

## INDIAN HIGH COURT ACT, 1861

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### ABSTRACT

Rule of “East India Company” ended in the year 1857, after the first war of independence. It was overthrown by the direct rule of “British Crown in 1858”. High Courts in India have a long history dating back to the British Raj. The British arrived to India as traders, but they quickly established a footing on the Indian mainland and got actively involved in India’s governance. There were two established judicial systems for dispensing justice in the three Presidency towns of “Calcutta, Madras, and Bombay”, namely the Supreme Court and the “Sadar Diwani” and “Sadar Nizamat Adalat”. This type of judicial proceedings was uncomfortable for the people who lived in the Presidency. In reality, it frequently clashed, resulting in contradictory outcomes. The British Parliament eventually settled this issue by passing the Indian High Courts Act in 1861. Pretty much from the start, the Crown’s valour assisted them in expanding its territorial control over the majority of Indian geographic location, and this was a moment when the British were well enough on the question of power over India. As a result, they require an implemented control in which the several inferior courts have their major courts inside the geographical bounds of their region. Prior to this legislation, the highest courts were solely at the central level, namely the Supreme Court in Calcutta. It was a problematic and complicated decision on the part of this subordinate court, thus there was an immediate need for a structure in which the primary courts are grouped into various sections. Changes in judiciary enacted under these legislation are abundantly visible in India’s current judicial system. In order to construct an effective legal system over India’s large geography, a suitable hierarchy of courts was required. There was an urgent need for courts at various territorial units that might act in the same capacity as the Supreme Court by monitoring districts and inferior courts.

**Keywords:** court, high court, territory, British, India, Crown, power, rule, Supreme Court, judiciary.

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## LITERATURE REVIEW

With the primary research, the researcher concludes and claims that there have been none of the current research works, analyzing the study of the topic “The High Court Act , 1861” The judicial system plays an important and essential part in the growth of a nation, and it is an arm of the government that must be very effective. The entire legal institutional framework directs the country's political and bureaucratic parties. This might be seen as an infrastructure that determines the phenomena of good governance. The efficiency of this chain is more significant than necessary since a proper hierarchical structure verifies the grandstanding of the court and, consequently, other government organisations .To obtain a more discrete and crystal clear picture of the research study of the Topic, the researcher refers to various journals written by historians, numerous articles and different history books to obtain a more intellect and precisely defined analysis, which were given and were pertained under accordingly and respectively.

To add to the efficiency and essence of intelligence in the presentation of the subject to the theoretical study of the Topic, the article “The Emergence And Evolution Of High Courts In India Before The Constitution Of India Came Into Effect by Dinesh Singh Chauhan”<sup>2</sup> gave some insightful and engaging information to facilitate the analysis of the Topic on a better level. The article provides efficient details and information on the current study of how in the era of ancient history in the establishment of high courts in India, many crimes were committed by the people and how the need of a defence system to serve people with proper justice and law enforcement with due penalties and punishment. Many wrongful deeds were done by the people, but they never seemed to pay off compensation for them; as for the society, the unlawful acts were morally correct and amounted to putting the community to have some ethical discipline and morality; such was the irony and probity of the mentality of people existed in the ancient era

It is considered by the sick driven mindset of the society. The agenda for the continuity or the discontinuity of the practice of law always adhered to the conversation, in ancient times or the point of view was equally clouded or surrounded by mostly the decision of people without any proper legal framework, so the establishment of courts in India was something

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<sup>2</sup> The Emergence And Evolution Of High Courts In India Before The Constitution Of India Came Into Effect by Dinesh Singh Chauhan, <https://www.legalserviceindia.com/legal/article-7006-the-emergence-and-evolution-of-high-courts-in-india-before-the-constitution-of-india-came-into-effect.html>

landmark and revolutionary. Furthermore, on the contrary Even after receiving opinions that could have been considered of any value and importance, which could have taken into some thought by the very attainment of ordinary vigilance and some compassionate nature of British Empire in India, and to extinguish some extent of these crimes and unrested murders at once they took a step forward to establishment of high courts in India. ***“The high court act, 1861 by Samar Jain”***<sup>3</sup> is another very useful resource and document referred by the researcher, to gain the information about the topic with a hundred percent originality and realistic understanding. The bare act passed by the ***“legislative council of India”***<sup>4</sup> provides the researcher great knowledge about the how why and when the High courts in India were established for the sake of betterment of judiciary. The Researcher in the furtherance of the study, proceeds to refer more articles and journals, providing more essence of burden of proof and understanding of the subject on a better understanding of level and intellect. Another article, ***“High Courts in India- History, Jurisdiction, Composition by Antalina Guha”***<sup>5</sup> in this article we can see some insightful views as High Courts have been seen to have broad jurisdiction because they can grant writs not only for infringement of individuals' basic rights, as well as for infractions of many other basic protections. It, like the Supreme Court, is a landmark decision. When a person's rights are violated, he or she can immediately address the High Court. Except for the Armed Services, the High Courts have responsibility over the lower arbitral tribunals.

