4

Inauguration of the Adalat System in Bengal

"Clive could not afford to indulge in counsels of perfection, he had to deal with actualities. He admitted that the Nawab had only 'The name and shadow of authority', yet his name...this shadow it is indispensably necessary that we should venerate."

P.E. Roberts: *History of British India*, p. 160

The system of "dual government, made confusion more confounded and corruption more corrupt."

J.W. Kaye: *The Administration of East India Co.*

"It was clumsy and it left the door wide open to abuses. There was too much power with too little responsibility."

Percival Spear: *India—A Modern History*, p. 204

"Hastings, in short foresaw and laid the foundation of the policy in which Indian legislation was put under the direction of the Legal Member of the Council, and by which the superintendence of the Moffusil Court and appellate jurisdiction over them were vested in the High Court".

J.F.Stephen: *The Story of Nuncomar and the Impeachment of Sir Elijah Impey* Vol. II, p. 242

SYNOPSIS

1. Courts in Bengal under the Mughals

In the later Mughal period from 1750 onwards the Mughal empire began to disintegrate. The provinces assumed independence under Subedar Nawabs and the executive officers began to try cases themselves. In Bengal the courts[1] which were administering civil and criminal justice, in the Districts and at the Provincial Capital, may be stated as follows:

At the Provincial headquarter four courts were established namely *Nazim-e-Subah, Darogha-e-Adalat Diwani* and *Darogha-e-Adalat Aliah*. The Court of *Nazim-e-Subah* was the highest Court of the Province. It dealt with all criminal appeals

1. M.B. Ahmad, *The Administration of Justice in Mediaeval India*, pp. 173-74.

from district courts, murder cases, revision petitions and cases referred to it by the district courts due to difference of opinion between *Qazi* and *Mufti*. The Court of *Darogha-e-Adalat Diwani* heard all the local civil suits and appeals, including matters relating to real property and land, from the District Civil Courts. The Court of *Diwan* had original and appellate jurisdiction in all revenue cases. The Court of *Darogha-e-Adalat Aliah* disposed of all revenue work on behalf of the *Diwan*.

In each District, courts were established to hear civil and criminal cases. To dispose of civil litigation three courts were established, namely, *Qazi, Zamindar* and *Qanungo*. The Court of *Qazi* was empowered to hear all claims of transfer of property and matters relating to inheritance. The Court of *Zamindar* was authorised to hear all other civil and common pleas. Revenue cases were decided by the Court of *Qanungo*. Apart from this, in each district, there were four criminal courts, namely, *Faujdar, Zamindar, Qazi* and *Kotwal*. The Court of *Faujdar* tried criminal and common law cases. The Court of *Zamindar* tried mostly petty criminal cases in a summary manner. The Court of *Qazi* was empowered to make full enquiries in murder cases only and was required to submit a report to the Court of *Nazim-e-Subah*. From all these Courts appeal was allowed to the Court of *Nazim-e-Subah*. *Kotwal* was the "peace officer" and was authorised to decide petty criminal cases.

2. Origination of a legal vacuum :

As seen in previous chapters when the Britishers came to India, the Mughal authority was fully weakened and entrenched over a vast portion of the country. The territories not under the suzernity of the Mughal Emperor had their own rulers. The British traders initially obtained a foothold with the permission of the Indian rulers and set up their factories mainly in three regions, later known as the Bombay, Madras and Bengal Presidencies. "The Mughals", observes Kapoor[2] "*had an elaborate governmental machinery and had evolved civil and criminal laws to govern their subjects. But unlike the modern times, there was no specific law to govern foreigners. In fact, the Mughal government had no interest in making foreigners amenable to their laws, except for police and revenue matters, or in respect of disputes arising between the Indian subjects and foreigners. Thus in respect of inter se affairs of foreigners in these settlements, a legal vaccum was created, in which grew the legal and political authority of the foreign governments; which increased with the decline of the Mughal Empire and extended to other Indian territories as they came under their influence and jurisdiction.*" This lacuna and weakness of the Mughals in their administration proved fatal and they became an easy prey to the foreigners.

a. Defects of the Judicial System

In many places influential landlords were authorised to maintain law and order in local areas. During the later Mughal period these landlords, commonly known as *Zamindars*, were empowered to try petty civil and criminal cases. Thus the *Zamindars* became very powerful and gained importance in all respects. James Mill remarked, "The *Zamindar* who was formerly the great fiscal officer of a district, commonly exercised both civil and criminal jurisdiction within the territory over which he was appointed to preside. In his *Faujdaree* or Criminal Court he inflicted

2. A.C.Kapoor : Constitutional History of India, Edn. 2nd, 1976, Ch.1.

all sorts of penalties. His discretion was guided or restrained by no law, except the *Koran*, its commentaries and the customs of the country, all in the highest degree loose and indeterminate."[3] Naturally, in lieu of litigation before the *Zamindar's* Court, arbitration was often preferred by the parties. In the districts the peasants were deprived from the justice even according to the local customary law. Corruption amongst judges and the servants of the government further added to the defective state of the local system. It became extremely difficult to file an appeal as no register of judicial proceedings was properly maintained. Not only in the moffussil but even at the seat of the Government the whole judicial system was degraded into a machine of oppression and exploitation of the poor subjects.

The Courts became the instruments of power instead of justice. The Company's servants who had claims against Indians, not residing under the British Flag but in the vicinity of the Company's settlements, used to seize simply and hold them prisoners until they consented to pay the claims without seeking permission from any officer of the Nawab's Government. Keith has pointed out, "The course of justice was further troubled by the revolution which placed Mir Kasim in power, for many Englishmen with or without the consent of the Company soon scattered through the interior to seize the trade and exerted wide influence on the administration of justice, and the overthrow of Mir Kasim led to further encroachments on native authority, the *banyas* (*banias*) or native agents of the English often controlling the local courts and even acting as judges."[4]

To tackle all these problems and to remove corruption[5] from the administration of justice, Warren Hastings was transferred from Madras to the Governorship of Bengal in 1772.[6] He first of all paid his attention to remove all those evils which were the greatest obstacles in the proper collection of the revenue of Bengal, Bihar and Orissa. He replaced the office of *Naib Diwan* by British Agency for collection of revenue, farms were let for a fixed term, revenue supervisors were designated as Collectors and appointed a Committee of Circuit to find out defects in the administration of justice and to prepare a proper plan on which the whole civil and criminal justice was to be based.[7]

3. Grant of Diwani

With the Battle of Plassey in 1757 the real authority of the Nawabs of Bengal passed to the English Company.[8] *At the historic battle of Buxar in 1764 it was not*

3. James Mill, *The History of British India*, Vol. III, p. 467.
4. A.B. Keith, *A Constitutional History of India*, pp. 63-64.
5. Rama Jois: *Legal & Constitutional History of India*, Ch. 4, pp. 142,143.
6. In February 1772 Warren Hastings reached Calcutta from Madras and took charge of Government from Cartier on April 14, 1772. Lyall writes, "No one can deny that Warren Hastings possessed to a degree rare at that period, the talents of political organization." Lyall, *Warren Hastings*, p. 84.
7. *Hastings to Josias Duprea*, 6th Jan. 1773: Gleig: *Memoirs of the life of Warren Hastings*, Vol. I, p. 268.
8. Clive defeated Nawab Siraj-ud-Daula's army and put an end to his power in Bengal in the Battle of Plassey in 1757. The British appointed a new Subedar of Bengal, Nawab Mir Jafar and obtained all privileges they needed. In fact the reality of power had now gravitated into the hands of Clive and Bengal had become virtually a British protectorate as well as a base for the further extension of British power towards the interior of India. Amaury De Reincourt in *The Soul of India*, at p. 201, said, "It was the French, rather than the British who inaugurated the policy of interfering in Indian politics, a new development that has far-reaching consequences." *See also* Thornton, *History of British India*, Vol.I, pp. 410-420; A Mervyn Davis, *Clive of Plassey*, pp. 220-24; Forrest, *The Life of Lord Clive*, Vol. II,

merely the Nawab of Bengal, as at Plassey, but the Emperor of India who was defeated. It had far-reaching political consequences in that it strengthened the British power in India and gave a death blow to the sovereignty of the Mughal Emperor in India. The Court of Proprietors of the Company in England sent Clive to India to deal with the situation and consequences. Thus Clive arrived in India as Governor of Bengal and Commander-in-Chief of the Company's forces in India, for the third time on May 3, 1765.[9] Clive's first achievement was that he entered into a treaty and prevailed upon the Mughal Emperor Shah Alam to confer momentous power upon the East India Company. The Mughal Emperor in August 1765 granted the *Diwani* of Bengal, Bihar and Orissa to the East India Company. In exchange the Company agreed to pay the Emperor[10] a sum of 26 lakhs of rupees and to the Nawab[11] of Bengal a fixed sum of 53 lakhs of rupees annually. The Nawab in return agreed not to keep any military force independently and left it in the hands of the Company's authorities. The Company made the best use of this opportunity to strengthen its position and develop a strong army for itself in the name of the Nawab of Bengal.[12]

4. Dual Government in Bengal: Its Consequences

The Nawab, who was Subedar of Bengal, represented the Mughal Emperor of India. While exercising his authority under *"Diwani"* the Nawab performed two main functions—(*i*) *Diwani i.e.*, collection of revenue and civil justice, and (*ii*) the *Nizamat i.e.*, military power and criminal justice. The Company obtained *Diwani* rights from the Mughal Emperor and the Nawab gave it *Nizamat* work. The Nawab had lost all real power and was a mere shadow in the background.[13] However, the administration of criminal justice was left with the Nawab who was also responsible to maintain law and order. Though the transfer of *Diwani* to the Company was obtained by Clive, in the actual collection of revenue he utilised the services of the natives. Clive was not interested in taking direct responsibility for the collection of revenue through English people as he realised that they will have to face more difficulties at this stage.[14] The administration of civil justice and collection of

---

p. 120; Gleig, *The Life of Robert First Lord Clive*, pp. 142, 194-202.

9. For the first time Clive came to India in the Company's service in 1743 and returned in 1753. After two years, in 1755 Clive again returned to India and stayed up to early 1760. In 1765 Clive came to India for the third time. On March 8, 1758, the Directors appointed Clive to be the sole President and Governor of Fort William in Bengal. *See* Malcolm, *The Life of Robert Clive*, pp. 126-27.
10. Aithison, *Treaties, Engagements and Sanads*, Vol. II, pp. 241-44.
11. *Ibid.*, Vol. II, p. 245. *See also* D.N. Banerjee, *Early Land Revenue System in Bengal and Bihar*, Vol. I, pp. 5-6; Forrest, *The Life of Lord Clive*, Vol. II, p. 279.
12. Malleson has pointed out, "A few months later the Prince was relieved of his responsibility for the maintenance of the public peace, for the administration of justice, and for the enforcing of obedience to law." G.B. Malleson, *Lord Clive*, pp. 171-72. According to Prof. Misra, "The acceptance of the *Diwani*, he (Clive) believed, would add to the political influence of the English, which might be utilised in the elimination of other European nations then engaged in the pursuit of commerce and trade in Bengal." B.B. Misra, *The Judicial Administration of the East India Company in Bengal*, p. 23; Sir C. Ilbert: *The Government of India* (1916) quoted by R.Jois: *Legal & Constt. Hist. of India*, 1984, Ch. 4, pp. 143, 144.
13. *See* P.E. Roberts, *History of British India*, at p. 160: "But Clive could not afford to indulge in counsels of perfection; he had to deal with actualities. He admitted that the Nawab had only 'the name and shadow of authority', yet this name... this shadow it is indispensably necessary that we should venerate."
14. "In the infancy of the acquisition (of the Diwans)," wrote Clive to Directors, "we were under the necessity of confiding in the old officers of the Government, from whom we were to derive our

revenue were left in the native hands under the supervision of the Company officials. Clive, therefore, appointed two prominent natives—Mohamed Reza Khan and Raja Shitab Roy, as Company's Diwan at Murshidabad and Patna respectively. At both the places two separate English officers were also appointed to supervise the working of these native officers. This typical division of power and responsibility—executive, revenue and judicial, between the Nawab and the Company in Bengal, Bihar and Orissa, became famous as the "Dual Government" introduced by Clive. According to Percival Spear, "....*a better name for it would perhaps have been the Divided Government.*"[15] In fact, writes Jain,[16] Bengal served as a laboratory where experiments were made in the adalat system and when workable results were obtained, they were transmitted to the provinces of Bombay and Madras.

With the introduction of the "dual government" the Company gradually usurped all the powers of administration which reduced the authority of the Nawab and made him completely devoid of any substantial power or function. "This act of Company," said Cowell, "was the acquisition of sovereignty by the English. Lord Clive by obtaining the grant of *Diwani* placed the Government of Bengal on a legal basis and established its relations with the natives on a footing of definitely civil responsibility.[17] It was merely a fiction adopted to conceal the de facto position of the Company which already had the real power in Bengal at the time.[18]

The divorce of power from responsibility under the "dual government" in Bengal further deteriorated the efficiency of the whole administrative machinery. The English servants of the Company misused their power and position to meet their selfish ends, which ultimately led to the exploitation of the people of Bengal, Bihar and Orissa and encouraged corruption, bribery, misappropriation and their evil consequences ruined a prosperous and flourishing Bengal making the inhabitants very poor and miserable.[19] As a result of such defective state of affairs the revenue also decreased considerably. The system of "*dual government*" according to the testimony of Kaye, "*made confusion more confounded and corruption more corrupt.*" Percival Spear says, "It was clumsy and it left the door wide open to abuses. There was too much power with too little responsibility."[20] As described by Keith the Courts were the instruments of power, rather than of justice, useless as means of protection, but apt instruments for oppression. One may say that instead of being the refuge of the oppressed, the Courts had been turned into a scandalously corrupt

---

knowledge and whom we therefore endeavoured to attract to our service by the ties of interest, until experience should render their assistance less necessary. Policy required we should pursue every step likely to conciliate the natives to our Government." *Clive to the Court of Directors*, 28th September, 1765. I.O. Mss. Eur. E. 12, pp. 76-77.

