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Authors' Name	Article	Page
Tapos Kumar Das	Do Judges Make Law? A Scrutiny in the Context of the Decisions of the Supreme Court of Bangladesh	7
Dr Abdul Alim	The Fourth and Fifth Amendment Rights of the American Constitution: Protection of Rights during Search, Seizure and Interrogation	34
Dr. Shima Zaman	Trans-Border Movement of Natural Persons under The General Agreement on Trade in Services (GATS) and Right to Work	53
Nasrin Rahman Abu Naser Md Wahid Biswajit Chanda	Gender Equality and Its Impact on Domestic Violence Law: A Comparative Study of Australia and Bangladesh	75
Biswajit Chanda	Debates on Family Law Reform in Bangladesh with Special Reference to Muslim Law	93
Dr Shahin Zohora	Problems of Pirpul Estates: An Experience of Shah Mukhdum (Rh.) Pirpul Waqf Estate	119
Md Rafiqul Islam	The Mayor's Courts in British India and Their Influence on the Judiciary of Bangladesh	135
Dr Halima Khatun Mst Hamida Khatun	Law of Polygamy in Bangladesh: An Analysis in the Context of Islamic Law and Human Rights	149
Md Shahidul Islam Md Golam Moula	<i>Suo Moto</i> Jurisdiction of the High Court Division and Its Impact on the Promotion of Human Rights in Bangladesh	163

The Mayor's Courts in British India and their Influence on the Judiciary of Bangladesh

Md Rafiqul Islam*

ABSTRACT *The Mayor's Courts were established in British India about three hundred twenty five years ago to adjudicate foreign nationals, mainly Europeans living in the British India. Subsequently, the jurisdiction of the court was extended to native Indians. This paper provides a detailed description of the Mayor's Courts. The purpose of this article is to focus on the composition and functions of the Mayor's Courts with respect to the contemporary socio-political situation of then British India. This article also analyses the influences of the Mayor's Courts over the present judiciary in Bangladesh.*

KEYWORDS *British India, East India Company. judiciary, Mayor's Courts*

1. Introduction

The East India Company¹ established the Mayor's Court in 1687 as a part of the Madras Corporation² with the primary objective to adjudicate foreign nationals, mainly Europeans living in the British India. However, the jurisdiction of the court was extended to native Indians. Following the Mayor's Court in Madras, the British government established two other

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¹ The East India Company was a British company formed in 1600 AD under a Royal Charter (The Governor and Company of Merchants of London Trading into the East Indies), granted by Queen Elizabeth I. The company was initially approved for 15 years for the enjoyment of exclusive trading rights in certain countries. The company exercised its monopoly since no other British subject was given the right to carry on trade in the same areas (Gupta 1989: 151). The Company's registration was extended several times and in the course of time it assumed the state power of the Indian sub-continent.

² Following the London Corporation and London Mayor's Court the Madras Corporation came into existence on 29 September 1688 (Kulshershta 1992: 45).

Mayor's Courts in Bombay and Calcutta along with a few amendments in the then Madras Mayor's Court by adopting a Royal Charter.³ Finally, the British Government abolished the Mayor's Courts one by one with the establishment of the Calcutta Supreme Court in 1774.

The Mayor's Courts had existed in India for more than one hundred years (1687-1798);⁴ yet there is much interest among Bangladeshi legal scholars about the courts – mainly because of their importance and influence in the present judicial system in Bangladesh. However, there is no significant scholarly work done in this field. The aim of this article is to focus on the composition and functions of the Mayor's Courts and their influence on present judicial institutions in Bangladesh. Firstly, it provides a detailed description of the Mayor's Courts, then it analyses the role of Mayor's Courts in respect of the contemporary situations of the then British India. Finally it examines the influences of the Mayor's Courts over Bangladeshi courts.

2. Mayor's Courts in India

The first Mayor's Court was established in Madras under the Company's Charter 1687.⁵ Then the Royal Charter 1726, issued by King George I on 24 September 1726, empowered the Company to establish Mayor's Courts in other presidency towns. There were three presidency towns in British India: Madras, Bombay and Calcutta. A Mayor's Court was already functioning in Madras. This Charter brought a few changes with respect to the formation and jurisdiction of the Mayor's Court in Madras as well as set up two new courts, one in Calcutta and the other in Bombay (Kulshershtha 1992: 63). Finally, the Charter of 1753 modified the Mayor's Courts in Madras, Calcutta and

³ The Charter of 1726 issued by King George I on 24 September 1726 (Kulshershtha 1992: 63).