***“Indian High Courts Act 1861”***<sup>6</sup>, is another secondary source that is referred by the researcher to have a significant knowledge about the topic about the High courts in India were established for the sake of betterment of judiciary. The Researcher in the furtherance of the study, proceeds to refer more articles and journals, providing more essence of burden of proof and understanding of the subject on a better understanding of level and intellect. ***“The emergence and evolution of High Courts in India by Afreen Alma”***<sup>7</sup> is another secondary source that is referred by the researcher to have a significant knowledge about the topic about the High courts in India were established for the sake of betterment of judiciary. The Researcher in the furtherance of the study, proceeds to refer more articles and journals,

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<sup>3</sup> The high court act, 1861, <https://www.lawcolumn.in/indian-high-courts-act-1861-salient-features/>

<sup>4</sup> legislative council of India , [https://en.wikipedia.org/wiki/State\\_legislative\\_councils\\_of\\_India](https://en.wikipedia.org/wiki/State_legislative_councils_of_India)

<sup>5</sup> High Courts in India- History, Jurisdiction, Composition by Antalina Guha, <https://blog.finology.in/constitutional-developments/high-courts-in-india>

<sup>6</sup> Indian High Courts Act 1861, [https://legislative.gov.in/sites/default/files/legislative\\_references/1861.pdf](https://legislative.gov.in/sites/default/files/legislative_references/1861.pdf)

<sup>7</sup> The emergence and evolution of High Courts in India by Afreen Alma, <https://theleaflet.in/the-emergence-and-evolution-of-high-courts-in-india/>

providing more essence of burden of proof and understanding of the subject on a better understanding of level and intellect. Such above mentioned references and comparisons would enhance the quality of the current case study and analysis of the topic and study of crimes and punishments in deeper level.

## RESEARCH QUESTIONS

- *What was the procedure of establishment of high court in India?*
- *What can we confer from the sudden overpowering establishment of high court in virtue of development of society in any increase or decrease of crime rates?*
- *What and how the judiciary evolved from the ancient times to in modern times?*

## INTRODUCTION

The origin of High Courts in History dates back towards the “**British Raj**”<sup>8</sup>. “The British entered India as traders, but quickly gained a footing on the Indian mainland and intervened in the nation's governance”. “**The Indian High Courts Act of 1861**”<sup>9</sup> permitted The Monarch to set up High Courts in India. “After the First War of Independence in 1857, the “**East India Company Rule**”<sup>10</sup> was dissolved in India, and it was replaced by royal authority of the Monarch in 1858. Prior to the Authority's implementation, India had a dual structure of judicial process: on only one hand, the British Crown Courts, while on the other, this same Company Courts”. The King of England's passage of the “**Regulating Act of 1773**”<sup>11</sup> prepared the stage for the formation of the Supreme Court's judgment in *Calcutta*<sup>12</sup>. “On March 26, 1774, Letters of Patent were issued to ascertain the Supreme Court of Judicial authority at *Calcutta* as a Court of Competent jurisdiction, with filled leadership to listen and decide all Grumblings for any offences, as well as to amuse, listen, and evaluate any Suits or behavior against some of His Sovereign's subjects” in *Bengal, Bihar, and Orissa*<sup>13</sup>. “King George – III founded the Supreme Courts in *Madras and Bombay*”<sup>14</sup> on December 26, 1800 and December 8, 1823, respectively”. “Following the **First War of Independence in 1857**”<sup>15</sup>, the Act united the rival Law and Judicial Systems of the Crown and the *East India Company*. “**The Secretary of State, Sir Charles**

<sup>8</sup> British Raj, [https://en.wikipedia.org/wiki/British\\_Raj](https://en.wikipedia.org/wiki/British_Raj)

<sup>9</sup> The Indian High Courts Act of 1861, [https://en.wikipedia.org/wiki/Indian\\_High\\_Courts\\_Act\\_1861](https://en.wikipedia.org/wiki/Indian_High_Courts_Act_1861)

<sup>10</sup> East India Company Rule, [https://en.wikipedia.org/wiki/East\\_India\\_Company](https://en.wikipedia.org/wiki/East_India_Company)

<sup>11</sup> Regulating Act of 1773, [https://en.wikipedia.org/wiki/Regulating\\_Act\\_of\\_1773](https://en.wikipedia.org/wiki/Regulating_Act_of_1773)

<sup>12</sup> Calcutta, state of India.