15. Percival Spear, *India: A Modern History*, p. 204.
16. Indian Legal History, 1972, Ch. 7.
17. H. Cowell, *The History and Constitution of the Courts and Legislative Authorities in India*, p. 32. Forrest says, "The acquisition of the Diwani was an attempt to combine responsibility with power." Forrest, *The Life of Lord Clive*, Vol. II, p. 285.
18. Aitchison: *Treaties, Engagements and Sanads*, Vol. II, 241: quoted in Jain: *Indian Legal History*.
19. In *Asia and Western Dominance*, at p 76, K.M. Panikkar states, "It was a robber state that had come into existence and Richard Becher, a servant of the Company wrote to his masters in London on May 24, 1769 as follows: 'It must give pain to an Englishman to have reason to think that since the accession of the Company to *Diwani* the condition of the people of this country has been worse than it was before...This fine country...is verging towards ruin'."
20. Percival Spear, *India: A Modern History*, p. 204. *See also*, A.B. Keith, *A Constitutional History of India*, 2nd Edn., pp. 55-58, 63-64.

body constituting an intolerable evil under which the country was groaning. And it was in this context that Warren Hastings was called.

5. The Company as Diwan

Clive left India in January 1767. The working of Clive's policy of dyarchy in Bengal created anarchy. No body was taking responsibility for the conduct of the government and the deteriorating condition of the natives. Governor Verelst succeeded Clive in India. In 1769 he introduced some new measures for collection of revenue and to investigate into the roots of corruption but his experiment failed and work of supervisers was increased enormously.[21]

The Directors of the Company suspected and blamed Indian officers for the evils. In 1771, therefore, the Company changed its policy and the Directors declared their resolution "to stand forth as *'Diwan'* and by the agency of the Company's servants to take upon themselves the entire care and management of revenue"[22]. In order to implement this changed policy and achieve their aim, the Directors transferred Warren Hastings from Madras to the Governorship of Bengal in 1772.

The Company's decision to stand forth as *Diwan* through an agency of their own servants was publicly announced at both Calcutta and Murshidabad by a proclamation issued on May 11, 1772.[23] The charge of the revenue and civil justice was taken over by the Controlling Councils of Revenue and they advised their subordinate agents and officers to deal with them directly on all matters relating to the *Diwani*.

The main object of the Company was to bring under the direct control of the Company's servants the revenue collections and civil justice in order to save both the ryots and the government from hardships caused due to the existence of the intermediaries. The Nawab's authority over criminal justice was recognized by the Company. The new policy of the Company, therefore, differed from Clive's system of double government in the sense that the collections were wholly taken away from the control of Nawab's government and were given to the European servants of the Company.

6. "Warren Hastings' plan of 1772"

The Committee of Circuit, under Warren Hastings as its Chairman, prepared the first judicial plan on August 15, 1772. It was the first step to regulate the machinery of administration of justice and the plan being a landmark in the judicial history became famous as "Warren Hastings' Plan of 1772".[24]

(1) Collector for each Unit.—Under this plan the whole of Bengal, Bihar and Orissa were divided into districts. The "District" was selected as the unit for the collection of revenue and for the administration of civil and criminal justice. In each district an English Officer, called Collector of the district, was appointed. His primary duty was to control the collection of revenue.

---

21. See Chatterji, *Verelst's Rule in India*, pp. 238-78.
22. General Letter of the Court of Director to Bengal, dated August 28, 1771.
23. For Proclamation, see *The Proceedings of the Controlling Council at Murshidabad*, Vol. X, p.15.
24. See *Committee of Secrecy, Report 7th* (1773), Appendix II, pp. 348-51: Colebrooke's *Supplement to the Digest of the Regulations and Laws of Bengal*, Vol. III, pp. 1-8; Peter Auber, *Rise and Progress of British Power in India*, Vol. I, pp. 425-427; B.B. Misra, *Judicial Administration of the East India Company in Bengal*, pp. 168-73.

(2) Moffusil Diwani Adalat.—As regards the administration of civil justice in each district a Moffusil Diwani Adalat was established. District Collector presided over it. The Moffusil Diwani Adalat was empowered to decide all civil cases dealing with real and personal property, inheritance, caste, marriage, debts, disputed accounts, contracts, partnerships and demands of rent.[25] Its decision was final in all suits up to the valuation of five hundred rupees.

(3) Sadar Diwani Adalat.—At the seat of the Government *i.e.*, Calcutta, one Sadar Diwani Adalat, a court of superior jurisdiction, was also established. It was the chief court of appeal and was empowered to hear appeals from all district Moffussil Diwani Adalats in such cases where the valuation of the suit was more than five hundred rupees.

(4) Small Cause Adalat.—Besides these courts, the Head Farmers of Parganas were authorised to decide petty disputes relating to property up to the value of ten rupees.

(5) Moffusil Faujdari Adalat.—In the sphere of criminal justice, the plan provided for the establishment of a Moffussil Faujdari Adalat in each district for the trial of all crimes and misdemeanours under the Collector of the district. One court like the Moffussil Faujdari Adalat was established at Calcutta to decide local criminal cases and was placed under the charge of a Member of the Council who served in rotation. In each district, a *Qazi* and a *Mufti* with the help of two *Maulvies*, who were appointed to expound the law, were to hold trials for all criminal cases. The Collector was authorised to supervise the working of the court.

(6) Sadar Nizamat Adalat.—A Sadar Nizamat Adalat was established at Calcutta to hear appeals from the Moffussil Faujdari Adalats of the districts and to control their working. It was presided over by a *Darogha* or Chief Officer appointed by the Nawab. A Chief *Qazi*, a Chief *Mufti* and three *Maulvies* were to assist the *Darogha* in performing his duties. The court revised important proceedings of the Moffussil Faujdari Adalats. The Moffusil Faujdari Adalats had no power to pass capital sentence without the approval of the Sadar Nizamat Adalat. In passing severe sentences for grave offences, the Nawab's signature was a prior condition as the Nawab was considered to be the head of the Nizamat Adalat.

(7) Personal Laws Safeguarded.—Article 27 of the Plan (1772) of Warren Hastings directed the Diwani Adalats "to decide all cases according to the laws of the *Koran* with regard to the Mohammedans and the laws of the *Shastra* with respect to Hindus". It was one of the most important provision of the plan, as it safeguarded the personal laws of Hindus and Mohammedans placing both these laws on equal footing. This was, in Macaulay's words, a "far-sighted policy". Rankins recognises it as "an act of enlightened policy".[26]

Warren Hastings made constant efforts to convince the Directors that the people of India were not savages, that they had laws of their own, that their customs should be respected. He was at pains to dispel the notion then prevalent in England that the people of India had no regular laws of their own. Mohammedan law was contained in a digest prepared by the order of Aurangzeb and acknowledged by the

25. G.W. Forrest, *Selections from the State Papers of Governor-General Warren Hastings*, Vol. II, pp. 371-72.
26. G.C. Rankin, *Background to Indian Law*, pp. 2-5.

Indian Courts. Hindu law, had not hitherto been systematically codified. Warren Hastings, therefore, invited to Calcutta ten of the most learned pundits in the country and commissioned them to prepare a digest[27] for the guidance and convenience of the civil courts. Sample portions of the English translation of the digest were transmitted to the Directors to convince them that "the people of this country do not require a standard for their property".[28] In Warren Hasting's view it was the sacred right of Indians to retain their own system of law and justice. Laying special emphasis on respecting the local customs, Warren Hastings stated the reasons for his opinion thus: "Even the most injudicious or most fanciful customs which ignorance or superstition may have introduced among them are perhaps preferable to any which could be substituted in their room. They are interwoven with their religion, and are therefore revered as of the highest authority. They are the conditions on which they hold their place in society, they think them equitable, and it is therefore no hardship to exact their obedience to them. I am persuaded they would consider the attempt to free them from the effects of such a power as a severe hardship.[29]

It is, therefore, clear that by safeguarding the personal laws of the natives of India, Warren Hastings showed his far-sightedness and the legal historians considered it, "*one of the wisest steps ever taken by Warren Hastings*".

The Native Law Officers assisted the Courts but in course of time they used to take evidence and pass orders which was defective. This were however "unavoidable defects" according to Rankin.

(8) Other Procedural Safeguards.—The plan prescribed the procedure for the trial of civil suits by framing definite rules.[30]

If the defendant was found to evade or delay his reply the court passed judgment against him. The hearing of a case was to be made in open court. To encourage justice the Collector at all times received petitions of complaint. In certain cases parties were to submit to arbitration and the award became the decree of Diwani Adalat. Measures were taken to remove oppression by rich-creditors and money-lenders. Registers of decrees and proceeding were to be maintained and complaints of over twelve years ceased to be actionable. Provisions were also made for payment of salaries to *Qazis* and *Muftis*, for removal of payment of Commission, for uprooting corruption and for moderate court fees in civil cases.[31]

7. Defects in the Plan

Though the judicial plan of 1772 was the first of its kind for the administration of justice within the framework of the country,[32] after its working certain major

27. This Digest Warren Hastings got translated into Persian and English as by that time no Englishman knew Sanskrit.
28. Penderel Moon, *Warren Hastings and British India*, p. 70.
29. *Ibid.*, p. 71.
30. M.E. Monckton Jones, *Warren Hastings in Bengal*, p. 312; Jain: *Indian Legal History*, 1972, pp. 75-78; Misra: *The Judicial Administration of the East India Co. in Bengal*, pp. 170-71; Rama Jois: *Legal & Constitutional History of India*, 1984, pp. 145, 146.
31. *Hastings to Josias Dupre*, 6th Jan, 1773, Gleig, *Memoirs of the Life of Warren Hastings*, Vol. I, pp. 268, 272.
32. Referring to the Judicial arrangements, Hastings stated that, "the only material changes which we have made in the ancient constitution of the country are in dividing the jurisdiction in civil and criminal

defects came to light. The plan provided for a civil and a criminal court in each district.

(*i*) *Less number of Courts.*—The head farmers were given power to decide petty cases up to Rs. 10. In fact it was necessary to have more subordinate courts keeping in view the population and the area of each district.

(*ii*) *Concentration of power.*—Another defect was the concentration of power—administrative, tax collection and judicial, in the hands of the Collector.[33] The Collector was the Civil Judge as well as supervisor of the criminal courts. It was impossible for the Collector to devote time and energy to regulate all these affairs.[34] Evils of the combination of executive and judicial powers in one person were bound to follow.[35] When the private trade done by Collectors and the misuse of powers by them and their officials came to the notice of Warren Hastings, he gave a second thought to the original plan and prepared a new judicial plan on November 23, 1773 which was implemented from 1774.

As expressed by Jois, the plan, however, brought great credit and honour to Warren Hastings because it was the proof of his intense desire to ensure impartial and less expensive justice to people in the Moffusil. Similarly it laid a sound foundation for future development.[36]

8. New Plan of 1774

Certain organisational changes were made in the judicial plan of 1772 by the President and Council of Bengal on the advice of the Directors of the Company.[37] These changes were introduced in 1774 and became known as the "New Plan of 1774". It was planned to bring down all the revenue collections to the Presidency "to be there administered by a committee of the most able and experienced of the covenanted servants of the Company under the immediate inspection and with the opportunity of instant reference for instruction to the President and Council."[38]

In each such district Provincial Councils were established. They heard appeals from the decisions of the Moffusil Diwani Adalats. This was a major advantage of the plan.[39] A Board established at Calcutta was authorised to issue instructions to all the six Provincial Councils. A Diwan was appointed at the seat of each Provincial Council to maintain accounts of the revenue collections of the districts. The English Collectors were replaced[40] by native Superintendents of revenue known as Naibs.[41]

---

cases by clearer terms...and in removing the Supreme Courts of Justice to Calcutta. There are other trivial innovations.... but the spirit of the constitution we have preserved entire." *See* Penderel Moon, *Warren Hastings and British India*, p.70.

33. M.E. Monckton Jones, *Warren Hastings in Bengal*, p. 316.
34. J.H. Harrington, *An Analysis of the Bengal Laws and Regulations*, Vol. I, p. 35.
35. W.K. Firminger, *Select Committee of the House of Commons, Fifth Report*, p. ccxxx.
36. Rama Jois: *Legal & Constitutional History of India*, 1984, p. 146.
37. *Letter of April 7, 1773 from the Company to the President and Council of Bengal*, Home Miscellaneous Series, Vol. 351, p. 15.
38. *Select Committee, Sixth Report* (1782), I.O. Parlimentary Branch No. 14, p. 4.
39. *The Judicial Administration of the East India Co. in Bengal*, pp. 174-82.
40. Proceedings of the President and Council in the Rev. Dept. No. 23, 1773. *See also* Home Misc. Series, Vol. 206, pp. 49-50 and Vol. 584, pp. 120-21. Regulation XX of 23rd Nov., 1773, Home Misc. Series, Vol. 351, p. 18.
41. Harrington, *An Analysis of the Laws & Regulations enacted by the Governor-General in Council at Fort William in Bengal*, Vol. I, p. 20; C.D. Field, *The Regulations of the Bengal Code*, p. 137; Morely,

Besides revenue collection work Naibs worked as courts of Diwani Adalats and decided civil cases. He sent reports of civil cases to Provincial Councils. Each Provincial Council administered justice in civil cases[42] for all districts in the division. The Provincial Council was also known as Provincial Sadar Adalat. It heard appeals from districts.

