

**1. CONCEPT OF CIVIL PROCEDURE
IN INDIA BEFORE THE ADVENT OF
THE BRITISH RULE
(EVOLUTION OF CIVIL PROCEDURE
FROM 1712 to 1901)**

SYNOPSIS:

a. Introduction

b. Period 1600 - 1681

c. Period 1681 - 1800

d. Period 1800 - 1947

A. INTRODUCTION:

In the middle of the 15th century, the European countries explored the route to India for the purpose of trade and other activities. Sir Vasco Da Gama, a Portuguese was the first to find out the sea route to India in the year 1498. Following the Portuguese, the French, the English and others showed interest in developing trade interests in India.

B. PERIOD 1600 - 1681:

The East India Company of the English was formed under the Charter Act of 1604 and in 1639, acquired a piece of land in Madras Patnam and established their Factory called Fort St. George.

Initially, the Company was interested in commercial activities, but they slowly started to show interest in settlement of legal disputes over their native English people settled in Fort St. George - Madras. With the expanding commercial activities, they showed interest in establishing Courts and judicial systems in Madras.

By the Charter Act of 1681, the Company established a Mayor's Court at Madras to decide civil, criminal and Admiralty (disputes in sea) cases. The Mayor's Court was in addition to the Choultry Court and the Admiralty Court existing at that time.

C. PERIOD 1681 - 1800:

With the passage of time, the East India Company established their branches in Calcutta and Bombay. So, by the Charter Act of 1726, three Mayor Courts were established each in Madras, Bombay and Calcutta. Their jurisdiction was confined only to civil cases. The system of appeals was also introduced. From Mayor's Court, appeals went to Governor in Council and then to Privy Council in England for cases exceeding 1000 pagodas.

By the Charter Act of 1753, certain changes were introduced in the existing Mayor's Courts. In 1770, Fox India Bill was introduced to control the administration of the East India Company.

In 1772, Sir Warren Hastings came to India as Governor of Bengal and he introduced his judicial plan of 1772, 1774 and 1780. He introduced Diwani Adalats (civil courts) and Nizamat and Faujdari Adalats (criminal Courts).

In 1773, the Regulating Act was enacted by the British Parliament to control the activities of the East India Company. Though the Regulating Act should be dealt under the Constitutional History, because of its importance in judicial reforms, it is also dealt under Indian Legal History.

Under the Regulating Act 1773, a Supreme Court was established at Calcutta. This Supreme Court and the Company's Courts (Adalats) came in conflict with one another. The conflicts have led to the occurrence of important cases like Trial of Nandakumar. Kamal ud-din case, Patna case, Cossijurah case, etc.

The defects in the Regulating Act had to be necessarily rectified and this was done in the form of 'Act of Settlement 1781'.

In 1784, Pitt's India Act was enacted to solve the problems of the administration of the East India Company. Lord Cornwallis came to India in 1786 succeeding Warren Hastings. He introduced three judicial plans in 1787, 1780 and 1793.

D. PERIOD 1800 - 1947:

Lord John Shore (1798 – 1805) and Lord Bentinck (1828 – 1835) also introduced judicial reforms

The Supreme Court at Calcutta established in 1778 was followed by Supreme Court at Madras in 1801 and Supreme Court at Bombay in 1828. All these Supreme Courts existed till 1861 and High Courts replaced them under the Indian High Courts Act 1861.

The High Courts at Calcutta, Bombay, Madras and Allahabad came into existence in 1861, under the Indian High Courts Act, 1861, after abolition of the Supreme Courts, the Adalats, etc. Changes were made in the High Courts under the High Courts Act, 1911, Government of India Act, 1915 and Government of India Act, 1935.

Till the year 1935, all appeals from the Indian High Courts went to Privy Council in England. So, in the year 1935, a Federal Court was established in India under the Government of India Act 1935-to hear appeals.

The Privy Council in England played an important role in the development of Indian legal system. It started hearing appeals from Indian Courts from 1726 onwards and upto 1935, when the Federal Court was established.

In 1947 India got independence and it became republic on 26th January 1950. The Federal Court becomes the Supreme Court of India and the appeals to Privy Council at U.K. was abolished.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Trace the evolution of Civil Procedure from 1712 to 1901.*
2. *Explain the concept of civil procedure in india before the advent of the british rule.*
3. *Write Short Note: a) Civil Procedure in India before the advent of the british rule.*

b) Evolution of Civil Procedure from 1712 to 1901.



**2. INQUISITORIAL AND ADVERSARY
IMPORTANCE OF OBSERVANCE OF
PROCEDURE**

SYNOPSIS:

- A. The inquisitorial model of justice***
- B. Adversary model of justice***

There are two models in general, which provides different forms of procedures.

A. THE INQUISITORIAL MODEL OF JUSTICE:

The inquisitorial model of justice relates basically to Romano Germanic System of Law, which is also known as civil law system or continental law system. According to it, If the purpose of justice is served, minor error in the procedure is ignored.

The court can play active role in procuring evidence, in the investigation of the case and the examination of the witness. Since the court itself is active to secure justice, legal representation from the side of accused is not necessary. This system has the following advantages.

B. ADVERSARY MODEL OF JUSTICE:

Adversary mode of justice is close to Anglo-American system and its past colonies. It advocates the supremacy of law, that is, equal treatment of law for all segments of society. It places the court in the neutral position.

Therefore legal representation from both sides is necessary. It insists upon due process of law. It thinks that if both parties were to act according to the rules of procedure justice can be secured.

The judge looks whether the evidence collected is in accordance with the law or not. He excludes any evidence, which is extorted through malpractices, such as, entrapment, deception practiced on the accused etc.

The neutral behavior of the judge promotes the sense of justice and fairness of the trial. This system claims that it would promote the supremacy of law, fairness in the proceedings, secures right to privacy of the individual.

Individual can work in their daily life without any fear, interference or undue encroachment upon their private life by public officials of the state. This is very much necessary to promote justice, freedom and progress.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Explain the inquisitorial and adversary importance of observance of procedure.*
2. *What are different forms of civil procedure in the ancient period?*
3. *Write short note on:*
 - a. The inquisitorial model of justice.*
 - b. Adversary model of justice*