<sup>13</sup> Bengal, Bihar, and Orissa, states of India

<sup>14</sup> Madras and Bombay, stats of India

<sup>15</sup> First War of Independence in 1857 [https://en.wikipedia.org/wiki/Indian\\_Rebellion\\_of\\_1857](https://en.wikipedia.org/wiki/Indian_Rebellion_of_1857)

**Wood**”, introduced the *Indian High Courts bill on June 6, 1861*, and it was enacted on August 6, 1861”. The Act was divided into 19 parts. It abolished all preexisting tribunals in *Calcutta, Madras, and Bombay*.<sup>16</sup>

Every High Court may have a **Chief Justice**<sup>17</sup> and up to 15 justices. The judge might be **barristers**<sup>18</sup> (5 years of experience), civil officials (10 years of experience, including 3 years as a *zillah*<sup>19</sup> judge), small cause court judges (5 years of experience), or High Court Pleaders (5 years of experience). The Chief Justice and at least one-third of the Regular Judges were to be *Barristers*, and at least one-third of the Regular Judges were to be Civil Service employees. All Judges served at the discretion of the Crown. The high court followed the same legal principles as the Supreme Court, namely English law. The concepts were also made available to the High Courts. On the appeals court side, the High Courts were also empowered to apply the principles of “*truth, fairness, and moral conscience*”. It followed the **Indian Penal Code (1860)**<sup>20</sup>; in criminal law. The High Court adhered to civil and criminal rules. The fundamental motivation for enacting the Indian High Courts Act was to create independent judicial institutions for each state. As a result, the British government opted to substitute formerly the *Sadar Adalat*<sup>21</sup> and Supreme Court with High Courts.

Currently, a High Court has the following jurisdictions:

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- a) “**Original Jurisdiction**”: According to **Article 225**<sup>22</sup>, “every High Court has original jurisdiction in revenue issues, as well as those involving admiralty, contempt of court, probate, and weddings. In certain instances, the petitioner may approach the High Court without first filing an appeal”.
- b) “**Appellate Jurisdiction**”: This is for situations when the applicant has filed a complaint against the decision of a subordinate court in that region. This power is classified into two types:
  1. “**Civil Jurisdiction**”- “This comprises orders and judgments issued by district,

<sup>16</sup> Calcutta, Madras, and Bombay, states of India

<sup>17</sup> Chief Justice, [https://en.wikipedia.org/wiki/Chief\\_Justice\\_of\\_India](https://en.wikipedia.org/wiki/Chief_Justice_of_India)

<sup>18</sup> Barrister, <https://en.wikipedia.org/wiki/Barrister>

<sup>19</sup> Zillah, Hindi meaning Of district

<sup>20</sup> Indian Penal Code (1860) <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>

<sup>21</sup> Sadar Adalat, [https://en.wikipedia.org/wiki/Sadr\\_Diwani\\_Adalat](https://en.wikipedia.org/wiki/Sadr_Diwani_Adalat)

<sup>22</sup> INDIA CONST. art.225

civil, and subordinate courts”.

2. “Criminal Jurisdiction” – “This comprises the session and supplementary session’s courts' decisions and judgments”.
- c) “Writ Jurisdiction”: Under **Article 226 of the Constitution**<sup>23</sup>, the High Courts have the authority to grant writs to enforce people' basic rights. The Superior Courts can generate the following sorts of writs :-
1. “**Habeas Corpus**”
  2. “**Mandamus**”
  3. “**Certiorari**”
  4. “**Quo Warranto**”
  5. “**Prohibition**”<sup>24</sup>
- d) “**Judicial Review**”: The High Courts have the authority of Judicial Review to review the legality of the centre and the states governments’ legislative and executive orders.
- e) “**Control of Subordinate Courts**”: The High Court can withdraw any ongoing matter from a subordinate court if it concerns a legal question. The matter might be resolved on its own, or the legal issue can be resolved and the case returned to the same court.
- f) “**A Court of Record**”: This entails the recording of High Court judgments, proceedings, and acts. These documents cannot be called into question in any other court.

## CONCLUSION

The British Parliament eventually settled this issue by passing the “**Indian High Courts Act in 1861**”. Pretty much from the start, the Crown's valour assisted them in expanding its territorial control over the majority of Indian geographic location, and this was a moment when the British were well enough on the question of power over India. As a result, they require an implemented control in which the several inferior courts have their major courts inside the geographical bounds of their region. Prior to this legislation, the highest courts were solely at the central level, namely the Supreme Court in Calcutta. It was a problematic and complicated decision on the part of this subordinate court, thus there was an immediate need for a structure in which

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<sup>23</sup> INDIA CONST. art.226

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the primary courts are grouped into various sections. Changes in judiciary enacted under these legislation are abundantly visible in India's current judicial system. In order to construct an effective legal system over India's large geography, a suitable hierarchy of courts was required. There was an urgent need for courts at various territorial units that might act in the same capacity as the Supreme Court by monitoring districts and inferior court.