In 1775 Sadar Nizamat Adalat was placed under the authority of the Nawab Mohammed Reza Khan was its Naib Nazim. He worked in place of Nawab. Thus the entire criminal judicature was transferred from G. G. in Council to the Nawab's supervision.

Warren Hastings considered the plan of 1774 as only a temporary measure to improve the existing state of judicial and revenue affairs. But in the meantime the Regulating Act with its new provisions came to be passed and Warren Hastings had to face a hostile majority in the Council.[43] After gaining six years experience[44] from 1774 to 1780, Warren Hastings got an opportunity in 1780 to reorganise the Adalats and to introduce important changes in the judicial system of Bengal, Bihar and Orissa.

9. Reorganisation of Adalats in 1780: Characteristics

(*i*) *Separation of revenue from judiciary.*—A new judicial plan was prepared by Warren Hastings to reorganise the existing Provincial Adalats. It was brought into force with effect from April 11, 1780. One important feature of this plan was the separation of the revenue from the administration of justice. Though the Provincial Councils of revenue continued at six provincial divisions *i.e.*, Calcutta, Murshidabad, Burdwan, Dacca, Dinajpur and Patna, to look after the collection of revenue, their judicial power to hold civil courts was taken away. At each of these six provincial divisions a Provincial Court of Diwani Adalat was established to be presided by a covenanted servant of the Company. They were appointed by the Governor-General and Council and were designated as Superintendents of the Diwani Adalats. They were appointed for life and were removed only on the proof of misconduct. The earlier system of monthly rotation was abolished. They became independent of the Provincial Councils of Revenue.

(*ii*) *Jurisdiction of Provincial Diwani Adalats extended.*—The Provincial Diwani Adalats were empowered to decide all cases of property, including those relating to inheritance and succession to Zamindaris and Talukdaries which were previously under the responsibility of the Governor-General and Council. These Adalats were authorised to refer small cases involving one hundred rupees or less to the Zamindar or Public Officer who resided near the residence of the parties. In all suits where

---

The Administration of Justice in British India, p. 49; Cowell, *History of the Constitution of Courts and Legislative Authorities in India*, p. 149, Monckton Jones in his book, *Warren Hastings* in Bengal, p. 291 differs from this view and says that *the Collectors however thus remained in their districts.* This has been contradicted by Professor Misra in *The Judicial Administration of the East India Co. in Bengal*, p. 182. Thus what Monckton said was not a historical fact.

42. *Select Committee, Sixth Report*, (1783) p. 22.
43. *See* Ch. V.B.N. Pandey, *Introduction of English Law into India*, Ch. II.
44. From 1774 to 1780 there were conflicts not only amongst the members of the Council but also between the Governor-General in Council and the Supreme Court. The famous *Patna* case threw light on the defective state of the Provincial Councils and of Moffussil Adalatas. The Englishmen who composed the Provincial Councils, left the task of deciding cases to the native law officers due to their ignorance about Indian law, language and customs.

the valuation of the suit was up to one thousand rupees, the decision of the Provincial Adalats was final.

(*iii*) *Appeal.*—Where the amount involved exceeded this value, an appeal was allowed to the Sadar Diwani Adalat at Calcutta. The Governor-General and his Council constituted the Sadar Diwani Adalat.

(*iv*) *Miscellaneous.*—The Court fee was fixed at 2% to 5% depending upon the valuation. Native law officers were required to assist the Court. Before entering the office the presiding officer of the court was to take an oath that he would administer justice without fear or favour.

Provisions regarding the process of court work, maintenance of records, appointment of local law officers, taking of oath and evidence continued to be the same as were laid down under the plan of 1772.

10. Defects of the Reorganisation Plan

The defects of the scheme of 1780 may succinctly be laid down as under :

(1) The number of Courts was less and the litigants had to travel far for getting justice.

(2) Officers appointed for Adalats were not trained in law and legal work. The scheme neglected this aspect.

(3) Apart from this, Zamindars and Public Officers were appointed to decide petty civil cases up to one hundred rupees.

(4) However, they had to work honorary. And this made them corrupt.

11. Appointment of Impey as Chief of the Sadar Diwani Adalat

In Sadar Diwani Adalat Warren Hastings realised the difficulty in deciding civil cases in appeal. To meet this difficulty Warren Hastings appointed Sir Elijah Impey as the Chief Justice of Sadar Diwani Adalat.[45] Sir Elijah Impey was learned in law and was already Chief Justice of the Supreme Court of Calcutta. Now onwards Impey became Chief Justice of both the superior courts, namely, the Supreme Court and the Sadar Diwani Adalat. The Governor-General and Council were not experts in law and were mostly busy in political matters; as such the appointment of Impey was a great relief to them also.

Sir Impey's appointment, was however objected to by the British Government as improper because (*i*) it was considered as an attempt by the Company to win favour of the Chief Justice; (*ii*) it amounted to taking additional remuneration which was prohibited by the Regulating Act; (*iii*) it was against the spirit and intention of the Regulating Act; (*iv*) it was not possible for the Chief Justice to devote all his time for the Supreme Court; and (*v*) it amounted to compromising the independence of the Supreme Court with the Company. Impey offered to refund the entire[46] salary which shows his good sense.[47] His object was to establish the rule of law to ensure

45. Warren Hastings moved the proposal in the Council on Sept. 27, 1780 and it was accepted on October 18, 1780. Sir Elijah Impey was formally appointed on October 26, 1780. B.N. Pandey, *Introduction of English Law ino India,* Ch. VIII, pp. 196-229.
46. Rama Jois: *Legal and Constitutional History of India,* 1984, pp. 149-50.
47. *Ibid.*

justice to all without any class discrimination. He was however recalled to answer the charge.[48]

12. Reforms of 1781: Initiative of Impey and Warren Hastings

Soon after his appointment as Chief Justice of the Sadar Diwani Adalat, Chief Justice Impey first of all devoted his time and energy to introduce reforms in the Diwani Adalats. He was aware of the defective state of the Diwani Adalats and the famous *Patna* case, in which he participated as the Chief Justice of the Supreme Court, further pointed out the growing power of the native law officers to whose hands even questions of fact were left by the judges of the Diwani Adalats. Chief Justice Impey, therefore, prepared a series of regulations to improve the administration of justice in the Diwani Adalats.

(1) To regulate the procedure of the Diwani Adalats a regulation was passed on November 3, 1780. It was clearly laid down that only questions of personal law will be referred to the native law officers *i.e.*, Pandits and Maulvies, and the question of fact will be decided by the Moffussil Diwani Adalats.

(2) In petty civil cases the jurisdiction of the Zamindars was retained but they were required to submit the record of proceedings in each case to the respective Moffussil Court.

(3) Old regulations were compiled and necessary alterations and modifications were made to meet the requirements of the judiciary.

(4) *One of the most remarkable contributions of Sir Elijah Impey was "the preparation of the first Civil Code" for the administration of civil justice in India.* Subsequently, they were incorporated with amendments and additions in a revised code which the Governor-General and Council adopted on July 5, 1781. *Thus in the legal history of India the first Civil Code was adopted in 1781.*[49]

So far Warren Hastings had introduced piecemeal reforms either in civil or in criminal justice from 1772, but after having nine years' experience, he realised the necessity of overhauling the whole system of the administration of justice. In performing this difficult task Chief Justice Elijah Impey gave his full support to Warren Hastings.

(5) In 1781, the number of Moffussil Diwani Adalats was increased from six to eighteen[50] in order to remove the difficulties of the litigants. With the exception of four Courts,[51] namely Bhagalpur, Chitra, Islamabad and Rangpur, each of these Courts was presided over by a covenanted servant of the Company. He was now called Judge instead of the previous designation of Superintendent and was entrusted with judicial functions only. They were subject to the orders of the Judge of the Sadar Diwani Adalat and the Governor-General in Council.

---

48. *Ibid.*; Misra, p. 275 quoted by Rama Jois.
49. See for details, B.K. Acharya, *Codification in British India*, pp. 55-56; A.C. Patra, *The Administration of Justice under the East India Company in Bengal, Bihar and Orissa*, p. 56.
50. Eighteen courts were established at these places: Azmeriganj, Bakarganj, Burdwan, Bhagalpur, Calcutta, Chitra, Dacca, Darbhanga, Islamabad, Lauria, Midnapur, Murli, Murshidabad, Nator, Patna, Raghunathpur, Rangpur and Tajpur (of place in Dinajpur).
51. These four were hilly districts and due to their location on the frontiers of the provinces it was considered necessary to concentrate both judicial and revenue authorities under the same person.

(6) Moffussil Diwani Adalats were required to send copies of judicial proceedings to the Sadar Diwani Adalat to which appeals were allowed from their decisions where the valuation of the suit exceeded one thousand rupees.

(7) Elijah Impey favoured the important principle of the separation of judicial and revenue functions and it was retained.[52] It was expressly laid down that the judges of the Diwani Adalats would have a jurisdiction completely distinct and separate from the jurisdiction of the person in charge of revenue collection, revenue cases and related matters.

(8) The Moffussil Diwani Adalats were authorised to have all power and authority to hear, try and determine all civil suits, arising within the limits of its jurisdiction including those of inheritance or succession to zamindaries and talukdaries. The Judge of the Moffussil Diwani Adalat was now vested with powers to summon any Zamindar or farmer to appear in person or by vakil to answer to an action lying in that court.

(9) The provision regarding the application of the personal laws of Hindus and Mohammedans which was first of all introduced by Warren Hastings in 1772, was also modified and certain additions were made to remove the difficulties. On the recommendation of Sir Elijah Impey the word "succession" was added to the word "inheritance" and it was further stated that "where no specific directions were given the judges of the Sadar Diwani Adalat and the Moffussil Adalats will act according to justice, equity and good conscience". In order to promote speedy and impartial justice the Code provided a specific procedure for Diwani Adalats.

(10) Under the new scheme the judges of the Diwani Adalats were directed that they must do the judicial work themselves and under no circumstances it should be delegated to the Native Law Officers. The function of the Native Law Officers was also clearly laid down: "They were only to expound the law on the facts decided by the judge." This important provision helped in up-rooting corruption as well as avoided conflicting situations like that of the *Patna* case.

(11) The Civil Code specifically laid down the functions of the Sadar Diwani Adalat. It was given appellate jurisdiction to hear appeals from the Moffussil Diwani Adalats in cases where the valuation of the suit exceeded one thousand rupees. It exercised original jurisdiction in matters of civil nature as were referred to by the Governor-General in Council.

(12) It was also empowered to exercise control and supervision over the working of all the subordinate Diwani Adalats. The Court was authorised to receive original complaints against the subordinate courts and then refer them to the respective Moffussil Diwani Adalat to expedite its disposal. It was within its authority to suspend any judge of the Moffussil Courts for misconduct and corruption and also to forward the matter with its recommendations for final orders to the Governor-General. The Sadar Diwani Adalat was given full powers to frame rules of practice, make necessary alterations in the existing rules and issue standing orders for the administration of justice.

(13) Special importance was attached to the system of keeping records of all the courts. Apart from every process or order issued by the court, the complaint,

52. W.H. Morely, *The Administration of Justice in British India*, pp. 50-51.

reply or rejoinder and depositions given by the parties were required to be duly entered in the registers of the Court. The Moffussil Diwani Adalats were directed to keep a register containing a summary account of the daily proceedings in each case. Every month a copy of it was sent to the Sadar Diwani Adalat at Calcutta.

13. The First Civil Code

The preparation of the first Civil Code, therefore, reflected the great contribution made both by Governor-General Warren Hastings and Chief Justice Elijah Impey, to improve the administration of civil justice. *The Civil Code became a landmark in the legal history of India due to its contribution in three directions of vital importance* as follows:

(*a*) In the first place, with the establishment of the Sadar Diwani Adalat at Calcutta and entrusting it with full powers, the administration of civil justice was centralised. It was only responsible to the Governor-General in Council. It controlled and supervised the subordinate courts as well as maintained uniformity in the administration of justice.

(*b*) Second, though the application of the personal laws was recognized as early as 1772, still Chief Justice Impey, through the provisions of the Civil Code, devised a better mode of governing the Hindu and Mohammedan laws. By laying down a proper process and rules of evidence Chief Justice Impey laid the foundation of a separate institution of the legal profession to assist the judges and the litigants, in India, which according to him played an important role in shaping the judicial process of the country.

(*c*) Third, by recognising the principles of separation of judiciary and revenue Elijah Impey as the Chief Justice of the Sadar Diwani Adalat established the independence and impartiality of the judiciary. It assisted in introducing the rule of law in the country. In order to implement these ideals Chief Justice Impey incorporated certain provisions in the Civil Code which specifically provided that even Zamindars, Talukdars and farmers, employed in the collection of revenue, were also under the jurisdiction of the civil courts.

14. Recall of Impey and Civil Justice

While Chief Justice Impey and Governor-General Warren Hastings were making every effort to improve the administration of civil justice, the criticism of Chief Justice Impey for accepting two appointments gained strength in England.[53] So great was the criticism that, unfortunately, the Directors of the Company issued an order from England to remove Sir Elijah Impey from the post of Sadar Diwani Adalat.[54] As such, on November 15, 1782, the Governor-General and Council decided to resume the duties of the Sadar Diwani Adalat in place of Chief Justice Impey. The House of Commons[55] in England on May 3, 1781 resolved to recall Chief Justice

53. The criticism was on the ground that by accepting the new office, Sir Elijah Impey violated the spirit of the Regulating Act. The chief object of the Regulating Act was to render the Supreme Court independent of the Executive.