⁴ The Madras Mayor's Court had existed from 1687-1797; while in Bombay and Calcutta from 1726-1798 and 1726-1774 respectively (Kulshershtha 1992: 68).

⁵ Charles II granted a Charter to the Company on 9 August 1683. It authorised the Company to establish one or more courts at such places as it might direct. James II repealed the same provisions by a new Charter on 12 April 1686. Then the East India Company issued a Charter dated 30 December 1687 under its authority (not under the Crown) which provided with the creation of a Mayor's Court at Fort St. George in Madras (Kulshershtha 1992: 59).

Bombay.⁶ The historical development of the Mayor's Court in Madras, Bombay and Calcutta, their powers and functions are described below.

2.1 History of the mayor's courts

The development of Mayor's Courts in British India could be discussed in main three stages:

- i) A Mayor's Court under the Charter of 1687;
- ii) Mayor's Courts under the Charter of 1726; and
- iii) Mayor's Courts under the Charter of 1753.

Mayor's Court under the Charter of 1687

The East India Company acquired a piece of land in Madras from the Raja of Chandragiri on 22 July 1639 and established a factory and residential building for the servants of the company named Fort St. George (Jain 1997: 11). The place became popular for commercial activities and the company obtained full authority from the Raja to govern it. The Company desired to transform Madras town into a corporation in order to set better governance system. For this purpose, the East India Company introduced a Charter on 30 December 1687 to create Madras Corporation as well as a Mayor's Court. The Corporation and the Mayor's Court came into existence on 29 September 1688 involving the British people and native Indians to make the tax collection system easy for the Company officials.

Mayor's Courts under the Charter of 1726

The East India Company acquired the island of Bombay in 1668⁷ and constructed a house named Fort William⁸ on the bank of the river Hoogly at Calcutta in 1690 to use as a factory or government house of the Company. In

⁶ The Charter of 1753 was issued by King George II on 8 January 1753 (Kulshershtha 1992: 69).

⁷ From Charles II under the Charter of 1668 for an annual rent of 10 Pound (Kulshershtha 1992: 47).

⁸ Fort William was established for Military forces to protect the East India Company and its trade in the city of Calcutta. It was the principal town of Bengal Presidency. In 1756, with the possibility of conflict with French forces, the British began building up the fort's strengths and defences (Kulshershtha 1992: 55).

1698, Prince Azim-Ush-Shan⁹ approved the Zamindari¹⁰ rights over three villages, namely Dihi Calcutta, Sutanati and Govindpur, to the East India Company (Kulshershtha 1992: 55).

Then the Charter of 1726 added a momentum in developing effective civil and criminal administration of justice by establishing Mayor's Courts in presidency towns. The Charter abolished the Admiralty Courts and transferred its appellate jurisdiction to the Mayor's Courts.¹¹ Thus, the three Mayor's Courts got a unique structure and power which introduced a uniform judicial system in the British India. The Charter shifted the powers of handling the Mayor's Courts from the East India Company to the direction of the British administration and they were assigned as Royal Courts. In fact, these Mayor's Courts were empowered as the superior courts compared to any other courts established by the Company in India until 1726.

Mayor's Court under the Charter of 1753

The Charter of 1753 reformed the Mayor's Courts at Madras, Calcutta and Bombay.¹² The reforms enabled the courts to address the conflicts among the native Indians residing in the presidency towns.¹³ The Charter also created a Court of Request in every presidency town to

⁹ He was subedar of Bengal and grandson of the Emperor Aurangzeb (Kulshershtha 1992: 55).

¹⁰ A zamidar means a landlord who was usually represented by a tax or rent collector (Kulshershtha 1992: 55).

¹¹ Admiralty Court was established at Madras on 10 July 1686. Its main purpose was to adjudicate various criminals connected to forfeiture of ships, piracy, trespass, injuries, wrongs, maritime and mercantile transactions etc. committed by traders (Jain 1997: 43).

