EAST India COMPANY rule was abolished in India after the First War of Independence in 1857, after which it was substituted by the direct rule of the Crown in 1858.

By the recommendation of the Second Law Commission, the Indian High Courts Act, 1861 was passed. Before the commencement of the Act, a double system of administration of justice prevailed in India: on the one hand, there were the British Crown Courts and, on the other hand, the Company Courts. The British Crown established the Supreme Courts in the Presidency Towns of Madras, Bombay, and Calcutta.

The company courts were the *Mofussil* Courts and the *Diwani Adalats*. This created many problems as the jurisdictions of the company courts and the Supreme Court were not clearly demarcated. Nor was there a clear relationship between these courts.

> *Often, even the procedures and laws applied by these courts were different; the Crown Courts followed English laws while the company courts followed customs and local regulations made by the Company.*

Hence, if a dispute concerning jurisdiction arose between the parties, the Government found itself in a challenging position.

The High Courts Act, 1861

The Act of 1861 was a short legislation of 19 sections. It authorised the Queen of England to establish High Courts by issuing Letters Patent to Presidency Towns wherever and whenever she deemed fit.

The first High Court in British India was the High Court of Judicature at Fort William, also known as the High Court of Calcutta; it was established by the Letters Patent dated May 14, 1862, issued under the Indian High Courts Act, 1861. The Charters of the Bombay and Madras High Courts were ordered in June 1862.

The three charters contain identical provisions and established the High Courts with similar powers and jurisdictions.

Each High Court consisted of a Chief Justice and other puisne judges not exceeding 15 in number. Under the Act, a person could be appointed as a judge of a High Court if they were either –

- A barrister of not less than five years standing, or
- A member of the covenanted civil service of at least ten years standing who had served as Zila judge for at least three years in that period, or
- A person having held judicial office not inferior to that of principal Amin or a judge of a small cause court for at least five years, or

- A person who had been a pleader of a Sadar Court for at least ten years.

At least one-third of the judges of a High Court, including the Chief Justice, had to be barristers, and the other one-third of the judges had to be members of the civil services. The judges held office during the pleasure of the Queen. She could give them the power to exercise all civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction.

The High Court was also to be a court of record; it was to exercise powers of superintendence over all subordinate courts. The Queen could also confer original and appellate jurisdiction, and all such powers and authority to adjudicate justice, as she thought fit. The Letters Patent could restrict the original jurisdiction of the courts to the Presidency Towns.

The High Courts were given supervisory powers over all courts subject to their appellate jurisdiction. They could call for returns from any courts subordinate to them or transfer any suit or appeal from one court to another, and make general rules for regulating the procedure of lower courts.

> *The British monarchy was authorised to establish High Courts beyond the Presidency limits and could transfer any territory from the jurisdiction of one High Court to another High Court.*

The ordinary and extraordinary jurisdictions of the Calcutta High Court

While exercising original jurisdiction, the High Court of Calcutta had the power to entertain suits in which the cause of action arose within the local limits of Calcutta, or if at the time of institution of the suit, the defendant resided or carried on business or work for gain within the local limits of Calcutta.

The High Court could decide suits that dealt with subject matters of dispute that were valued at not less than INR 100, as such matters were to be adjudicated by the small causes courts. The High Court also had original criminal jurisdiction to try cases involving persons residing within the Presidency Towns of Calcutta.

The High Court also had extraordinary jurisdiction to try offences committed by persons residing within the local limits of any courts it had superintendence over. It had appellate jurisdiction over criminal and civil cases adjudicated by the courts subordinate to it; it also had the power to enroll and admit advocates and *vakils*, and was empowered to determine necessary qualifications for pleaders, advocates, and *vakils*.

> *In criminal appeals, the decision of the High Court was final as there was no provision to appeal against its decisions.*

However, in civil matters, an appeal would go to the Privy Council against a decision of the High Court if the value of the subject matter in dispute involved or exceeded INR 10,000, or if the High Court certified the case as one fit for appeal to the Privy Council. In addition to this appellate provision, an appeal would lie before the Privy Council against any decision or order made by the High Court while exercising its original jurisdiction.

