsideration, or reserve it for the consideration of the Crown or veto it. A bill rejected by the legislature could become law upon his certification that it was essential for the safety, peace or interest of any part of the country. He retained the right to legislate by ordinance in emergencies; these ordinances were effective as law for a period of six months.

In the area of provincial legislature a bill passed by the legislature and assented to by the Governor further required the assent of the Governor-General to become law. The Governor had power to reserve certain important bills passed for the consideration of the Governor-General. The Governor was not responsible to the legislature even in the sphere of 'transferred' subject; he 'in his discretion' could override the advice of the elected ministers. A bill or grant rejected by the legislature could be allowed by the Governor upon certification that it was essential for the 'safeguard and due discharge of his responsibilities with respect to the reserved subjects'. Both the Governor and the Governor-General were also empowered to require the legislatures (central and provincial) to refrain, in the public interest, from further pursuing a measure before them.

Notwithstanding an appearance of devolution and representative legislative authority, the structure thus remained fully unitary with all

legislative power centralized in the Governor-General. A few innovations of details were, however, a mark of progress. Indian legislators both elected and nominated received "members' privileges" for the first time. The communal constituencies as also the landholders constituencies continued as the integral basis of the 1919 plan; but franchise was widened and by and large extended to all taxpayers. Women got the right to vote for all legislatures except the Council of State.

Limitations and misgivings in the 1919 Act were numerous and sufficiently weighty to perpetuate, instead of mitigating, Indian feeling of dissatisfaction. Legislative power of control in the restricted area of transferred subjects was trammelled by the 'safeguards' and made completely impotent by the financial arrangement. Finance lay in the 'reserved' category beyond the control of ministers responsible to legislature, creating decisive hurdles in the effective execution of legislative plans and proposals. As can be imagined, the plan fell far short of Indian expectations which the announcement in Parliament had raised. Immediate and drastic revision of Act was demanded. Refusal to concede sparked off the 'non-cooperation' movement of the twenties, leading the way to the 'civil disobedience' agitation of the thirties. Both were organized by the Congress under the leadership of Gandhi. The call was no more for 'Home Rule' but for 'Swaraj', *i.e.*, full independence. There was an all party agreement for the attainment of 'domain status' within the British Commonwealth in which sovereignty was to be derived from the people, exercisable constitutionally. At long last in October, 1929, Britain announced dominion status for India as 'the accepted goal', but wanted time to first sort out the issue of princely states due to their individual and independent treaties with the Crown.

Provincial autonomy: Federal legislative structure (1935-1947)

In consequence the 1935 Act was born after several parleys between Indian leaders and Britain. It contemplated a federation consisting of British Indian provinces and native states. They were to be autonomous units of the proposed Indian federation. Provinces were to receive autonomy from the Crown, whereas the native states were to 'choose', of their free will, to accede to the federation, surrendering their sovereignty through the Crown which had the so-called paramountcy.

The composition of the legislatures underwent a significant change. In addition to the bicameral legislature at the centre, six[4] provincial legislatures also became bicameral composed of a Legislative Assembly and a Legislative Council. Other provincial legislatures retained the unicameral form. Reasons for selecting or omitting a province for the bicameral form were neither logical nor made public.

4. Madras, Bombay, Bengal, United Provinces (now Uttar Pradesh), Bihar and Assam.

Legislative powers of the centre and the component units were demarcated through three lists. Central list contained subjects over which the centre had exclusive competence; provincial list enumerated subjects within the exclusive power of the provinces, and the concurrent list included items with concurrent power for both the centre and the provinces. The central list consisted of subjects which concerned India as a whole, *e.g.*, communications and currency, or upon which the existence of the federation depended, *i.e.*, defence and external affairs. Provincial list included items of local interest not affecting the country as a whole, like local government and public health. The concurrent list contained items of provincial relevance but requiring a parallel central control to ensure special attention and uniformity in the country, like criminal law and labour relations. Personal law was included in this as a special favour to protect the interests of Muslims.

Constituency pattern based upon communal and other class interests remained more or less unaltered. Provincial upper chamber consisted of representatives elected (by the lower house or by special constituencies depending upon the practise in individual provinces), nominees of the Governor and those elected for reserved seats for the minorities. It was a permanent body with one third of it retiring and being renewed every three years.