54. Letter of Directors to the Governor-General dated April 30, 1782. See, *Home Miscellaneous Series*, Vol. 353, pp. 241-42.

55. The British Parliament was not satisfied with the opinion of the Law Officers of the Crown, who stated that there was nothing illegal in the appointment. The Parliament passed an Act in 1781 exempting the Governor-General and Council from the jurisdiction of the Supreme Court. See, P.E. Roberts, *History*

Impey to explain his conduct in accepting an office subordinate to the Governor-General and Council whose transactions the Supreme Court was intended to control. Accordingly, Chief Justice Impey left Bengal and in June 1784 reached England.

Though Warren Hastings' step to appoint Sir Elijah Impey as Chief Justice of the Supreme Court, and also as the Chief Justice of the Sadar Diwani Adalat was severely criticised in India and England, in fact it was a far-sighted policy of Warren Hastings. Appreciating the far-sightedness of Warren Hastings, Stephen remarked, "Hastings, in short, foresaw and laid the foundation of the policy in which Indian legislation was put under the direction of the Legal Member of the Council, and by which the superintendence of the Moffussil court and appellate jurisdiction over them were vested in the High Court."[56]

On the whole it appears that during the period 1780 onwards, the Directors were more concerned with the establishment of British sovereignty in India. In carrying out this policy they got full support and assistance from the leaders of the ruling party in the British Parliament. According to them it was the proper time to strengthen the political control for further expansion in India rather than to introduce vital reforms in the judiciary of the country. They were not willing to take any step which might have weakened the hands of the executive in implementing their political policy.

15. Reforms in the administration of criminal justice

As early as 1772, Warren Hastings was fully aware of the glaring defects in the existing administration of criminal justice, still he preferred to leave it in the hands of the Nawab. Under the judicial plan of 1772 Warren Hastings established a Sadar Nizamat Adalat at Calcutta[57] and Moffussil Faujdari Adalats in the districts. But the criminal justice was administered in the name and under the seal of the Nawab. The Company insisted on this policy in order to allow the independence of the Nizamat Adalat as it was sure that any interference in these courts would adversely affect its political policy. In 1774 with the withdrawal of Collectors from the districts, the control of the Faujdari Adalats also passed to the native judicial officers. The scope of the Sadar Nizamat Adalat to control the Provincial Faujdari Adalats was thus reduced.

In 1775, the Sadar Nizamat Adalat was shifted in Murshidabad[58] in order to avoid any interference and conflict with the Supreme Court. Mahomed Reza Khan was declared innocent and restored to his office of Naib Nazim of the Sadar Nizamat Adalat.[59] He was empowered to superintend the administration of criminal justice and police throughout the provinces.

(*i*) *Plan of Mahomed Reza Khan.*—After his reappointment Mahomed Reza Khan prepared a plan to improve the administration of criminal justice. The plan

---

of British India, 3rd Edn., p. 213.

56. J.F. Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. II, p. 242.

57. Sadarul Haq Khan was appointed Daroga of the Court and was also authorised to use the seal of the Nawab. Daroga worked under the guidance of the Governor-General and Council. Mahomed Reza Khan Naib Subah was dismissed and arrested in April 1772 and the post of Naib Subah was also abolished.

58. G.W. Forrest, *Selections from the State Papers of Governor-General Warren Hastings*, Vol. II, p. 436.

59. See, *Despatches to Bengal*, March 3, 1775, Vol. 7, pp. 413-26.

was adopted in January 1776 and continued till April 1781. According to the plan, twenty-three Faujdari Adalats were established.[60] Monthly salary of the judicial officers was fixed. There was no change in the constitution of the Sadar Nizamat Adalat except that it now passed under the superintendence of the Naib Subah, who could exercise his powers directly over his subordinates. Sadarul Haq Khan was allowed to continue and preside over this court as *Daroga*. He was assisted by the Chief *Qazi*, the Chief *Mufti*, three *Maulvies*, one *Munshi* and one *Seristadar*. Instead of *Daroga*, the *Naib Subah* was authorised to use the seal of the Nawab. Under the new scheme by fixing a salary for each judicial official, Mahomed Reza Khan reduced the establishment charges of the Sadar Nizamat Adalat and Moffussil Faujdari Adalats. In other matters relating to criminal justice, the plan made it clear that the courts would be guided by the provisions of the judicial plan of 1772.[61]

According to Reza Khan's judicial plan the administration of criminal justice continued from 1776 to 1781. During this period, Reza Khan's supervision over the criminal judicature proved ineffective and the machinery inefficient due to various factors. Though crimes continued to be punished according to strict interpretation of Mohammedan law, justice depended on the mercy of individuals rather than the strength of the judicial system. In the hands of the unscrupulous judicial officers, the criminal courts became instruments of oppression and torture. Inadequacy of police forces[62], and the role of Zamindars[63] further deteriorated the existing miserable state of affairs in these courts. Due to the protection of Europeans and recommendations of the high officials, it was becoming very difficult for Reza Khan even to punish the guilty and corrupt officers.[64] Professor B.B. Misra has pointed out, "The transfer of political balance in favour of the Company had already shifted loyalty to the British. The decree of the Nizamat, therefore, could not be enforced without the assistance of the Company's sepoys who, in their turn, were not enough to be equitably distributed throughout the provinces. The Zamindars, therefore, took undue advantage of the helpless state of the Nizamat, and being influenced by the uncertainty of political conditions in the country acted independently of any superior authority. They not only withheld their support to the Faujdars but secretly harboured the chiefs of dacoits whom they screened from the punishment of law."[65]

(*ii*) *Reforms of Warren Hastings.*—In 1781, Governor-General Warren Hastings introduced certain changes to improve the administration of criminal justice. The old policy of non-interference in criminal justice was thus changed.

(*a*) Warren Hastings first of all empowered the judges of the Moffussil Diwani Adalats also to act as Magistrates in their respective jurisdiction. They were authorised to arrest all those persons who were suspected to have committed crimes. They exercised a sort of police powers. Their duty was to commit criminals

60. The plan provided for criminal courts one in each of these places: Burdwan, Bhagalpur, Bhitaria, Bhushna, Bishnupur, Birbhum, Carrakpur, Chitpur, Chittagong, Dacca, Dirajpur, Hijili, Hugli, Jessore, Kalighat, Krishnagar, Midnapur, Murshidabad, Patna, Purnea, Rajmahal, Rangpur, Sylhet.
61. See, *Home Miscelluneous Series*, Vol. 353, pp. 186-92.
62. See, *Calendar of Persian Correspondence*, Vol. V, Nos. 238, 270 and 422.
63. *Rangpur District Records*, Vol. I, p. 38; Vol. IV, pp. 161-62.
64. T.K. Banerjee, *Background to Indian Criminal Law*, pp. 142-243.
65. B.B. Misra, *Judicial Administration of the East India Company in Bengal*, p. 321. See, From Mahomed Reza Khan to the Governor-General, December 11, 1776 *Calendar of Persian Correspondence*, Vol. V, No. 422.

immediately on their own apprehension to the nearest Moffussil Faujdari Adalat and submit written charges on the basis of which they were arrested.

(*b*) A separate department was established at Calcutta to control and supervise the working of the Faujdari Adalats. These Adalats were required to submit their monthly reports, return of proceedings, details of charges, lists of persons arrested and sent for trial by the Magistrates to the Adalats. Similarly, reports were also sent to this department by the Sadar Nizamat Adalat. A covenanted servant of the Company, who presided over the department, was designated as the Remembrancer of the Criminal Courts. He was directly under the Governor-General. For all information and necessary action the Remembrancer mainly depended on the information supplied by the criminal courts. By this process, in the beginning, many irregularities came to light which were committed in the criminal courts.

(*c*) The Faujdari Adalats were further reduced by Warren Hastings from twenty-three to eighteen[66] in July 1782 with a view to reduce the administrative expenses.[67] In 1785, the Magistrates were authorised to try petty offences. This step was taken specially to have speedy administration of criminal justice.

Though the appointment of the Remembrancer and creation of his office was a remarkable step to introduce reforms and co-ordinate the machinery of criminal justice, in actual practice the control exercised by the Remembrancer proved very weak and ineffective. In order to conceal the real deteriorating state of affairs and gain special favour from the Remembrancer, the courts began to submit reports to present a favourable picture of the affairs rather than the true position which in fact misled the Remembrancer in taking the final decision. This system anyhow continued to function until Lord Cornwallis in 1790 completely overhauled the old set-up of Mohammedan Criminal Courts and introduced important changes in the Mohammedan Criminal law and procedure.

(*iii*) *Defects and its reasons.*—The reforms of Governor-General Warren Hastings only touched the fringe of the whole problem of improving the criminal justice. Other important factors, namely, the constitution of criminal courts, the defects and severity of Muslim criminal law, the mode of trial and proceedings in the criminal courts, which mainly required vital reforms and special attention were left untouched subsequently. It is not a fact that Warren Hastings never thought of introducing reforms in these directions. Warren Hastings' judicial plan of 1772 proved that he had his own constructive ideas and plans to improve the judicial system. But he failed to implement his ideas and plans because of certain limitations[68] which were due to his conflict with hostile Members of the Council,[69] wavering support of the Company's Directors in England, antagonistic interests of political parties in England prejudicing his reputation. Referring to the lack of power and means equal to his

66. Whole area was redistributed in eighteen courts, namely, Azmerganj, Bakarganj, Bhagalpur, Burdwan, Chitpur, Chitra, Dacca, Islamabad, Midnapur, Murli, Murshidabad, Nator, Rajhat, Rangpur, Tajpur, Darbhanga, Lauriya and Patna.

67. See *Home Miscellaneous Series*, Vol. 353, pp. 295-323.

68. G.W. Forrest, *Selections from the State Papers of Governor-General Warren Hastings*, Vol. II, pp. 337-42.

69. See Hastings' Letter to the Court of Directors, Dec. 3, 1774, *Bengal Letters Received*, Vol. XIII, pp. 247-50. *See also* S. Weitzman, *Warren Hasitngs and Philip Francis*, Chapters II and III.

responsibilities, Warren Hastings wrote, "*The meanest drudge, who owes his substance to daily labour enjoys a condition of happiness compared to mine while I am doomed to share the responsibility of measures which I disapprove, and to be idle spectator of the ruin which I cannot avert.*"[70]

(*iv*) *Contribution of Warren Hastings.*—Appreciating the contribution of Warren Hastings, Lord Macaulay said, "*... internal administration, with all its blemishes, gives him a title to be considered as one of the most remarkable men in our history. He dissolved the double Government. He transferred the direction of affairs to English hands. Out of a frightful anarchy, he deduced at least a rude and imperfect order. The whole organization by which justice was dispensed, revenue collected, peace maintained throughout a (vast) territory...., was formed and superintended by him. He boasted that every public office, without exception which existed when he left Bengal, was his creation. It is quite true that this system... was at first far more defective than it now is. But whoever seriously considers what it is to construct from the beginning the whole of a machine so vast and complex as a government, will allow that what Hastings effected deserves high admiration.*"[71]

In the light of these observations there appears sufficient justification when Professor Penson states that, "Cornwallis built on foundations already laid or begun to be laid by his predecessors and especially by Hastings. It was the emphasis rather than the principle that was new, but the principles were not clearly stated and the strength of the home government was used to enforce them.[72]

On the whole, Warren Hastings' various reforms are clear testimony to the fact that he was not only a capable administrator but a great inventive genius also. He adopted the method of "trial and error" in uprooting the evils of the existing judicial and executive systems and never hesitated even in taking bold steps to remove such evils. In spite of the fact that his role is condemned in connection with certain unfortunate cases,[73] he proved that even in the most critical hours in his life he never lost courage but tackled the situation to the best of his ability. As the first Governor-General he proved himself one of the most faithful servants of the English East India Company, who played a vital role in further strengthening the foundation, which was earlier laid down by Clive, for the future expansion of the British Empire in India.[74]

---

70. Letter of Hastings to Lord North, March 1775, quoted in Lyall, *Warren Hastings*, p. 72.
71. Macaulay, *Essay on Warren Hastings*, pp. 83-84.
72. The Cambridge History of India, Vol.V, pp. 436-37.
73. Trial of Raja Nand Kumar, the *Patna case*, the *Cossijurah case*, *etc. See* Chapter V.
74. For more details, *see* Chapter V of this Book.

5

The Regulating Act

"English people monopolised trade in essential commodities and sold them after earning huge profits."

Lecky: *History of England*, Vol. III, p. 474

"Having acquired political power, the new Western rulers absorbed many of the autocratic tendencies of the Oriental despots whom they had displaced. A board of retainers and ostentatious luxury became desirable... Englishmen lived like Nawabs they had dispossessed."

Beatrice Pitney Lamb: *India—A World in Transition*, p. 59

"...the plan of controlling the Company's Government by the King's Court entirely failed...The policy which shaped the Regulating Act was no doubt well-intentioned but it was rashly and ignorantly executed. The anarchy which ensued continued till the policy of the Regulating Act was reversed."

Cowell: *History & Constitution of the Courts & Legislative Authorities in India*, p. 44

[The Supreme Court was a] "terror heightened by mystery, for even that which was endured was less horrible than that which was anticipated."