Subsequent changes and the Government of India Act 1915

Eventually, several other High Courts were established in the country. A High Court was established in Agra on March 17, 1868, which was ultimately shifted to Allahabad in 1875.

After the Indian High Courts Act, 1911 was passed, one significant change was that the number of judges in the High Court was increased from 15 to 20. The Act also authorised the establishment of more High Courts, wherever and whenever it was deemed fit. It also empowered the Governor-General in Council to appoint additional judges to the other high courts for a period of two years.

On July 27, 1915, the British Parliament passed the Government of India Act, 1915. By this Act, some earlier provisions were repealed, and several changes relating to the composition and jurisdiction of the High Courts were announced. The Act introduced a restriction on the jurisdiction of the High Courts of Calcutta, Madras, and Bombay, laying down that they "*may not exercise any original jurisdiction in any matter concerning revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force*." No reason was assigned for the introduction of this restriction.

All High Courts were to remain courts of record and had the power of superintendence over all courts subject to their appellate jurisdiction. High Courts also had the power to frame rules and regulations penetrating the subordinate courts' functioning.

> *In case of disputes between the natives, the High Courts were to apply customary or personal law while deciding matters concerning succession and inheritance.*

In case the parties were subject to different customs and personal laws, the suit was to be adjudicated according to the defendant's laws. The Act of 1915 also provided immunity to the Governor-General, Lieutenant Governor, Chief Commissioners, and the Government's Executive Council members from the original jurisdiction of the High Courts if they did anything in their respective official capacities. However, the persons mentioned above were not immune from liability in the event they committed offences of felony or treason.

In February 1916, a High Court at Patna was established; in the same year, a High Court at Nagpur was inaugurated. Then, in March 1919, a High Court at Lahore was instituted.

Jurisdictional and procedural changes following the Government of India Act, 1935

With the enactment of the Government of India Act, 1935, all earlier enactments were repealed. Under this Act, each High Court was to be a court of record. Every High Court consisted of a Chief Justice and as many charges as prescribed by the British monarchy. The Governor-General in Council appointed judges of the High Court, and he was also empowered to appoint additional judges. These judges were to hold office until they attained the age of 60 years. A judge of a High Court could be removed from his post on grounds of incapacity of mind or body or misbehaviour only on the recommendation of the Privy Council.

Earlier, only English barristers or advocates of Scotland could become the Chief Justice of a High Court, but now, Indian judges who had served the High Court for not less than three years could be appointed as its Chief Justice. Hence, finally, Indian members of the bar had the chance to become the Chief Justice of a High Court.

The salaries and pensions of the judges were to be fixed by the King, and it could not be allotted to their disadvantage without his approval.

The jurisdiction of the High Courts remained unchanged; they did not have original jurisdiction in revenue matters. They were conferred the power to transfer cases *suo moto* from any of their subordinate courts on application by the parties.

Under the 1935 Act, appeals from the decisions of High Courts could be referred to a Federal Court provided that the relevant High Court certified that the case involved a substantial question of law. Also, decisions of the High Court could be referred to a Federal Court without the certificate of fitness of the High Court if the value of the subject matter of a civil suit and dispute was not less than INR 50,000.

Pre-Constitutional writ jurisdiction of the High Courts

Before the enactment of the Constitution of India, all High Courts had the power to issue the writ of *habeas corpus* throughout territories falling under their original and appellate jurisdictions.

It is important to remember that only the High Courts of Calcutta, Madras, and Bombay had the power to issue other writs. The Presidency High Courts' powers to issue writs were limited to the territorial limits of ordinary civil jurisdiction connected to matters which fell within that jurisdiction.

After the enactment of the Constitution, by virtue of Article 226, the High Courts are now empowered to issue writs against the State and its instrumentalities.