The lower house was to be elected for five years unless dissolved earlier. Finance bills could only be introduced in the lower house. Entire budget excepting the salary and allowances of the Governor could be discussed, but part of it was non-votable.

The Governor, the chief executive authority in the province representing the King, was to act on the advice of the council of ministers. These were to be chosen by the Governor from the members of the legislature. Ministers were responsible to both the houses of the legislature. But the Governor was also required to include ministers representing minority. It was a difficult task to constitute such a ministry.

Provincial legislative authority appeared to be wide enough. But it was negatived by reserve powers exercisable by the Governor under the caption 'safeguards'. The Act conferred upon the Governor 'special responsibility' over certain matters, allowing him to act 'in his individual judgement' without consulting the ministers. It was done in the name of protecting special interest of some communities as an obligation of the Crown. It is interesting to note that 'prevention of discrimination against British trade' was one of such 'special responsibilities'.

Regarding certain other matters also the Governor could act 'in his discretion' overruling the advice of the ministers. It implied that the 'transferred' and 'reserved' categories in effect continued as under the 1919 Act and the 'dyarchy' was abolished in name alone. In addition, Governors'

special right (to veto a bill, reserve it for the consideration of the Governor-General, return it with amendment to the legislature, sanction the introduction of certain bills, stay proceedings at any stage to safeguard proper discharge of special responsibilities, legislate by ordinance or personal Act, approve a demand in the budget rejected by the legislature) were further negations of the powers of the legislature.

The central legislature was to consist of the King represented by the Governor-General and two houses. The Legislative Assembly (the Lower House) was to comprise representatives of the provinces (elected indirectly by the provincial legislative assemblies), elected representatives of certain communities and nominees of the rulers of the native states. The house was to have a tenure of five years unless dissolved earlier by the Governor-General. The Council of States (the upper house) was to comprise representatives of the native states, six nominated members of the Governor-General, members directly elected by territorial communal constituencies and some reserved-seat members from minorities, women and depressed classes. Both the houses enjoyed similar powers, except that finance bills and votes of supply could originate in the lower house only.

The central executive was not made responsible to the legislature. Specific sanction of the Governor-General was required to initiate certain bills. The Governor-General's power to veto bills, pass ordinances or personal Acts, *etc.*, continued to be effective as under the 1919 Act. The legislatures in no sense, therefore, could be considered sovereign bodies under the 1935 Act.

One of the conditions for the federation to come into operation was accession of a specified minimum of the native states. As no native state acceded, the federal part of the Act never came into force. The Act was only implemented in the provinces. Central legislative arrangement continued as under the 1919 Act, except that its sphere of operation was constricted, in view of the provincial control over subjects specified in the provincial list.

Independence and sovereign democratic legislature (1939-1947)

At the beginning of the second world war in 1939, India was declared at war with Germany without consulting the Indian legislature in the matter. Resenting the move the Congress ministries resigned and provincial governments were taken over by the respective Governors. Political aspirations of the minorities fanned by British assurances ad patronage since 1909, reaching its climax, now became the demand for carving Pakistan out of India. 'Quit India' launched by Gandhi, sparking off a nationwide anti-British movement in 1942, naval rebellion of Bombay dockyard, pressure of postwar world opinion particularly of U.S.A. and the Labour party in power in England, led the British to an unequivocal acceptance of India's claim to freedom.

A Constituent Assembly represented by all major political and religious groups in India proposed by the British was agreed to. But at its very first session the Muslim League withdrew, reiterating its demand for Pakistan and a separate constituent assembly for it. Partition of India was ultimately agreed upon as the only solution. The paramountey of the Crown over the native states was to lapse leaving each state independent and sovereign. Balkanisation of India was complete. The Indian Independence Act, 1947 was passed setting up two independent dominions, India and Pakistan.

The legislature of each dominion was to have full legislative sovereignty. The powers of the legislature of the dominion were exercisable without any limitation whatsoever by the Constituent Assembly formed in 1946.

The Constituent Assembly prepared and adopted the Constitution of India which declared the country to be a sovereign democratic republic.[5]

.The Constitution is a happy combination of federal and unitary models- though essentially federal in character, the centre has been given the power to encroach upon the field reserved for the states in certain contingencies, *e.g.*, in case of emergencies (financial or due to breakdown of constitutional machinery in a state, or arising out of external aggression or internal disturbance.

