



ADVANCE SOCIAL SCIENCE ARCHIVE JOURNAL

Available Online: <https://assajournal.com>

Vol. 05 No. 01. Jan-March 2026. Page#. 7606-7615

Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)<https://doi.org/10.5281/zenodo.22921420>

Legal Transformation in the Indian Subcontinent under British Rule: A Critical Analysis from Company Charters to Independence, 1600–1947

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Abstract

The legal history of the Indian subcontinent under English rule was neither an abrupt transplantation of English law nor a linear movement from “traditional” law to modern law. It was a prolonged process in which the East India Company and, after 1858, the British Crown reorganised existing systems while progressively introducing legislation, English legal concepts and centralised courts. This article traces that development from English trading settlements to the constitutional transition of 1947. It examines Company courts, the Regulating Act 1773 and Supreme Court at Calcutta, jurisdictional conflicts in 1781, nineteenth-century codification, High Courts, criminal and civil procedure, and constitutional reforms from 1861 to 1935. Particular attention is given to legal pluralism and the dual character of colonial law as administration and adjudication. The article argues that the central legacy of the era was a durable institutional and statutory framework. The Indian Independence Act 1947 ended British sovereignty but preserved legal continuity, enabling India and Pakistan to inherit and modify much of the existing legal order.

Keywords: *Indian legal history; British India; East India Company; colonial law; codification; judicial institutions; constitutional development; legal pluralism; independence, 1947*

1. Introduction

The legal history of the Indian subcontinent during the English or British era is best understood as a history of institutional transformation rather than simple legal replacement. When English commercial interests entered South Asia, they encountered established legal and administrative traditions associated with Mughal governance, regional states, religious communities, local custom and corporate institutions. In practice, different sources of authority coexisted, and the legal order was geographically and socially diverse. British rule gradually reorganised this plural environment through courts, regulations, statutes, administrative offices and professional legal institutions. The process extended over more than two centuries and produced a layered legal system in which colonial legislation existed alongside Hindu and Muslim personal law and customary norms (Derrett, 1968; Jain, 2022; Lhost, 2022).

The period may be divided into four broad phases. The first, from 1600 to the mid-eighteenth century, concerned the legal organisation of English trading settlements and presidency towns. The second, beginning with the Company's territorial expansion in Bengal, involved the construction of a colonial judicial and administrative order. The third, particularly during the nineteenth century, was marked by centralisation, professionalisation and codification. The fourth, from the late nineteenth century to 1947, increasingly connected legal development with constitutional reform, representation, political rights and the transfer of sovereignty (Jain, 2022; Travers, 2007).

This article adopts a historical-doctrinal approach, reading major statutes and constitutional enactments alongside legal and historical scholarship. The purpose is to identify the institutional turning points through which South Asian public and private law was reconstructed. Recent scholarship has shown that British institutions often developed through the selective adaptation of earlier Persianate and indigenous administrative practices rather than through the wholesale imposition of metropolitan models (Bayly, 1996; Raman, 2012; Travers, 2022). The legal history of the period is therefore simultaneously a history of codification, institutional innovation, adaptation and political control.

2. Legal Pluralism Before Consolidated British Rule

British administrators did not enter an empty legal field. Mughal governance operated through overlapping forms of imperial regulation, Islamic jurisprudence, administrative practice and local custom. Qazis, revenue officials, local authorities and other actors participated in dispute resolution and governance. Hindu and Muslim communities also maintained distinct normative traditions, especially in matters concerning family, inheritance, marriage and religious practice (Derrett, 1968; Lhost, 2022; Travers, 2022).

This plurality matters because colonial law initially developed through engagement with existing systems rather than their immediate abolition. Warren Hastings's Plan for the Administration of Justice of 1772 directed that disputes concerning inheritance, marriage, caste and religious usages among Muslims and Hindus should be decided according to Islamic and Hindu legal authorities respectively. Modern scholarship treats this as an important foundation for religious personal law in British India, while also showing that colonial courts and administrators transformed the traditions they claimed to preserve (Lhost, 2022).