¹² For the appointment of a Mayor, a panel of two names from the Aldermen was presented by the Corporation every year in order to select one by the Governor-in-Council. As a result, the Council had an influence on the appointed Mayor (Kulshershtha 1992: 70).

¹³ The Charter directed the Mayor's Court to adjudicate a matter only after receiving consent from both the parties. In order to ensure impartiality, a person interested in the subject-matter of the dispute was not allowed to sit as a judge (Kulshershtha 1992: 70).

decide cases valuing not more than five *pagodas*¹⁴ to give low cost and speedy justice to the poor.¹⁵

2.2 Structures of the mayor's courts

For the purpose of this article, the structures and compositions of different Mayor's Courts are discussed below:

Composition of Madras Mayor's Court

The Madras Corporation consisted of a Mayor, 12 Aldermen and 60 to 120 Burgesses.¹⁶ The Mayor's Court was a part of this corporation. The Mayor of Madras acted as the Chair of the Madras Mayor's Court, while an Alderman acted as a judge. However, at least two Aldermen along with the Mayor could form the bench to adjudicate any case came before the Mayor's Courts. Primarily, the names of judges chosen from the Company employees (who were servants of the corporation as well) were mentioned in the Charter of 1687. Thereafter, on yearly basis, the Aldermen always elected a Mayor from the native English, while the Aldermen were appointed for lifetime or until they were resident in Madras. However, at least three Aldermen, out of twelve, were appointed from the British servants working in the Company; and the rest Aldermen could be appointed from different nationalities and religions. Out of initial twelve Aldermen, three were selected from English, three from Hindus, one from French, two from Portuguese and three from Armenians and jews (Jain 1997: 17-18).

The composition, jurisdiction and functions of the Madras Corporation and the Mayor's Court were amended by the Charter of 1726. The then Madras Corporation consisted of one Mayor and nine Aldermen. The Mayor or a senior Alderman together with two other Aldermen formed the quorum of the Court.

¹⁴ A *pagoda* was in Madras coin equivalent to about eight shillings of English currency (Kulshershtha 1992: 63).

¹⁵ It consisted of 8 to 24 Commissioners of whom three could form a quorum (Kulshershtha 1992: 70).

¹⁶ An Alderman was a member of the municipal legislative body in a town or city in many jurisdictions and a Burgess was generally the chief officer of the Corporation who served within the Borough the same kind of duties a Mayor exercised in a city.

Composition of Calcutta and Bombay Mayor's Courts

Like Madras Mayor's Court the Mayor's Courts of Calcutta and Bombay were the part of respective corporation. The Mayor's Courts in Calcutta and Bombay both consisted of one Mayor and nine Aldermen. The Mayor or a senior Alderman together with two other Aldermen formed the quorum of the court.

Each Mayor's Court comprised the Mayor and nine Aldermen, seven of whom including the Mayor were selected from British subjects and the remaining two were chosen from either subjects of substantial states of the Great Britain or states having gracious relationship with the Great Britain. In the first order, the Charter of 1726 included the names of the first Mayor and nine Aldermen for each presidency town. The Charter mentioned that existing nine Aldermen and the outgoing Mayor would elect the next Mayor from the Aldermen for a corporation when a Mayor ends his yearly tenure. An Alderman was appointed either for life or for the term of his residence in the presidency town. The Mayor and the Aldermen were authorised to fill up the vacant post of an Alderman either from the inhabitants of the concerned presidency town or from the employees of the Company. A Mayor's Court was a Court of Record, which means a court whose records are kept permanently and the credibility of such records cannot be questioned in any other court. A Court of Record has also the power to punish for the contempt of its authority (Kautilya 1997: 19).

2.3 Jurisdiction of mayor's courts

The Mayor's Courts were established in British India under the Charters of 1687 and 1726. Following the above mentioned Charters, the jurisdictions of the then Mayor's Courts are discussed below.