Macaulay: *"Essays on Warren Hastings"*, *Edinburg Review, Oct., 1841*, p. 109

SYNOPSIS

1. Circumstances prior to Act of 1773
   - (*a*) The British Parliament & the Company
   - (*b*) Causes for taking over the Company
   - (*c*) Appointment of Parliamentary Committees
   - (*d*) Main Objects of the Bill
2. Salient Features of the Regulating Act, 1773
   - (*a*) Election for Directors
   - (*b*) Control over Correspondence
   - (*c*) Appointment of Governor-General and Council
   - (*d*) Decision by majority present
   - (*e*) Extent of G.G.'s power
   - (*f*) Bombay and Madras under control of G.G.
   - (*g*) Establishment of the Supreme Court of Judicature
     - (*i*) Constitution, Powers and Jurisdiction
     - (*ii*) Immunity of G.G. and his Council
     - (*iii*) Justices of Peace
     - (*iv*) Appeals
3. Legislative Power under the Act of 1773
   - (*a*) General Power
   - (*b*) Restrictions
4. Charter of 1774 and the Supreme Court at Calcutta
5. Critical estimate of the provisions of the Regulating Act, 1773 and the Charter of 1774
   - (*a*) Defects of the Act
     - (*i*) Conflict between G.G. & Councillors
     - (*ii*) The "Imminent-Necessity" undefined
     - (*iii*) Undefined position of the Company
     - (*iv*) Conflict between Judiciary and Executive
     - (*v*) Vague terms and wide interpretations
     - (*vi*) Uncertain law
     - (*vii*) Conflict between Co.'s Courts and the S.C.
     - (*viii*) Conflict between Council and the S.C.
   - (*b*) Achievements of the Act
6. Some Landmark Cases
   - (*a*) Trial of Raja Nand Kumar (1775)
     - (*i*) Events before the Trial
     - (*ii*) Facts of the case
     - (*iii*) Two important questions raised in the trial
     - (*iv*) Some peculiar features of the trial
     - (*v*) Opinions of Macaulay, Mill, Beveridge, Stephen etc.
   - (*b*) Case of Kamaluddin (1775)
     - (*i*) Facts and decision
     - (*ii*) Conflict
   - (*c*) The Patna case (1777-79).
     - (*i*) Issues involved
     - (*ii*) Facts
     - (*iii*) Important points raised before the Supreme Court
     - (*iv*) Effect of the Patna case on Co.'s Government in India
   - (*d*) The Cossijurah case (1779-80)
     - (*i*) Facts
     - (*ii*) Conflict

1. Circumstances prior to Act of 1773

(a) **The British Parliament and the Company.**—One of the major problems before the British Parliament was to determine its relationship with the Company.[1] Earlier, the Company was mainly concerned with trade and commerce in India but its subsequent political involvements and territorial gains created a new situation. An established principle of English Constitutional law was that no subject could acquire territories except for the Sovereign. As early as 1759, Lord Clive, in his letter to Pitt, suggested that the Crown should take over the territories which were in the possession of the Company. At this stage, Parliament took no step as there were three points of view[2] before it for consideration; the first was that the Company's privileges and powers must remain untouched. The second view was that the Crown should take over full sovereignty of the Company's territorial possessions in India. Both these proposals suggested extreme steps which the British Government tried to avoid. Pitt considered that it was not only a constitutional matter but it involved a major policy decision also. The third view was that the Crown may take over the Company into partnership, assuming the position of a controlling and dominant partner in all matters. It was acceptable to the British Parliament and gradually the British Government made every effort to realise it.

The spirit of bargaining with the Company started by an Act of 1767 when the British Government permitted the Company to retain its territorial acquisitions and its powers for two years on condition that a sum of £400,000 per year be paid by the Company in return to the Crown. Its total annual receipts from India were estimated at not less than two million "so that the British nation took heavy blackmail upon the Company's gains, however they may have been gotten".[3] The demand of Parliament continued increasing as it was supposed that the Company was making fortunes in India, till it was discovered that the Company instead had fallen into debts. In spite of the Company's deteriorating financial condition Parlia-

1. There were increasing political demands in England that the Government should take over the Company's possessions in India. Because of shifting alignments in British politics this was not done. The reports of the two Parliamentary Committees—Select Committee and Secret Committee—drove home the conviction that the independence of the Company must yield to the supremacy of British Parliament.
2. Holdsworth, *A History of English Law*, Vol. XI, p. 162.
3. Alfred Lyall, *The Rise and Expansion of the British Dominion in India*, pp. 172-73.

ment derived advantage and asserted its right to the sovereignty of the Indian territories.

(b) Causes for taking over the Company:

(1) Public opinion against the Company gathered momentum in England.[4]

(2) Corruption amongst the servants of the Company.[5]

(3) Complicated administrative problems of the dual government.[6]

(4) Lack of proper judicial administration.

(5) Lack of central authority to control and guide the affairs of the Company.

(6) Deteriorating financial condition of the Company and its heavy debts.[7]

(7) Company's defeat in 1769 at the hands of Haider Ali of Mysore.

(8) Terrible famine in Bengal which took a heavy toll of its population.[8]

(9) The Company applied for a loan of one million pounds in 1772.

(c) Appointment of Parliamentary Committees.—The British Parliament got an opportunity to tighten its stronghold on the Company's affairs. The House of Commons appointed two Parliamentary Committees, namely, a Select Committee and a Secret Committee to study in detail the financial position of the Company and related matters and to uproot corruption from the administrative and judicial machinery of the Company. According to Harrington, the Committee of Secrecy reported with reference to the Courts of justice, "...the despotic principles of the Government rendered them the instruments of power rather than of justice, not only unavailing to protect the people but often the means of the most grievous oppressions under the cloak of the judicial character."[9]

In March 1773 the Company renewed an appeal for a loan and subsequently in May the House passed a resolution, "That all acquisitions made under the influence of a military force, or by treaty with foreign princes, do of right belong to the State."[10] Ultimately two Acts were passed by Parliament in 1773. The first

---

4. Lucy S. Sutherland, *The East Indian Company in 18th Century Politics*, p. 147. See also, Bolt's *Consideration on Indian Affairs* and Dow's *History of Hindustan*.
5. Due to their private trade they collected vast fortunes. They were not paying transit duty and tried to displace Indian Officials whosoever resisted them. *See*, Mill, *History of British India*, Vol. III, pp. 326-27. English people monopolised trade in essential commodities and sold them after earning huge profits. See, Lecky, *History of England*, Vol. III, p. 474. Beatrice Pitney Lamb in *India: A World in Transition*, at p. 59 said, "Having acquired political power, the new Western rulers absorbed many of the autocratic tendencies of the Oriental despots whom they had displaced. A horde of retainers and ostentatious luxury became desirable. Despotic tempers seemed appropriate to their new status. In this sense, Englishmen lived like the Nawabs they had dispossessed." Adolphus, *History of England*, Vol. I, pp. 345-48. *See also*, Malcolm, *Life of Clive*, Vol. III, pp. 313-16; Adam Smith, *Wealth of Nations*, Vol. II, Book IV, pp. 250-57. P.E. Roberts in *History of British India*, at p. 179, said, "During the fifteen years that followed the battle of Plassey, immense wealth was brought back from India by retired servants of the East India Company, who bought estates and rotten boroughs, and expected to be received on terms of special equality with the old landed aristocracy. The 'Nabobs', with their orientalized ways and ostentatious expenditure, figure largely in the caricature and satire of the age."
6. A. Mervyn Davis, *Warren Hastings*, pp. 76-77; *See also* at p. 311, where in his letter to Macpherson, Warren Hastings made complaints about the conditions in Oudh and stated, "Lucknow was a sink of inequity...what will you think of clerks in office clamouring for principalities... in the confidence of exhaustless resources they gambled away two lakhs of rupees at a sitting and still grumbled that their wants are not attended to."
7. *Annual Register*, 1773, p. 65.
8. V.B. Kulkarni, *British Dominion in India and After*, p. 51.
9. Harrington's *Analysis*, Vol. I, p. 27.
10. *Parliamentary Debates (U.K.)*, Vol. XVII, Col. 903.

Act granted to the Company a loan of £ 1,400,000 at 4% interest. The Company was forbidden to declare dividends exceeding 6% and it was required to submit accounts after every six months to the Treasury.

(d) Main Objects of the Bill.—The second and far more important was the Regulating Act, 1773, which was introduced by Lord North on May 18, 1773 in the House of Commons as Regulating Bill. Its three main objects were to (*i*) reform the constitution of the Company,(*ii*) to reform the Company's government in India, and (*iii*) to provide remedies against illegalities and oppressions committed by the servants of the Company in India. Accordingly, the Regulating Act changed the constitution of the Company at home, altered the structure of the Government of India and provided, though in a very inefficient manner, for the supervision of the Company by a ministry. When the Bill was introduced in the House of Commons, it was severely criticised. Edmund Burke denounced it as "an infringement of national right, national faith and national justice." The Bill was ultimately passed by an overwhelming majority of the House of Commons[11] on June 10, 1773 and subsequently by the House of Lords[12] and received the Royal assent on June 21, 1773.

2. Salient Features of the Regulating Act, 1773

The Regulating Act, 1773 permitted the Company to retain its Indian possessions, but its management was brought under the definite, if only partial, control of Crown and Parliament. The Act may be regarded as *Parliament's first attempt to construct a regular Government for India and to intervene in the control of the Company's administration.* It was mainly intended to impose control over the Company and the servants of the Company in India as well as in England.

(a) Election for Directors.—The Regulating Act introduced vital changes in the Constitution of the Company in England. The Directors of the Company were elected for a period of four years, one-fourth of them were to retire every year and the retiring Directors were not entitled to be elected again. As pointed out by Kaye: "The effect of this provision was to secure stability and continuity in the policy of Directors." The voting qualification for the Court of Proprietors was raised from holding a stock of £ 500 to £ 1,000. An unfortunate feature of the new provision was that those possessing a stock of £ 3,000 were given two votes, while those possessing a stock of £ 10,000 were given four votes each. As such, Keith observed, "*...the measure failed to improve the quality of the Court of Proprietors or to prevent power being readily purchased by servants of the Company returning with the spoils of the East.*"[13]

(b) Control over correspondence.—In order to assert Parliament's control over the Company, the Directors were required to place regularly all their correspondence, regarding civil and military affairs with the Indian authorities, before the Secretary of State. All correspondence relating to revenues in India was required to be placed before the Treasury in England.

(c) Appointment of Governor-General and Council.—The Regulating Act made certain important alterations in the structure of the Company's Government

11. In the House of Commons it was passed by 131 votes to 21.
12. In the House of Lords by 74 votes to 17.
13. A.B. Keith, *A Constitutional History of India,* p. 71.

in India.[14] A Governor General and four Councillors were appointed by the Presidency of Fort William in Bengal. The Governor of Bengal was designated as the Governor-General of Bengal.

(d) Decision by majority present.—The Act stated the names of the first Governor-General and four Councillors.[15] Warren Hastings,[16] who was Governor of Bengal, was appointed the first Governor-General. Their term of office was for five years and the King was empowered to remove them even earlier on the recommendation of the Court of Directors.

(e) Extent of G.G.'s power.—The Governor-General-in-Council was given all the powers to govern the Company's territorial acquisitions in India, to administer the revenues of Bengal, Bihar and Orissa and to supervise and control the general civil and military government of the Presidency.

(f) Bombay and Madras under control of G.G.—The Presidencies of Bombay and Madras were placed under the control and superintendence of the Governor-General-in-Council while exercising their powers to make war and peace. The Governor-General and the Council were to keep the Court of Directors fully informed of all their activities affecting the interests of the Company and they were also to work in entire obedience to the orders and instructions of the Court of Directors.

(g) Establishment of the Supreme Court of Judicature.—Section 13 of the Regulating Act empowered the Crown to establish by Charter a Supreme Court of Judicature at Fort William in Calcutta. This provision was specially made to remove the defective state of the judiciary as it existed under the Charter of 1753.

(*i*) *Constitution, Power and Jurisdiction.*—The Supreme Court was to consist of a Chief Justice[17] and three Puisne Judges,[18] being barristers of not less than five years' standing to be appointed by His Majesty. It was further provided that the Supreme Court would have full power and authority to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction. In criminal cases it would act as a Court of Oyer and Terminer and Gaol Delivery for the town of Calcutta and the factories subordinate thereto.

The Supreme Court was authorised to form and establish such rules of practice for the subordinate courts as were necessary for the administration of Justice and due execution of all the powers as stated in the Chapter. It was recognised as a Court of Record.

---

14. Sophia Weitzman, *Warren Hastings and Phillip Francis*, p. 15.
15. They were : Richard Barwell, a man of high abilities (*see* Penderel Moon, *Warren Hastings and British India*, p. 92.); General Clavering, a professional soldier; Phillip Francis, a clerk in War Office in England and a bitter enemy of Hastings and Impey; and Colonel Monson, an aid-de-camp to George III.
16. From April 13, 1772 to October 19, 1774, Warren Hastings was Governor of Bengal and from October 20, 1774 to February 8, 1785, he remained Governor-General of Bengal. He was not Governor-General of India as there was no such post at that time.
17. The Charter of 1774 appointed Sir Elijah Impey as Chief Justice of the Supreme Court at Calcutta. The appointment was made by Lord Bathurst, the Chancellor, on the recommendation of Thurlow, who was then Attorney-General. Stephen, *Story of Nuncomar*, Vol. I, p. 3.
18. Letters Patent appointed three other judges, namely, Robert Chambers of the Middle Temple, first called to Bar on May 22, 1761; John Hyde of Lincoln's Inn, called to the Bar on November, 6, 1758; and LeMaistre of the Inner Temple, called to the Bar on June 20, 1760. *Home Miscellaneous Series*, Vol. 108, pp. 311-29.