The Company's growing bureaucracy also relied increasingly on petitions, written records, translations and registers. Raman (2012) shows that documentation became part of the mechanism through which colonial authority classified and administered Indian society. Legal history was therefore closely connected with the emergence of a documentary and bureaucratic state.

3. From Trading Settlements to Company Courts, 1600–1772

The English East India Company received its royal charter in 1600. During the seventeenth century, English settlements expanded at Madras, Bombay and Calcutta. Their early legal arrangements reflected the needs of merchant communities and the authority granted through royal charters and Company rules. The Charter of 1726 was especially important because it established Mayor's Courts in Madras, Bombay and Calcutta and created a more systematic judicial organisation in the presidency towns (Jain, 2022).

The distinction between the presidency towns and the *mofussil*—the territories outside them—remained a persistent feature of British Indian legal history. English institutions initially operated most directly in the commercial settlements, while rural and interior areas were administered through Company regulations and adapted indigenous institutions.

The decisive change followed the Company's territorial expansion in Bengal. After Plassey in 1757 and the acquisition of the Diwani of Bengal, Bihar and Orissa in 1765, the Company assumed major responsibilities for revenue collection, administration and justice. Commercial authority could no longer be separated from territorial government. The need for courts capable of resolving disputes and supporting administration created the conditions for a more comprehensive colonial legal system (Travers, 2007, 2022).

4. Warren Hastings and the Early Colonial Judicial Order, 1772–1784

Warren Hastings's reforms of 1772 marked a major institutional turning point. The Company organised civil and criminal adjudication through the emerging *adalat* system. Civil justice was associated with Diwani Adalats, while criminal justice operated through Faujdari institutions under Company supervision. The reforms retained Hindu and Muslim legal authorities in specified personal matters while increasingly placing adjudication within a bureaucratic framework (Jain, 2022; Lhost, 2022).

The importance of the 1772 reforms lies in the principle that Company government would operate through identifiable courts, officials and procedures. Yet this was not simply an English importation. Jaffe (2015) and Travers (2019, 2022) show that Company authorities appropriated and transformed late Mughal practices of petitioning, judicial inquiry and documentary administration. Colonial state-building therefore involved institutional adaptation as well as displacement.

The Regulating Act, 1773, added a new constitutional layer by creating the office of Governor-General of Bengal and providing for a Supreme Court of Judicature at Fort William. The Supreme Court began operating in 1774 as a royal court with judges trained in English law. Its authority coexisted uneasily with Company administrative and revenue courts, producing disputes over the reach of royal justice (Travers, 2007).

The Act of Settlement, 1781, responded to these conflicts by restricting aspects of the Supreme Court's jurisdiction and protecting Company officials acting in their official capacities. Pitt's India Act, 1784, then strengthened British parliamentary supervision over Company government through the Board of Control. These measures established increasing metropolitan supervision over Company government (Act of Settlement, 1781; Pitt's India Act, 1784; Jain, 2022).

5. Centralisation, Cornwallis and the Bureaucratic Legal State

During the late eighteenth and early nineteenth centuries, the Company increasingly sought to rationalise administration. The Cornwallis reforms of the 1790s strengthened the role of European officials, reorganised the courts and helped establish a more formal bureaucratic relationship between revenue, executive and judicial institutions. The regulations associated with the Cornwallis period are often treated as a major stage in the professionalisation of the colonial administration (Jain, 2022; Singha, 1998).

The transformation was not simply institutional. It changed the practical relationship between state authority and legal subjects. Judicial proceedings increasingly required written records, petitions, formal pleadings and official decisions. In northern India, the interaction of revenue administration, schools, village officials and courts contributed to the colonial construction of subjects who were expected to become simultaneously governable and legally intelligible (Bellenoit, 2017; Du, 2022; Raman, 2012). Bureaucracy became part of colonial legal administration.