Jurisdiction of Mayor's Courts under the Charter of 1687

The Mayor's Court exercised its jurisdiction in civil cases where the value of the cases exceeding three *pagodas*. In criminal cases this court required the assistance of juries. The credit of introducing the jury system in criminal administration of justice at the early British period in India goes to the Mayor's Court. The Charter also introduced the appointment of a legal expert as a Recorder to assist the Mayor's Court during the trials. At the beginning, an appeal against the decision of a Mayor's Court was allowed to the Admiralty Court in all civil cases

exceeding three *pagodas* ¹⁷ and in criminal cases where the punishment was death sentence only. However, the Governor-in-Council started to hear appeal from the Mayor's Courts in 1704 when the Admiralty Court ceased to operate. ¹⁸

The Governor-in-Council was empowered to dismiss or remove any Aldermen from their position at anytime, even without any reasonable ground. The Governor-in-Council of each presidency town was empowered to make bye laws, rules and ordinances in order to regulate the functions of the Corporation as well as provide a better administration to the inhabitants of the town subject to a written permission or approval from the Board of Directors of the Company. Subsequently those rules or ordinances required a final approval from the Court of Proprietors after getting approval from the Board of Directors of the Company. ¹⁹

Jurisdiction of Mayor's Courts under the Charter of 1726

Mayor's Courts were established by a Royal Charter aiming to strengthen the company administration and judiciary in British India. The Courts were authorised to hear all civil disputes between the parties and determine and decide upon those matters. The Charter empowered the Mayor's Courts to exercise testamentary jurisdiction and to issue a letter of administration to the successors of a deceased. Each court exercised jurisdiction over the people living in the respective presidency town and working in factories subordinate to the company. The Charter also introduced the provision of appointing an officer called Sheriff to serve the process of the court. The court issued summons to defendant to appear before it upon the receipt of a written complaint from aggrieved persons. The court was empowered to issue a

¹⁷ The Admiralty Court was introduced to punish interloper merchants and criminals of piracy on high seas (Kulshershta 1992: 60).

¹⁸ The ruling power of the British East India Company was ceased, and India came under the direct control of the British Crown. The government of Bombay, Calcutta and Madras were thereafter administered by a Governor-in-Council, consisting of the Governor as the president and two members. The Governor and the two other members of the Council were appointed by the Crown and selected from the Indian Civil Service. They were the executive members of the government (Kelly 2007).

¹⁹ The Court of Proprietors was composed of persons holding shares of the British East India Company. They were empowered to attend in the general meeting of the company and to elect the Governor and the Board of Directors of the company.

warrant against a defendant if the defendant failed to appear before the court on the fixed date. The sherrif had the power to arrest any warranted accused and to present him before the court. The court had the discretion to release any defendant on execution of a bail bond or such security as it deemed fit. The sherrif implemented the decision or judgment of the court by arresting the convict and putting him into jail. The whole procedure of the court was based on the practice exercised in the courts of England. The Governor-in-Council was the proper authority to hear appeal against the decisions of a Mayor's Court – the appeal had to file within fourteen days of the decision made. A decision of the Governor-in-Council was final in cases valuing less than 1000 *pagoda*, and when the value exceeded that sum a further appeal was allowed to the King-in-Council (Privy Council).

3. Evaluation of the Mayor's Court

Before the Mayor's Court came into being a well structured administration of justice existed in the Indian subcontinent during the Hindu and Muslim periods. However, the appointment of judges, neutrality of judges and division of courts' jurisdictions were not as explicit as could be seen in the Mayor's Courts. To assess the distinctness of the Mayor's Courts and their influence over the contemporary judiciary a comparative study of ancient courts, Mayor's Courts and contemporary courts is imperative.

The Hindu period began towards the end of the 3rd century and continued up to the beginning of the 13th century (Kulshershtha 1992: 1) although there is different opinion that this period extends nearly 1500 years before and after the beginning of the Christian era (Halim 2009 : 37). During that period only learned and highly qualified persons were allowed to become a judge. In deciding the cases the judges were required to take the oath of impartiality and to follow the prescribed trial procedure. Trial by *Ordeal* followed by the courts was not only painful and dangerous but also detrimental to the principles of rule of law.²⁰ *Brahmins* were exempted from death sentence; women and *sudras* were

²⁰ Trial by *ordeal* was a method to determine the guilt. The ancient Indian society which was largely dominated by religion and faith in God, considered the trial by ordeal a valid method of proving guilt (Kulshershtha 1992: 47).

not allowed to be judges despite having expertise – these are the few drawbacks of the then judicial system (Talukder 2011: 16-17).