As to jurisdiction of the Supreme Court it was restricted to certain categories of persons which the Act defined. It had jurisdiction over all British subjects residing in Bengal, Bihar and Orissa and had power to decide all complaints regarding crime, misdemeanous or oppressions. It had jurisdiction over servants of the Company too.

(*ii*) *Immunity of G.G. and his Council.*—The Regulating Act specifically laid down that the Supreme Court will be incompetent to exercise its criminal jurisdiction over the Governor-General and any of his Councillors. The Court had no power to arrest or imprison them in any action. Immunity of the Governor-General and his Councillors was granted in order to safeguard them from unnecessary harassment and also to maintain their prestige as they were the heads of the executive.

(*iii*) *Justices of Peace.*—Section 38 authorised the Governor-General, members of the Council and the Judges of the Supreme Court to act as Justices of the Peace and to hold Quarter Sessions.

(*iv*) *Appeals.*—The Act further empowered the Crown to issue a Charter[19] to make provision for appeals from the judgments of the Supreme Court to the King-in-Council and also to state the conditions and circumstances under which such an appeal was to be allowed.

3. Legislative Power under the Act of 1773

The Regulating Act granted legislative power to the Company's executive authority in India.

(a) General Power.—The Governor-General and Council were authorised to make and issue rules, ordinances and regulations for the good order of civil government of Company's settlements at Fort William and other subordinate factories and places.

(b) Restrictions.—This general power was granted subject to certain qualifications.[20]

(*a*) They were required to be just and reasonable and not repugnant to the laws of England.

(*b*) They were not to be valid or of any force until they were duly registered in the Supreme Court with its consent and approbation.[21]

(*c*) The rules and ordinances were registered only after the expiration of twenty days from their open publication.

(*d*) Even after their registration, in England any person (in India or England) was legally entitled to file an appeal against such regulation to the King-in-Council within sixty days after its publication there and the King-in-Council had the power to set aside and repeal such laws if they were considered defective (S. 36).

(*e*) Within a period of sixty days from its registration an appeal was allowed to be made to the Supreme Court at Calcutta challenging the legality of

19. W.H. Morley, *Administration of Justice in India*, Charter of 1774, pp. 549-87.
20. Section 36.
21. A parallel may be seen when in the past it was required that corporations should enter bye-laws on record with Justices of the Peace and have them examined by the Chancellor or Judges (15 Hen. VI, c.6; 19 Hen VII, c.7); Petty J., in *Ramachund Ursamul* v. *Glass*, (1844), Cr. Cas. 360.

the rules and regulations. Copies of such regulations were to be sent to the Secretary of State in England.

(*f*) The King reserved the power to disapprove of them at any time within two years from the date they were passed by the Governor-General and Council.[22]

(*g*) The Company's officials were prohibited from engaging themselves in private trade and also from accepting presents in various forms.[23]

(*h*) The Courts in England were also empowered to punish English people for their crimes or misdemeanours which were committed during their service under the Company in India.[24]

These manifold qualifications were imposed (*i*) to safeguard the interest of the British people, (*ii*) to safeguard the imperial policy in India; and (*iii*) to check the hasty actions of G.G. in Council in making rules, ordinances and regulations. This Act contained also the provisions to prevent abuses and corruption in the administration of the Company.

In other words it was to deprive the Company of its political power secured in India and to vest the same in Parliament. *Under the guise of Directors' control over the Company's affairs the British Parliament established its effective control over the affairs of the Company which paved the way for its complete takeover by enacting the Government of India Act of 1858.*[25]

4. Charter of 1774 and the Supreme Court at Calcutta

The Regulating Act, 1773 superseded the provisions of the Charter of 1753 and empowered the Crown to establish a Supreme Court. Under Section 13 of the Act, George III issued a Charter on 26th March, 1774 which established the Supreme Court[26] at Calcutta. Just like its predecessor, the Mayor's Court, the Supreme Court was also a Crown's Court.

The Charter of 1774 constituted the Supreme Court and elaborately defined its jurisdiction and powers.[27] Sir Elijah Impey[28] was named as the first Chief Justice while Stephen C.Le Maistre,[29] Robert Chambers[30] and John Hyde[31] were named as

22. Section 37.
23. Section 23.
24. Section 39.
25. Rama Jois: *Legal & Constitutional History of India,* 1984, pp. 251-52.
26. The establishment of the Supreme Court made Governor-General Warren Hastings a bit disturbed. He commented, if he was really trusted, why was he not granted powers commensurate with his responsibilities? He foresaw the likelihood of a conflict and disliked the idea of importing into Bengal all the paraphernalia of the English law. However, there was one consolation that his old school friend, Elijah Impey, was to be the first Chief Justice. *See* Penderel Moon, *Warren Hastings and British India,* p. 94.
27. The Charter was drawn by Impey and revised and settled by Thurlow, the Attorney-General; Wedderburn, the Solicitor-General; De Gray, Chief Justice of the Common Pleas and Bathurst, the Lord Chancellor. Hence Impey knew the true intent and purpose of the Charter of 1774, Elijah Impey, *Speech,* p. 26; Stephen, *Story of Nuncomar,* Vol. I, p. 3.
28. He was having seventeen years' standing at the Bar. *Home Miscellaneous Series,* Vol. 115, p. 17.
29. *Impey Papers,* Vol. 16259, *Impey to Dunning,* 30th August, 1777, pp. 82-83 (British Museum). *Impey to Thurlow,* 30th August, 1777, pp. 84-85.
30. Of the three puisne judges, Chambers, a Vinerian Professor of Law at Oxford, was the most distinguished. *Memoirs of Willian Hickey,* Vol. III, pp. 220-21.
31. *Impey Papers,* Vol. 16259 (B.M.) *Impey to Thurlow,* 30th August, 1777, pp. 84-85.

three Puisne Judges.[32] For the subsequent appointment of a judge the Charter stated the qualifications as of at least five years' standing as a Barrister of England and Ireland. The judges were to hold office at the pleasure of the King. Each judge of the Supreme Court was to be a Justice of the Peace and was to have authority and jurisdiction as the Judges of the King's Bench in England had under the Common law. The Court was authorised to establish rules of practice and process. It had the power to appoint the necessary subordinate staff and regulate the court fees with the consent of the Governor-General.

The Charter granted civil jurisdiction to the Supreme Court. Where the cause of action exceeded Rs. 500, the Supreme Court was authorised to hear in the first instance. It could also hear the matter by way of appeal from the decision of a Moffussil Court, a Company's Court. Where the valuation of a suit exceeded 1000 Pagodas an appeal could lie to the King-in-Council within six months from the decision of the Supreme Court.

While exercising its criminal jurisdiction the Supreme Court was to be a Court of Oyer and Terminer and Gaol Delivery in and for the town of Calcutta, the factory and Fort William and the other factories subordinate thereto. All offences of which the Supreme Court had cognizance were to be tried by a Jury of British subjects resident in Calcutta.

The Supreme Court was empowered to superintend the Court of Collector, Quarter Sessions, and the Court of Requests and was empowered to issue to these Courts the writs of *certiorari, mandamus,* error or *procedendo.* The Court was also granted full ecclesiastical, civil and criminal jurisdiction over all the British subjects in Bengal, Bihar and Orissa and over all the persons employed directly or indirectly in the service of the Company. The powers of a Court of Equity and those of a Court of Admiralty for Bengal, Bihar and Orissa and the other adjacent territories and islands under the jurisdiction of the Company, were also given to it. The judges of the Supreme Court were authorised to admit attorneys and advocates and they nominated three persons for the office of Sheriff when selection was made by the Governor-General and Council. *The Supreme Court was vested with four distinct jurisdictions, namely, civil, criminal, ecclesiastical and admiralty*[33]. Thus the Supreme Court at Calcutta was granted the widest jurisdiction and many important powers. Keeping in view the jurisdiction of the Court, the population of the three provinces (Calcutta, Bombay and Madras) may be classified into four distinct categories, namely, British subjects, the servants of the Company, the inhabitants of Calcutta and the Indians residing in the three provinces.

5. Critical estimate of the provisions of the Regulating Act, 1773 and the Charter of 1774

Though the aims and objects[34] of the framers of the Regulating Act were very good, many defects came to light subsequently. They were either due to the

32. When Judges of the Supreme Court landed at Chandpal Ghat of Calcutta Hastings officially welcomed them on 19th October, 1774. *See* H.E.A. Cotton, *Calcutta Old and New,* p. 104; H.E. Busteed, *Echoes from Old Calcutta,* p. 60.
33. Morley, *Administration of Justice in India,* pp. 549-87.
34. Perhaps the main object of the Act was "to establish a self-acting balance of powers, and to prevent abuses by a system of co-ordinate authorities." *See* Sir Alfred Lyall, *Warren Hastings,* p. 53.

inexperience of the policy-makers in Indian affairs or due to defective drafting of the provisions of the Act. Over-ambition of the Government and lack of Co-ordination between Executive and Judiciary were also additional reasons. The Regulating Act was a half measure and disastrously vague in many points.[35] Some very serious omissions were made in the Act and various terms of the Act were left undefined which ultimately resulted in conflict, confusion and criticism. On the one hand the Governor-General came into conflict with the members of his Council, on the other the Supreme Court came into conflict with the Governor-General and Council. A brief account of the conflicting and defective provisions, which led to the failure of the policy of the Regulating Act, may be stated as follows:

(a) Defects of the Act

(*i*) *Conflict between G.G. & Councillors.*—The Regulating Act appointed a Governor-General and four members of the Council. It was expected that this new set-up would improve the old defective state of affairs. In the first instance, persons, who were to occupy these posts, were also named in the Act. Only one Councillor Richard Barwell and the Governor-General Warren Hastings were appointed from amongst the Company's servants working in India. They were well acquainted with the Indian political development and the Company's role in India. The British Parliament made the mistake of sending out to India three Councillors, namely Clavering, Monson and Francis who were altogether new and were ignorant about Indian affairs. They came to India at the instance of some politically influential leaders in England and were thoroughly prejudiced against Warren Hastings and the Company's officials in India, as was proved by their role in the subsequent proceedings of the Council with the Governor-General. Several times Governor-General Warren Hastings found himself out-voted by the factious majority of the Council.[36] It led to constant conflicts between the Governor-General and Members of his Council on various issues.[37] Such frictions were bound to react on the efficient working of the Governor-General and Council, which was the highest authority in India for policy-making and decision-taking regarding the Company.

(*ii*) *The "Imminent Necessity" undefined.*—By empowering the Governor-General of the Presidency of Calcutta to have control over the other two Presidencies of Bombay and Madras, the Regulating Act sowed seeds of constant conflict between them. The Act made the mistake of giving power and at the same time laying down an exception to it. As a result of it the latter nullified the former. The exception to the main provision authorised the Presidencies of Bombay and Madras to take

35. P.E. Roberts, *History of British India*, p. 182. The Regulating Act in fact accommodated conflicting interests and contradictory principles. It was a sort of compromise and a temporary settlement. *See* B.N. Pandey, *The Introduction of English Law in India*, p. 35; C. Ilbert, *The Government of India*, pp. 53-54.

36. Sir John Strachey does not employ expressions too strong when he characterises the plan of governing an empire by a constantly shifting majority at the Council Board as "impossible" and "folly". *See* W.K. Firminger, *Select Committee of the House of Commons on the Affairs of the East India Company, Fifth Report*, p. cclv.

37. Three members of the Council tried to secure powers from Warren Hastings and Barwell, and were eager to prove that due to their arrival Bengal was saved from ruin. It was also their ambition to remove Warren Hastings and to appoint any one from their group as Governor-General. Francis was the most ambitious and bitter enemy of Warren Hastings. See, *Letter of Col. Monson to Rockingham*, 3rd August, 1775, *Rockingham Papers*, R.I. 1583; *George Vansittart to John Cailaud*, 4th Jaunary, 1775. *European Letter Book*, pp. 51-53.

independent decisions in the case of "*imminent necessity*". It proved to be a very vague phrase in actual working. Taking full advantage of such emergency powers, Bombay and Madras Governments began to take decisions regarding their relations with other Indian powers without even consulting the Governor-General on the plea of emergency. They declared wars with the Marathas and Hyder Ali respectively without making any reference to the Governor-General and Council at Calcutta. Thus the ambitious Governors of Bombay and Madras came into conflict with the Governor-General. It created new conflicting situations and problems regarding the Company's relations with Indian and Foreign powers. It gradually widened the gulf between Calcutta and other presidencies and the growing tendency of taking independent decisions stimulated the trend towards secession from the central authority of the Company's Government in India. Ultimately, it resulted in weakening the British control over Indian territories till steps were taken by the British Parliament to control the abuse of such power.