This period also demonstrates why the history of colonial law should not be reduced to the diffusion of English legal principles. The colonial state depended upon Indian scribes, translators, revenue officials, legal experts and documentary practices. Company officials often worked through existing institutional forms while redefining their authority. The resulting system was increasingly centralised but remained dependent upon local knowledge and personnel (Bayly, 1996; Raman, 2012; Travers, 2022).

6. Charter Act 1833 and the Movement Toward Codification

The nineteenth century brought a decisive shift from dispersed regulations toward systematic legislative codification. The Charter Act, 1833, was central to this transformation. It concentrated legislative authority in the Governor-General in Council and provided for the appointment of a Law Commission. The First Law Commission, chaired by Thomas Babington Macaulay, was appointed in 1834. Its work included the preparation of a draft Penal Code and contributed to the broader project of consolidating and codifying Indian law (Law Commission of India, 2018; Jain, 2022).

Codification had several purposes. It promised greater certainty, uniformity and accessibility in a legal environment characterised by multiple regulations and differing institutional arrangements. Written codes could also facilitate administration across a large territory by defining offences, rights, procedures and legal relationships in relatively standardised terms. The project reflected nineteenth-century confidence in legislation as an instrument of legal rationalisation.

Yet codification also involved the state's power to define social conduct. Cohn (1996) argues that colonial systems of classification and knowledge were closely related to the exercise of political power. Codification was therefore not a politically neutral technical exercise. The colonial government determined which practices would be recognised, which would be classified as offences, and how legal categories would be applied. The process strengthened both legal predictability and governmental capacity.

7. The Great Codifying Era: Criminal, Evidence, Contract and Procedure

The Indian Penal Code, 1860, became one of the most enduring products of colonial codification. Enacted as a general penal code for India, it organised a wide range of offences and general principles of criminal liability into one statute (Indian Penal Code, 1860). Its structure provided a relatively systematic framework for criminal law and became highly influential beyond the colonial period.

The Indian Evidence Act, 1872, similarly sought to consolidate and define the law of evidence. By establishing statutory rules concerning relevance, admissibility and proof, it reduced dependence on fragmented procedural practice and created a more standardised evidentiary framework (Indian Evidence Act, 1872). The Indian Contract Act, 1872, provided a general statutory framework for contractual relationships and commercial obligations (Indian Contract Act, 1872).

Procedural codification developed alongside substantive legislation. The Code of Criminal Procedure, 1898, consolidated criminal procedure, while the Code of Civil Procedure, 1908, consolidated civil judicial procedure. The latter entered into force as a comprehensive procedural statute for civil courts (Code of Criminal Procedure, 1898; Code of Civil Procedure, 1908). Together, these enactments linked substantive rules to judicial processes of investigation, evidence, judgment and appeal.

The codification project was therefore transformative because it produced a legal vocabulary that could be applied across extensive territories and administered through courts and officials. Nevertheless, uniformity was never complete. Personal laws, local regulations, special areas and customary practices continued to complicate the idea of a single law for all inhabitants (Chatterjee, 2020; Derrett, 1968; Lhost, 2022).

8. High Courts and the Reorganisation of the Judiciary

The Indian High Courts Act, 1861, represented another major institutional change. The Act authorised the Crown to establish High Courts of Judicature at Calcutta, Madras and Bombay. The new High Courts brought together functions previously distributed between Supreme Courts and the Sadar Adalats, creating a more integrated superior judicial structure (Indian High Courts Act, 1861; Jain, 2022).

The establishment of High Courts was significant for several reasons. First, it created durable centres of appellate and original jurisdiction. Second, it strengthened judicial professionalism and the development of a body of reported case law. Third, it provided expanding opportunities for Indian legal practitioners to participate in formal colonial courts. Over time, the legal profession became an important site of engagement with constitutional and political questions.

The judiciary, however, continued to operate within an executive-centred colonial constitution. Courts operated within an imperial hierarchy, and executive authority remained substantial. The legal system was professionalising while remaining embedded within colonial sovereignty (Jain, 2022; Cohn, 1996).