After the end of the Hindu period, the Muslim period started at the beginning of the 13th century and continued up to the middle of the 18th century.²¹ In that period high standard of legal learning and reputed sanctity of character was required to be a *Qazi*. Then skilled practice and high judicial reputation were required for promotion and other facilities. Contempt of court was considered a serious offence and was severely punished; judicial procedure was simple and the decisions were made speedy. Although the Muslim law prohibited trial by *ordeal* in non-Muslim states this system continued uninterruptedly (Kulshershtha 1992: 25-26). At the time of trial, no discrimination was made on the basis of rank, sex, religion etc. Under the Muslim criminal law, there were no distinction between crime and tort as well as private and public law. In case of murder, the law of *Diya* or blood money provided under the Muslim law could not be seen as an appropriate way. The independence of judiciary was not visible as both executive and judicial powers were reposed on one hand. Testimony of two Muslim women was equivalent to that of one Muslim male which goes against the principle of equality (Talukder 2011: 37-38). During that time a well organised judicial system was established by the Muslim rulers all over the empire including Bengal (Kulshershtha 1992: 31).

Queen Elizabeth issued a Charter on 31 December 1600 permitting the East India Company to run business and maintain discipline amongst its servants (Kulshershtha 1992: 32). Theoretically a British ship on a voyage to abroad was treated as a part of the British domain. The Charter authorised the Company to establish courts for better control over the Company affairs; and also empowered the East India Company to make laws and ordinances for the welfare of the company and its servants.

²¹ Muslim period in Bangladesh started at the beginning of 13th century (1203 or 1204) when Ikhtair Uddin Mohammad Bin Bakhtair Khilji conquered Bangla (Talukder 2011: 19).

The Mayor's Court introduced the hierarchal system among the courts in British-India. The position of the Mayor's Court was at the top of the hierarchy, and the Court of Requests was placed in the bottom.²² The Mayor's Courts were presided over by the Mayors and the Aldermen, who were either servants of the company or dependant on the company's pleasure for their stay in India. They had neither any regular legal training nor any previous judicial experience. Administration of justice on such persons was never free from evil consequence (Kulshershtha 1992: 65). Conversely, the Recorder of the Mayor's Court was skilled in law. Sir Biggs was the first Recorder and he had working experience as a Recorder in London. Sir Biggs held dual post simultaneously, one as a Judge Advocate (the chief judge of the Admiralty Court) and another as a Recorder of the Mayor's Court in Madras. Assumption of two positions by Sir Biggs was disputed on the ground of conflict of interest. Because, the Admiralty Court was empowered to receive appeal from the Mayor's Court. However, it was a matter of relief that after the death of Sir Biggs in 1689 no Recorder was appointed in the Mayor's Courts.

The Mayor's Court was not independent from the company's executive government. The executive authority of the company i.e., Governor-in-Council was empowered to appoint Mayors and Aldermen to act as judges of the Mayor's Courts under the Charter of 1753. Such appointment provision resulted in integration of the executives in the administration of justice and failure of effective dispensation of justice.

The procedure of the court was not prescribed by law (Jois 1984: 107). Its proceedings were conducted in a summary way according to the ideas of justice, equity and good conscience and the laws framed by the company time to time. The Mayor's Court did not follow uniform

²² There could be an appeal against the decision of the Mayor's Court to the Governor-in-Council and when the value of the disputed subject-matter was not less than thousand *Pagodas*, there could be a second appeal to the King-in-Council. The judgments of the Mayor's Courts were sent to England where the Board of Directors of the Company scrutinised those judgments and prepared proper guidance on the basis of such scrutiny (Kautilya 1997: 24).

punishments for the same crimes and the term of imprisonment was prolonged. The trial system was very slow and the authority did not take any initiative to complete the proceedings within a reasonable time. Moreover, in many cases in absence of legal knowledge the judges failed to deliver fair judgment (Kulshershtha 1992: 41). The highest punishment was death by hanging- granted mainly for robbery, while for witchcraft the punishment was fine and pillory.