(*iii*) *Undefined position of the Company.*—It was difficult to gather from the provisions of the Act as to what was the legal position of the Company in India. The Company was holding its powers in India from the British Crown and the Mughal Emperor. The Company's legal position in India was as *Diwan* of the Mughal Emperor. Due to this fact the British Parliament hesitated to assume complete sovereignty over India. According to law the British Crown could assert its sovereignty only on the rights the Company had secured from British Parliament. Parliament also disliked the idea of recognising the sovereignty of the Mughal Emperor in the Regulating Act specially when they knew that Mughal sovereignty in fact was nominal and slowly waning. *Parliament's effort to assert its sovereign rights on the Company's Diwani lands was possible only after the complete extinction of the Mughal sovereignty which it preferred to wait and see.* Most probably because of this fact the Regulating Act was immediately vague in its terminology on vital issues. From the provisions of the Act, it was difficult to maintain in practice the theoretical distinction between the two spheres of the Company's authority, namely, as the agent of the British Crown and as an officer of the Mughal Emperor. Neither the Company was asserting its right over the *Diwani* land nor was it expressly keeping quiet on the related issues. There appears to be great truth in the observation of J.F. Stephen that the drafters of the Regulating Act did not wish, "to face the problem with which they had to deal and to grapple with its real difficulties. They wished that the King of England should not act as the sovereign of Bengal, but they did not wish to proclaim him so. They wished not to interfere in express terms either with the Mughal Emperor or with the Company which claimed under him."[38]

(*iv*) *Conflict between Judiciary and Executive.*—The Regulating Act provided for the establishment of a Supreme Court. In pursuance of these provisions the Crown by issuing the Charter of 1774 established the Supreme Court at Calcutta and appointed eminent Judges to preside over the Court. The Governor-General and Council were constituted under the same Act by the Crown. In actual functioning both of them. *i.e.* judiciary and executive came into serious conflict[39], amongst

38. J.F. Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. II, p. 129.
39. The Charter gave precedence to the Chief Justice after the Governor-General, over the Members of

themselves over certain issues. Each claimed their superiority over the other on the basis of their appointment by his Majesty.[40] The Regulating Act failed to define their mutual relationship and no procedure was laid down to avoid any future conflict amongst them. The Governor-General and the Council were exempted from the criminal jurisdiction of the Supreme Court except in cases of treason and felony and they were not liable to be arrested or imprisoned but the provisions were incomplete as many other matters were left untouched by the Act which were very necessary to maintain the prestige of the high office of the Governor-General and Council.

(*v*) *Vague terms and wide interpretations.*—The jurisdiction of the Supreme Court was confined to "British subjects" in certain respects and the native inhabitants were exempted. But nowhere, *i.e.* neither in the Act nor in the Charter of 1774, was it defined as to who were the "*British subjects*". While defining the "British subjects," Stephen expressed great doubt about its real meaning and pointing out the confusion he stated: "That in one sense the whole population of Bengal, Bihar and Orissa were British subjects and in another sense, no one was a British subject who was not an English born and in a third sense, all the inhabitants of Calcutta might be regarded as British subjects".[41] Thus the question arose, what did the employment of the Company actually constitute? Whether the zamindars[42] and the farmers were servants of the Company? Due to the use of vague terms in the Act, Judges interpreted it in the widest sense to extend their jurisdiction. Judges placed all those directly or indirectly employed by the Company and those employed by British subjects under the jurisdiction of the Court.[43]

(*vi*) *Uncertain Law.*—The Regulating Act was not clear regarding the law which was to be administered by the Supreme Court. Whether it was to be the law of the plaintiff or that of defendant? Whether the law of Hindus or that of Mohammedans? The Judges knew nothing about Hindu or Muslim law; they knew only English law and usages. Burke remarked "...that no rule was laid down either in the Act or the Charter by which the Court was to judge. No description of offenders or species of delinquency were properly ascertained according to the nature of the place or the prevalent mode of the abuse."[44]

James Mill condemns the English law and process, which was adopted by the Supreme Court, as arbitrary and mechanical. Criticising the English law, as it existed at that time, James Mill said: "*The English law, which in general has neither*

---

the Council. The Councillors considered this precedence a matter of jealousy and reproach. Chief Justice Impey was a school friend of Warren Hastings. See *Francis to Ellis*, 8th November, 1774, Quote in Weitzman, *Hastings and Francis*, p. 296; Morley, *Administration of Justice in India*, Charter of 1774, p. 553.

40. Referring to "The Provisions of the Act" Punniah in *Constitutional History of India*, at pp. 16-21, states. "That they obscured the intention of the authors and lent themselves to more than one interpretation and so brought about serious conflicts between the Supreme Court and the Supreme Council."
41. Stephen, *Story of Nuncomar*, Vol. II, p. 126.
42. *Raja of Kasijurah's case*, where the Supreme Court claimed jurisdiction over the Zamindars. For details *see*, para 6.
43. For imperfections of the jurisdictional definition in the Act, *See* Kaye, *Administration of the East India Company*, p. 329; Cowell, *History and Constitution of Court and Legislative Authorities in India*, pp. 53-54.
44. *Select Committee*, 9th Report, (1783), p. 6.

definition nor words, to guide the discretion or circumscribe the licence or the Judge, presented neither rule nor analogy in cases, totally altered by diversity of ideas, manners and pre-existing rights; and the violent efforts which were made to bend the rights of the natives to a conformity with the English laws, for the purpose of extending jurisdiction ...produced more injustice and excited more alarm, than probably was experienced, through the whole of its duration, from the previous imperfection of law and judicature.''[45]

(*vii*) *Conflict between Co.'s Courts and the Supreme Court.*—The framers of the Regulating Act failed to lay down any provision dealing with the relationship between the Company's Courts and the Supreme Court which was established by the Crown.[46] They derived their authority and jurisdiction from two different sources, namely, the Company's Adalats were established under the authority of the Mughal Emperor granting *Diwani* to the Company and were governed by the treaties with the Nawabs of Bengal; the Supreme Court of Judicature at Calcutta was a Crown's Court established by a Charter of 1774 under the authority of the Regulating Act of 1773. The Regulating Act made the jurisdiction of the Supreme Court partially concurrent with that of the Adalats without unifying the sources of sovereignty from which each derived authority.[47] The Adalats looked only to the Governor-General and Council at Calcutta for support and guidance. They were two different entities and friction amongst them was bound to arise.[48] A series of conflicts between the two systems of judicature arose. Adalats were backed by the Council at Calcutta and, therefore, the conflicts actually developed between the Council and the Supreme Court. The majority of the Council stood firm in adopting its extreme views while the Judges of the Supreme Court laid emphasis on their superiority to implement their decisions.

(*viii*) *Conflicts between Council and the Supreme Court.*—The Regulating Act failed to make it clear whether the management and government of territorial acquisitions and revenues of the kingdoms of Bengal, Bihar and Orissa vested in the Governor-General and Council, was or was not, to be exempt from the jurisdiction of the Court. It was a matter of great public importance that the collection of the revenues afforded the richest opportunities for oppressions by persons who were employed by the Company. On this matter the Council and the Supreme Court came into severe conflict. The former pleaded exemption for its officers from the Court's jurisdiction for their acts in the collection of revenue. On the other hand, the Court stated that it was their primary and most important duty to hear cases in which the complaints were made against the revenue officers for their illegal acts.

---

45. James Mill, *History of British India*, Vol. III, pp. 502-503.
46. In the *Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. II, at p. 125, J.F. Stephen said, "Like many later statutes the Regulating Act used language involving problems, the solution of which was left to those who had to work it, because Parliament, either from ignorance or timidity, did not choose itself to solve or even to study them."
47. B.B. Misra, *The Judicial Administration of the East India Company in Bengal*, Ch. IX, pp. 214-216.
48. Philip Francis, in his letter to Lord North in February 1775, while admitting this defect advised him that the King's sovereignty over the provinces may be declared. He stated "Without it there can properly be no government in this country. The people at present have either two sovereigns, or none....The jurisdiction of the Supreme Court of Judicature should be made to extend over all the inhabitants, who will then know no other sovereign but the King of Great Britain. I concieve that this may be done without touching the country courts, or departing from the laws and customs of the people." *See* Parkes and Merivale, *Memoirs of Sir Philip Francis*, Vol. II, p. 27.

The post-Regulating Act period *i.e.* from 1774 to 1780, gave rise to a series of conflicting problems and situations. Many leading cases, *e.g. Raja Nand Kumar, Patna case, Raja of Kasijurah, Kamal-ud-din, Rani of Burdwan, Swarup Chand, etc.*, pointed out the lacunae and the defective provisions of the Regulating Act. The conflicts, which were not only amongst the Governor-General and his Councillors but also between the Council and the Supreme Court, proved the inefficiency of the machinery created by the Regulating Act as well exposed the vague and defective provisions of the Charter of 1774. Macaulay described the role of the Supreme Court during the period from 1774 to 1780 as a reign of terror, *"of terror heightened by mystery, for even that which was endured was less horrible than that which was anticipated."*[49]

In spite of the admirable objectives of the Regulating Act, one would like to agree with the Report on Indian Constitutional Reforms[50] that the Act proved a crude attempt at providing a satisfactory governmental machinery, violating the first principles of administrative mechanics. The system of checks and balances set up by the Act made the Governor-General powerless before his own Council and the executive powerless before a Supreme Court. This broke down the working of the Act.

James Mill[51] in this regard rightly observed that as usual the Parliament trod blindfold and established two rival independent powers in India: the Supreme Council and the Supreme Court. Conflict between them was therefore the natural consequence.

(b) Achievements of the Act.—In this context, it will be proper to consider the real achievement of the provisions of the Regulating Act. Two achievements of the Act may be stated as follows:

(*i*) It made changes in the personnel of the Governor's Council by which the doings of the Company's servants would henceforth be controlled by men who have no personal interest to serve by cloaking misgovernments in the districts, and who presumably would be free from the class prejudices of the Company's servants.

(*ii*) It substituted a Court of King's Judges and professional men of the law for a Court composed of Company's servants who were removable by the Company's servants.

In the light of the two achievements, as stated above, and the various defective provisions of the Act which created serious conflicts, there appears to be a great truth in Cowell's assessment, *"Thus the plan of controlling the Company's Government by the King's Court entirely failed....The policy which shaped the Regulating Act was no doubt well intentioned but it was rashly and ignorantly executed....The anarchy which ensued continued till the policy of the Regulating Act was reversed."*[52]

---

49. Macaulay, *"Essays on Warren Hastings"*, *Edinburg Review*, October, 1841, pp. 109-206.
50. (1918), p.17 quoted by A.C.Kapoor : Constitutional History of India, 2nd Edn., 1976, Ch. 1.
51. James Mill, *History of British India*, cited by W.K. Firminger, *Historical Introduction to the Bengal Portion of "the Fifth Report"*, from Select Committee of House of Commons, p. cclx.
52. Cowell, *History and Constitution of the Courts and Legislative Authorities in India*, p. 44.

6. Some landmark cases

The Regulating Act by establishing a Supreme Council worsened the situation due to the defects mentioned before. Due to defective drafting a conflict arose between Supreme Court and the Supreme Council. Ambiguity and uncertainty of law and procedure gave rise to unrest and created an atmosphere of tension and terror in the country.

Even two years after the opening of the Supreme Court, Phillip Francis, a Member of the Council, pointed out that the great question of sovereignty was even then undetermined. "We have", he said, "a Supreme Court of Judicature resident at Calcutta, whose writs run through every part of these provinces in His Majesty's name, indiscriminately addressed to British subjects who are bound by their allegiance, or to the natives, over whom no right of sovereignty, on the part of the King of Great Britain has yet been claimed or declared.[53]

The conflicts between the Executive Government of the Company and the Supreme Court at Calcutta may be illustrated by presenting a critical analysis of some of the important decisions of the Supreme Court which are considered landmarks in the legal history of India due to their far-reaching effects on the future course of the Government's action in India.

(a) Trial of Raja Nand Kumar (1775): The Judicial Murder.—The trial of Raja Nand Kumar[54] was the first decisive event during the early stage of the growing bitterness between the Supreme Court and the Council. Its special significance lies in the fact that the Judges of the Supreme Court introduced English principles of law and procedure into India, laws which were unknown to Indians before. With the insistence of the Judges on the independence of judiciary, in spite of interference of the Council, began a new era in the administration of justice in India. The trial gained great historical importance as it formed an integral part of the charge on which Warren Hastings and Impey were impeached by the House of Commons after their return to England.

(i) *Events before the Trial.*—Raja Nand Kumar, who was once Governor of Hugli under Nawab Siraj-ud-Daulah in 1756 and later due to his loyalty to the English Company in 1757 was nick-named as "Black Colonel" during Clive's period, brought several charges of bribery and corruption against Governor-General Warren Hastings[55] in 1775.

On March 11, 1775, Raja Nand Kumar gave a letter containing complaints against Warren Hastings to Francis, a member of the Council.[56] Francis presented

---

53. S. 4 of the Charter of 1774 makes the Judges, "Justices and conservators of the peace and coroners within and throughout the said provinces, districts, and countries of Bengal, Bihar and Orissa and every part thereof, and to have such jurisdiction and authority as our justices of our Court of King's Bench may lawfully exercise within that part of Great Britain called England by the Common law thereof." J.F. Stephen commented, "This might have been so construed as to enable the Court to issue writs of *mandamus*, prohibition and *certiorari* to every court in Bengal and to issue a *habeas corpus* to any native to bring up the women in his Zenana". J.F. Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. II, pp. 125-26.

54. For details *see*, J.F. Stephen. The *Story of Nuncomar and Impeachment of Sir Elijah Impey;* H.Beveridge. *The Trial of Maharaja Nand Kumar;* H.E. Busteed, *Echoes from old Calcutta;* B.N. Pandey, *Introduction of English Law into India: The Career of Elijah Impey in Bengal.*

55. P.J. Marshall "The Personal Fortune of Warren Hastings." *Economic History Review*, 2nd Series, xvii (1964-65), pp. 292-3.