The desire of the founding fathers to make the centre strong enables it to have a better share of the legislative powers, than the component states. The form of government is parliamentary, though an elected President (who acts on the advice of the Council of Ministers) is the executive head of the state.

The Indian Parliament, *i.e.*, the central legislature, consists of the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Rajya Sabha is composed of representatives of the states and Union territories (maximum limit being fixed at 238), besides twelve nominees of the President having special knowledge or experience in literature, science, art and social service. It is a permanent body, one third of its members retiring every second year. The Vice-President of India is its ex-officio chairman. Representatives of the states are elected by the lower house in each state in accordance with the system of proportional representation by means of the single transferable vote.

Lok Sabha normally continues for a period of five years[6] but it subject to dissolution earlier by the President. Its term cannot be extended except in emergency for one year at a time by Parliament by law. It comprises not

5. The words 'socialist, secular' were added to the preamble by the Constitution (forty-second Amendment) Act, 1976, after the word 'sovereign'.
6. The life of the Lok Sabha was extended to 6 years by the Constitution Forty-Second Amendment) Act, 1976. It is fixed at five years again by the Constitution (forty-third Amendment) Act.

more than five hundred twenty-five members directly elected by the voters in the states, not more than twenty members to represent Union territories chosen in the manner prescribed by Parliament, and not more than two nominees of the President form the Anglo-Indian community, if the community is not adequately represented. Seats are reserved for the scheduled castes (approximately 15%) and scheduled tribes (approximately 5%) in the Lok Sabha—a reservation, originally contemplated to last for 10 years only, is being given a lease after every decade and is, at present, to last up to January 25, 1980. Representation in the Lok Sabha is based on population, and seats are allotted to each state in the same ratio. Adult suffrage has been granted for the first time, that is, all citizens of India above the age of 21, whether men or women, unless otherwise disqualified, have been given the right to vote. Later on, all citizens of India above 18 years have been given adult suffrage.

To enable members to fulfil their responsibility effectively and freely certain immunities and privileges are extended to them. Some are set down in the Constitution itself, others can be laid down by each house by law. But unless this is done, the privileges and immunities of the House of Commons in England as at the commencement of the Constitution apply.[7]

Procedure in each house is laid down by the house subject to the provision of the Constitution. Except a money bill and other financial bills every matter can be initiated in either house. In case of deadlock provision is made for a joint sitting of the two houses. Barring situations which demand special majority and procedure (*e.g.*, constitutional amendment), all issues are decided by a majority of members present and voting. A bill becomes law after being passed by both houses and assented to by the President. Rajya Sabha is intended as a continuous unit with periodic influx of fresh talent of greater sophistication and experience than Lok Sabha, to consider matters with mature reserve and caution. It is not, however, co-equal to Lok Sabha as it is impotent in financial matters[8] and the ministers are not responsible to it.

When neither house is in session and circumstances demand immediate action, the President as the chief executive of the country is empowered to legislate by ordinance. Such legislative power is co-extensive with that of Parliament, subject to every constitutional limitation applicable to an Act of Parliament. An ordinance so passed must be laid before Parliament after it reassembles.

7. By the Constitution (Forty third Amendment) Act, 1976, it has now been provided that the privileges *etc.*, shall be those as at the commencement of the amendment and such as may, from time to time, be evolved by each House of Parliament.
8. A Money Bill can be deemed to have been passed by both Houses if the House of the People does not agree to the amendments suggested by the Council of States or if it is not returned to the House of the People within fourteen days.

The President may assent to any bill passed by Parliament presumably acting upon ministers' advice. Except in case of a money bill he may return a bill for reconsideration; if after re-consideration Parliament again passes the bill he has no choice but to give assent.