There was no specific and uniform state law or common *lex loci*²³ to determine inheritance, succession and other issues before establishing Mayor's Court in British India. Practically, in all civil cases justice was administered according to the Hindu or Muslim personal laws. The criminal justice system however was entirely based on Muslim law. In this backdrop, the Englishmen introduced their own laws through Mayor's Courts to govern their business related disputes with the approval of the Mughal Emperor (Kulshershtha 1992: 37).

In 1680, Strynsham Master, the Governor of Madras, recognised English language as the official language of Madras (Kulshershtha 1992: 42). The Royal Charter of 1726 for the first time made possible for the company to apply the English laws parallel to the personal laws of Hindus and Muslims in British India. Thus, the English language and laws facilitated establishing a bridge between the English law and personal law of native Indians.

In spite of few shortcomings the Mayors' Courts were no doubt much better than the courts existed prior to them in the presidency towns and constituted links with the evolutionary process of the Indian judiciary. The Mayors' Courts were more formal and regular than the courts existed earlier and in turn paved the way for a more improved and structured justice system by professionals.

²³ *Lex-loci* mean the law of a place-outside the presidency towns in moffusil areas, which shall be applicable to all (except Hindus and Mohammedans). (Kulshershtha 1992: 273).

4. Influence of Mayor's Court in Bangladesh

Bangladesh emerged as an independent state in 1971. In ancient time Bangladesh was a part of undivided India and was known as 'Bengal'. Here the legal system developed gradually passing through various stages. The current legal system emanates from a 'mixed' system in which the structure, legal system and specific concepts are combination of both Indo-Mughal and English law (Alam 2009).

In Bangladesh, in limited areas, the provision for appointment of judges is similar to that of the Mayor's Courts in British India. In Bangladesh, an executive magistrate so authorised either by the government or by the District Magistrate can preside over the Mobile Court.²⁴ Similar to the Mayor's Court, this practice promotes executive's dominance in the justice are of Bangladesh. Again, an advocate of the Supreme Court having ten years standing experience or a judicial officer having ten years professional experience could be appointed as a judge of the Supreme Court which is similar to the appointment of the Recorder of the Mayor's Court.²⁵

During the British period, the English brought mass of legal rules strictly known as the common law and statutes including their traditions, manners and techniques to establish, maintain and develop the judicial system of India. These British-India impacts on the judiciary have placed the judiciary of Bangladesh in a unique position (Talukder 2011: 52). The judiciary in Bangladesh consists of the Supreme Court, lower courts²⁶ and other special courts and tribunal dispensing justice in different areas. This setup is to a great extent resemble to the hierarchical judicial system in British India. The Mayor's Court

²⁴ Section 5 of the Mobile Courts Act 2009.

²⁵ Article 95 of the Constitution of the People's Republic of Bangladesh.

²⁶ The Hierarchy of the subordinate civil courts (bottom up) are Assistant Judge, Senior Assistant Judge, Joint District Judge, Additional District Judge and District Judge; while, for the subordinate criminal courts are Judicial Magistrate, Senior Judicial Magistrate (First Class Magistrate, Metropolitan Magistrate and Special Magistrate), Chief Judicial Magistrate (Chief Metropolitan Magistrate), Joint Sessions Judge, Additional Sessions Judge and Sessions Judge.

introduced oath arrangement for a witness with intent to encourage the witness to speak the truth before a court, which till exercised by the courts in Bangladesh (Kulshershtha 1992: 70).

5. Conclusion

Mayor's Courts were established by the East India Company for prosecuting the European law breakers within the limits of its settlements in Madras, Bombay and Calcutta. Later on their jurisdictions were extended to the native Indians and persons interested to accept the courts' jurisdiction and were not residing in the presidency towns. Though the Company abolished the Mayor's courts more than a century ago their influence on the present judiciary in Bangladesh is still observed in limited areas.

The decisions of the Mayor's Courts were as authoritative as those of the courts in England.²⁷ In addition, the Charter of 1726 also established a local legislature (Governor-in-Council) in each presidency town with such powers as are exercised by the existing city corporations and municipalities in Bangladesh. The Mayor's Courts contributed remarkably in providing an effective and organised administration of justice in British-India and Bangladesh.

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²⁷ The Charter of 1726 introduced uniformity between the Mayor's Court in India and the Court of England. The source of the authority for both the courts was the same, viz, the Crown, who was regarded as the fountain of justice (Kulshershtha 1992: 63).

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