9. Crown Rule After 1857 and the Expansion of Legal Administration

The uprising of 1857 marked a constitutional rupture. The Government of India Act, 1858, transferred the Company's governing functions to the British Crown. A Secretary of State for India, supported by a Council of India, assumed central responsibility in Britain, while the Governor-General in India also became the Viceroy. The transfer ended the Company's position as the formal governing authority and consolidated India within direct Crown rule (Government of India Act, 1858; Jain, 2022).

The post-1857 period saw continued expansion of statutory administration. The Police Act, 1861, established a statutory framework for the organisation and control of police forces, while the Prisons Act, 1894, provided a legislative foundation for prison administration. These institutions were integral to the operation of criminal justice because codified offences required mechanisms of investigation, detention and punishment (Jain, 2022; Singha, 1998).

Criminal justice also became a major instrument through which the colonial state responded to political opposition. Offences relating to public order and state authority, together with press and security legislation, gave the government legal means to regulate political activity. This does not mean that the entire justice system existed only for political repression; rather, it means that ordinary administration and imperial security were institutionally interconnected (Singha, 1998).

10. Personal Law, Social Reform and the Persistence of Legal Pluralism

Despite the expansion of codified public and commercial law, British rule did not create complete legal uniformity in private matters. Hindu and Muslim personal law continued to govern significant aspects of marriage, inheritance, family relations and religious practice. Colonial courts nevertheless became increasingly important in interpreting these traditions through translated texts, legal experts and judicial precedent (Chatterjee, 2020; Derrett, 1968; Lhost, 2022).

The state simultaneously introduced social-reform legislation. The Bengal Sati Regulation, 1829, prohibited *sati* in the territories to which it applied, while the Hindu Widows' Remarriage Act, 1856, provided legal recognition to widow remarriage (Bengal Sati Regulation, 1829; Hindu Widows' Remarriage Act, 1856). These measures illustrate that colonial law could preserve personal-law categories while also intervening in social practices.

"Muslim law" and "Hindu law" under British rule should therefore not be treated as unchanged continuations of precolonial jurisprudence. Colonial courts selected texts, privileged particular interpretations and embedded legal norms within state-administered procedures. Lhost (2022) shows how Islamic law continued to operate in everyday life while British institutions changed its relationship with community and state.

11. Legislative Councils and the Constitutionalisation of Colonial Law

By the late nineteenth century, legal history increasingly included representative institutions. The Indian Councils Act, 1861, expanded legislative councils; the Indian Councils Act, 1892, enlarged participation and permitted greater discussion of public and financial matters. Neither created responsible government, but both contributed to the gradual institutionalisation of representative politics (Jain, 2022).

The Indian Councils Act, 1909, expanded the councils further and introduced a larger role for elections, including separate electorates for Muslims. This became an important feature of the constitutional history of British India (Indian Councils Act, 1909; Jain, 2022).

The Government of India Act, 1919, represented a further stage. It introduced dyarchy in the provinces, dividing subjects between "transferred" areas administered by ministers responsible to legislative councils and "reserved" areas remaining under the Governor's control. The central legislature was also reorganised as a bicameral body. Political participation consequently expanded without displacing imperial executive authority (Government of India Act, 1919).

Law thus became increasingly constitutionalised. Elections, councils, legislative debate and ministerial responsibility provided new arenas for political claims, while colonial sovereignty remained the underlying constitutional framework.

12. The Government of India Act, 1935 and the Final Constitutional Framework

The Government of India Act, 1935, was the most extensive constitutional statute enacted for British India before independence. It provided for provincial autonomy, proposed a federation involving British Indian provinces and princely states, and established a Federal Court while setting out a more elaborate division of legislative powers (Government of India Act, 1935; Jain, 2022).

Provincial autonomy became operational in 1937 and increased the responsibility of Indian ministers in provincial administration, although governors retained important discretionary and special powers. The

Act therefore provided more developed experience of representative government without ending the colonial constitutional order (Bhattacharjee, 2018).