States are free to choose bicameral or unicameral form of legislature. At present seven[9] states have bicameral legislature. The upper house, *i.e.*, the Legislative Council is called *Vidhan Parishad,* the lower house, *i.e.*, the Legislative Assembly is called *Vidhan Sabha.* The minimum strength fixed for the Legislative Council is forty and the maximum is one third of that of the Legislative Assembly. Legislative Assembly must have not less than sixty and not more then five hundred members. It is composed of members chosen by direct election. But certain seats are reserved for the scheduled castes and scheduled tribes (as in the Lok Sabha), in proportion to their population in the state, up to January 24, 1980. To secure adequate representation to the Anglo Indian Community, the Governor of the state can nominate one member of that community to the Assembly. For the Legislative Council there is no direct election or representation of territorial constituencies. It is constituted through indirect election, from local bodies (1/3), university graduates (1/12), teachers (1/12) legislative assembly (1/3) and nomination by the Governor (1/6). Nominees of the Governor represent literature, science, art, cooperative movement and social service.

The pattern for conducting financial and other business, and the right to regulate procedure, priviledges, *etc.*, are the same as at the centre. The tenure of the state legislature is also the same as of Parliament.

The Governor's relations with the legislature in the state are similar to those of the President with Parliament. In addition, the Governor can also reserve a bill passed by the legislature for the President's consideration. His legislative power to pass ordinances is conditioned in the same way as that of the President. The Governor performs his functions with the aid and advice of the council of ministers, except in respect of matters where he can act in his discretion under the Constitution. Most fruitful use of this power can possibly be made in choosing the chief minister of the state, in reserving bills for President's consideration and in informing the President of constitutional crisis arising in the state or in requiring the dissolution of the Legislative Assembly and calling for President's rule. This discretion too has ultimately to be circumscribed by suitable conventions, as far as possible, in order to obviate any charge of patisanship or arbitrariness.

Barring special circumstances permitting other organs or bodies to legislate, legislative power is wholly conferred upon Parliament and state legislatures. The subject-matter of legislation is clearly distributed between

9. Andhra Pradesh, Bihar, Maharastra, Madhya Pradesh, Tamil Nadu, Karnataka and Uttar Pradesh.

the two as laid down in three lists. Distribution of powers is largely based upon the pattern under the Government of India Act, 1935. Residuary powers of legislation, however, are specifically and exclusively conferred upon Parliament. This is a marked departure from the 1935 Act wherein the residuary power was not assigned to the centre or the states, but was left to the discretion of the Governor-General to assign them to either.

The important legislative limitations are that the Indian Parliament or the state legislature cannot pass a law violating the fundamental rights, or the distribution of powers between the centre and the states, as laid down in the Constitution. Constitutional amendment of some of the provisions is possible through a special majority in Parliament, whereas some others can be amended only through a further concurrence of at least half the state legislature (*e.g.*, federal provisions). That the fundamental rights themselves can be amended, a controversial subject in the country for some years, has ultimately been affirmed after some contentious judicial pronouncements and constitutional amendments. However, the doctrine that the basic structure of the Constitution cannot be altered by any constitutional amendment, enunciated in majority judgement of the Supreme Court of India in 1973, has yet to be stablized.[10]

In about three centuries, from the early days of the British rule in India to the middle of the twentieth century, the country has thus fully made up the leeway so far as its legislative and judicial institutions are concerned. From the informal, rough and ready administration of justice, the concentration of virtually all legislative and executive power first in the Company and then in the Crown's representatives, the country has really travelled a long long way. The Constitution of India now provides a completely independent and well-organised judicial system with the power to judge the constitutionality of legislative and executive actions. It is an integrated judicial system with no separate courts for the administration of state laws (unlike that of the U.S.A.). Adult franchise, parliamentary and responsible government both at the centre and in the states, and a federal system with approximately 600 princely states fully integrated in the Indian polity, provides a legislative framework which not only conforms to the norms of responsible federal government practised in other countries, but is in several respects ahead of them.

10. The basic structure doctrine was laid down in *Kesavananda* v. *State of Kerela* AIR 1973 SC 1461. The Constitution (Forty-second Amendment) Act, 1976 passed by the then Congress government during the emergency periods seeks to do away with it by making all and every constitutional provision amendable. However, the 43rd and 44th amendments were made to undo the ill effects of the 42nd amendment.

The experience of over five decades of the working of these judicial and legislative institutions[11] has more than justified the trust placed in them by founding fathers.

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11. However, for some period between the declaration of emergency in 1971 (and more particularly that in June 1975) and the Lok Sabha elections and change of government in March, 1977, both the judicial and legislative institutions were under a deep shadow having been made completely subservient by the then Prime Minister.