The Act also addressed legal continuity by preserving existing law until alteration or repeal by competent authority. The creation of the Federal Court further strengthened the constitutional dimension of adjudication and reflected the increasing complexity of the governmental structure (Government of India Act, 1935).

13. The Indian Independence Act, 1947 and Legal Continuity

The final legal stage of the British era was the Indian Independence Act, 1947. Passed by the British Parliament, the Act provided for the establishment of the independent Dominions of India and Pakistan and brought British sovereignty to an end in the territories concerned. The Act took effect on the appointed day of 15 August 1947 and created a constitutional mechanism for the transfer of governmental authority (Indian Independence Act, 1947).

Independence did not require the immediate abandonment of the colonial legal framework. Section 18(3) of the Act provided that, subject to the Act and necessary adaptations, the law of British India existing immediately before the appointed day would continue as the law of each new Dominion until changed by competent legislative authority. This was a practical constitutional device designed to prevent a legal vacuum during political transition (Indian Independence Act, 1947).

For both India and Pakistan, the provision had enormous institutional significance. Courts, police organisations, procedural laws, criminal statutes, evidence rules and administrative regulations could continue operating while new constitutional and legislative arrangements were developed. Subsequent adaptation and constitutional change altered this inheritance, but the basic continuity established in 1947 explains why numerous colonial-era statutes remained influential in the legal systems of the successor states (Jain, 2022).

14. Critical Assessment of the English Legal Legacy

The English-era legal transformation should not be reduced to either a narrative of legal modernisation or one of colonial coercion. It combined professional courts, written codes, legislative institutions, police and prison systems, legal education and a growing legal profession with a political order designed to govern a colonised population (Jain, 2022).

Colonial law could increase procedural regularity and legal predictability while also strengthening administrative capacity. Criminal law, policing and public-order regulation operated within a system in which imperial security remained a central governmental concern. Kolsky (2010) and Singha (1998) demonstrate how colonial justice changed relations between state power, social order and legal authority, while Cohn (1996) emphasises the connection between colonial classification, knowledge and political control.

The legal order was also hybrid. English concepts became influential, but the resulting system was not identical to English law. Personal laws, local customs, indigenous personnel and inherited administrative practices remained important. British institutions often translated, classified and reorganised existing norms rather than simply eliminating them (Lhost, 2022; Travers, 2022).

Its most consequential legacy was therefore institutional. At independence, the successor states inherited courts, statutes, procedures and administrative agencies that could be adapted rather than entirely replaced.

Conclusion

The legal history of the Indian subcontinent under English rule from 1600 to 1947 was a prolonged transformation in which commercial settlements became territorial government, fragmented courts developed into organised hierarchies, and dispersed norms were increasingly codified.

The judicial reforms of 1772, the Regulating Act, 1773, the Supreme Court at Calcutta and the settlement of jurisdictional conflicts in 1781 established foundations for colonial judicial and constitutional law. During the nineteenth century, centralisation and codification became dominant. The Charter Act, 1833, and the Law Commissions prepared the ground for the Indian Penal Code, 1860, and later legislation on evidence, contracts and procedure. The High Courts Act, 1861, and subsequent reforms created a more coherent judicial structure, while police, prison and procedural legislation strengthened the machinery of justice.

In the twentieth century, colonial legal history increasingly became constitutional history. Legislative councils expanded, political representation increased, and the Government of India Acts of 1919 and 1935 introduced more developed forms of provincial and central governance. Yet substantial executive powers remained with colonial authorities, and law continued to regulate political opposition as well as ordinary administration.

The Indian Independence Act, 1947, ended British sovereignty while preserving the continuity of existing law. India and Pakistan therefore inherited courts, statutes, procedures and administrative institutions developed under colonial rule and subsequently reshaped them through their own constitutional processes.

The English era is best understood as a complex process of legal reconstruction. Its central legacy was a layered legal architecture of codification, bureaucracy, judicial institutionalisation, adaptation and constitutional change that continued to shape South Asian law after 1947.

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