56. See *Minutes of the Council* (Secret Dept.) dated 11th and 13th March, 1775. *See also* G.W. Forrest *Selections from State Papers of Governor-General Warren Hastings*, Vol. II. pp. 298-315 and 337-342.

that letter before the Council, at its meeting, the same day. In his letter of complaint, Raja Nand Kumar stated that in 1772 Warren Hastings, when he was Governor, accepted from him as bribe a sum of Rs. 1,04,105 for appointing Gurudas as Diwan and from Munni Begam Rs. 2,50,000 for appointing her guardian of the infant Nawab Mubarak-ud-Daulah.

On March 13, 1775, the Council received another letter from Nand Kumar. On the same day the Council discussed the subject-matter of the complaint. In his second letter Raja Nand Kumar offered to produce vouchers supporting his charges of bribery against Warren Hastings. In the Council meeting Monson moved a motion to call Nand Kumar before it. Warren Hastings, who was presiding at the meeting as Governor-General opposed this motion stating that neither would he preside over the meeting of the Council as his character was being discussed, nor would he recognise the authority of the members of the Council to sit as Judges to hear any case against him. In spite of Hastings' opposition, Monson's motion was carried by a majority of votes in the Council. Warren Hastings dissolved the meeting of the Council and left his seat. The majority of the members in the Council expressed the view that Governor-General Warren Hastings was not empowered to dissolve the meeting of the Council and in place of Warren Hastings they elected Clavering to occupy the presiding seat at the meeting. According to Monson's motion Raja Nand Kumar was called before the Council to prove his allegations against Warren Hastings. In order to prove his charges, Raja Nand Kumar produced a letter in Persian, which was written by Munni Begum to him.[57] While examining Raja Nand Kumar, the members of the Council asked a leading question: Was he ever approached by Warren Hastings or his men for the letter of Munni Begum? In his reply, Raja Nand Kumar disclosed that Kanta Babu, Warren Hastings' favourite *Bania* came to him nearly four months ago to take this letter but the original letter was not given to him. Though Kanta Babu was also called by the Council to appear before it, he avoided appearing at the instance of Warren Hastings.

The Council by majority dismissed Raja Nand Kumar and found that the charges levelled by him against Governor-General Warren Hastings were true. They held that Warren Hastings received a sum of Rs. 3,54,105 as bribe.[58] By a resolution therefore, the Council directed Warren Hastings to pay the same amount into the Company's Treasury.

(*ii*) *Facts of the Case.*—A few months later, Raja Nand Kumar was arrested with the Fawkes[59] and Radhacharan for conspiracy at the instance of the Governor-General and Barwell.[60] Warren Hastings and Barwell, his favourite member of the

57. G.W. Forrest, *Selection from the Letters, Despatches and other State Papers*, 1772-1785, Vol. II Letter of Munni Begum, pp. 53-54.

58. On his return to England Warren Hastings was impeached for bribery before the House of Commons and House of Lords, *See* P.J. Marshall, *The Impeachment of Warren Hastings*. Chs. II, III and IV, pp. 22-87.

59. Joseph Fawke and Francis Fawke.

60. The trial of Nand Kumar for forgery and that of Joseph Fawke, Francis Fawke, Radhacharan and Nand Kumar for conspiracy against Hastings and Barwell was first printed in London by Cadell in 1776 under the authority of the Supreme Court of Judicature at Calcutta. *See* Cadell, *The Trial of Nand Kumar* (1776). The version of the trial as published by Cadell was inserted in the State Trials (*State Trials*, Vol. 20; Forgery case, pp. 923-1078; Conspiracy case, pp. 1078-1226). In 1906 a verbatim report of the trial was published by P. Mitter. Mackintosh differs on the point that the trial was first of all published in England (Mackintosh, *Travels*, Vol. II, p. 198). But is it clear that Elliot acted as an

Council, declared their intention before the Judges of the Supreme Court to prosecute Nand Kumar, the Fawkes and Radhacharan for conspiracy.[61] This event led the people to think that with a retaliatory motive this step was being taken against Nand Kumar to ruin and disgrace him. The trial of Nand Kumar for conspiracy continued together with another trial of his for forgery. In the conspiracy case, the Supreme Court delivered its judgment in July, 1775. Fawke was fined but judgment was reserved against Nand Kumar on account of the forgery case. Those who criticised the rule of Impey and Warren Hastings stated that somehow Warren Hastings felt that it would be difficult to involve Nand Kumar directly in the conspiracy case, and therefore, they pooled their resources to prove another charge namely of forgery against Nand Kumar and thus got rid of him under the provisions of the English Act of 1729.

The charge of forgery against Nand Kumar, which came before the Supreme Court in May, 1775, was with respect to a bond or deed claimed as an acknowledgment of debt from Bulaki Das[62] the Banker, which it is said, was executed by him in 1765. Mohan Prasad brought a charge of forgery on 6th May, 1775 before the Justices of the Peace for the town of Calcutta. Le Maistre and Hyde acted as Magistrates, they heard the case and examined the evidence for the prosecution till late in the night. The Magistrates, in the capacity of the Justices of the Peace, being satisfied with the evidence of the prosecution witnesses, ordered the Sheriff and Keeper of His Majesty's prison at Calcutta to keep Nand Kumar in safe custody until he would be discharged in due course of law.

On 7th May, 1775, Mohan Prasad gave a bond to prosecute Nand Kumar in the Supreme Court. On the basis of it, the trial of Nand Kumar[63] began before the Chief Justice and three puisne Judges of the Supreme Court on 8th May, 1775. Out of the twelve members of the Jury, two were Eurasians and the remaining were Europeans having resided since long in the town of Calcutta. On the advice of Vansittart, Mohan Prasad engaged Durham as his counsel and Alexander Elliott acted as interpreter of the Court. Thomas Farrer was appointed defence counsel of Nand Kumar.

The trial of Nand Kumar began on 8th June, 1775 and continued for a period of eight days without any adjournment. The defence counsel first of all advanced a plea as to the jurisdiction of the Supreme Court. The Judges considered that the plea was unsupportable and the defence counsel was allowed to withdraw it due to

interpreter during trial. He left India in 1775 with an authenticated account of the trials and the Judges authorised him to get it printed in London (Letter of Judges to Elliot, August 10, 1775).

61. For details *see*, B.N. Pandey, *Introduction of English Law into India: Career of Sir Elijah Impey in Bengal*, (1774-1783), pp. 57-69.

62. In his lifetime Bulaki Das regarded Nand Kumar as a great benefactor and patron of his family. Before his death in 1769, Bulaki Das entrusted his wife and daughter to the care and protection of Nand Kumar. It is said that after Bulaki Das's death Nand Kumar's attitude completely changed. *See* Beveridge, *The Trial of Maharaja Nand Kumar*, p. 131.

63. J.D.M. Derrett, "Nand Kumar's Forgery" *English Historical Review*, lxxv (1960), pp. 223-38. For a different interpretation, *see* N.K. Sinha, "The Trial of Maharaja Nand Kumar" *Bengal, Past and Present*, lxxviii (1959), pp. 135-45. J.F. Stephen in the *Story of Nuncomar and the Impeachment of Sir Elijah Impey*, claimed that the prosecution had no connection with political events. In the light of evidence in Sutherland *English Historical Review*, lxxii, p. 461, this view is no longer tenable. B.N. Pandey, *Introduction of English Law into India: Career of Sir Elijah Impey in Bengal*, 1774-1783, pp. 77-98.

two reasons. According to the law as it existed at that time, if the plea as to the jurisdiction was decided against, the defendant would be precluded from pleading not guilty to the indictment. Farrer, the defence counsel, also thought that if the judgment went against Nand Kumar, he might use this plea sometime later by a motion to check the effect of the judgment. Nand Kumar, therefore, pleaded not guilty and stated that his entire transactions with Bulaki Das were correct and genuine.

The Court sat every day from 8 a.m. and witnesses were examined till late at night. Sometimes proceedings were delayed due to ignorance of the Judges about Indian habits and the nature of persons appearing as witnesses. Documents, statements and accounts were in different languages which were gradually being translated into English for the benefit of the Judges. Busteed stated, "How complicated and perplexing these must have seemed as well as the strange documentary exhibits which, like the accounts, were in diverse languages and which, with every word of the evidence had to be filtered to the understanding drop by drop through an interpreter."[64] Another peculiar feature of the trial was that the Judges cross-examined the defence witnesses even in minute details and thus they carried out the work of the prosecuting counsel on the plea that the King's Counsel was incapable of doing if efficiently. It was really very surprising and created serious doubts and suspicions about the impartiality of the Judges. The trial continued till the midnight of June 15, 1775. On 16th June, in the morning, Chief Justice Impey summed up the whole case. The Judges gave the unanimous verdict of "guilty" and the jury also declared their verdict of "guilty". Rejecting all defence pleas the Chief Justice passed the sentence of death on Nand Kumar under an Act of British Parliament, which was passed in 1729.

From 16th June to 4th July, 1775 various efforts were made to save the life of Nand Kumar. The defence counsel decided to take an appeal to the King-in-Council and petitioned the Court to stay the execution of the sentence so long as the Council's decision was not known. The Court rejected the petition. Efforts were also made to seek the assistance of the Members of the Council but all efforts proved in vain. Earlier on 27th June the Council received a letter from the Nawab recommending suspension of the sentence until the pleasure of His Majesty was known.[65] The Council forwarded this letter to the Supreme Court. No action was taken on it. Raja Nand Kumar was thus hanged on August 5, 1775, at. 8 a. m. at Cooly Bazar near Fort William.

(iii) Two important questions raised in the Trial.—First, whether Nand Kumar was under the jurisdiction of the Court? Second, whether the English Act of 1729 which made forgery a capital offence and under which Raja Nand Kumar was executed, was extended to India?

Objection regarding the jurisdiction of the Supreme Court over Raja Nand Kumar was based on the ground that before the advent of the Supreme Court, the Indians in Bengal were tried by their own men in their own local criminal courts.

64. H.E. Busteed, *Echoes from Old Calcutta*, p. 77.

65. *Secret Consultations* 1775, Range A, Vol. 29, pp. 379-80. On 31st July, Nand Kumar wrote to Francis, requesting him to interpose with the justices, and secure his respite. *See*. C.H. Parkes, *Memoirs of Sir Philips Francis* (edited by H. Merivale), Vol. I, Nand Kumar's letters to Francis, pp. 37-38.

In this case as the offence was committed before the advent of the Supreme Court, Nand Kumar could be tried only by Faujdari Adalats and not by the Supreme Court.

On the second question, regarding applicability of the Act of 1729 to India and the execution of Raja Nand Kumar for forgery, there was a difference of opinion even amongst the Judges.[66] Chambers, J. stated that the Act of 1729 was particularly adopted to the local policy of England wherefor reasons political as well as commercial, it had been found necessary to guard against the falsification of paper currency and credit, by laws the most highly penal, and that he thought the same reasons did not apply to the then State of Bengal. Impey, Hyde and Le Maistre regretted to agree with Chambers' view. Chief Justice Impey declared his firm belief, first, that the Statute of 1729 did apply to India; second, that the English criminal law in general and the Statute of 1729 in particular had been administered in India by English Courts that functioned before the advent of the Supreme Court;[67] third, the Judges had no option to try forgery under any different law. Regarding the applicability of the Statute of 1729,[68] Chief Justice Impey stated the principle that when the King introduces his law in a conquered dominion, all such laws as are in force in the realm of England at the time when the laws are so introduced, do become the laws of the dominion. Laws made subsequently may not extend to the new dominion except when expressly mentioned in those laws that they shall.[69] Impey, therefore, argued that in 1726 King George I granted a Charter of Justice for the town of Calcutta and thereby introduced English law. On the surrender of that Charter, a new Charter of Justice was granted by King George II in 1753. It means that all criminal laws in force in England in 1753 became the laws of the town of Calcutta. Thus the Statute of 1729 was extended to India by the Charter of 1753 as it was passed before this Charter.

(*iv*) *Some peculiar features of the Trial.*—The decision of the Supreme Court in the trial of Raja Nand Kumar became a subject of great controversy and doubts were also expressed regarding certain peculiar features of the trial, which may be given as follows:

(*a*) Charge preferred against Raja Nand Kumar was shortly after he had levelled charges against Warren Hastings.[70]

(*b*) Chief Justice Impey was a close friend of Hastings.[71]

(*c*) Every Judge of the Supreme Court cross-examined the defence witnesses due to which the whole defence of Raja Nand Kumar collapsed. It was also not

66. B.N. Pandey, *The Introduction of English Law into India: The Career of Sir Elijah Impey in Bengal*, p. 78.
67. Impey stated that before the Supreme Court, Courts of Oyer, Terminer and Goal delivery had territorial jurisdiction over Calcutta and they administered English Law. Impey cited Radha Charan Mittre's case of 1765 to prove that the Statute of 1728 was at least once applied before. Radha Charan Mittre was indicted in 1765 for forging the codicil of a will of one Cojah Solomans. He was sentenced to death. The Court of Directos granted him pardon. *Bengal General Consultations*, March 11, 1765 (India Office Library).
68. 2 Geo. 2 c. 25 (1729); *See*, Stephen, *Story of Nuncomar and Impeachment of Elijah Impey*, Vol. 2, p. 48n; B.N. Pandey, *The Introduction of English Law into India: The Career of Elijah Impey in Bengal* (1774), p. 107.
69. See *Parliament Debates* (*British*) 1788, Vol. 28, Col. 1360.
70. Rama Jois; *Legal and Constitutional History of India*, 1984, Vol. II, p. 126.
71. *Ibid.*

legal according to the rules of procedure prevailing at that time. Criticising the attitude of the Judges, H.E. Busteed wrote, "The desire of the Judges was to break down Nand Kumar's witnesses, in particular the Chief Justice's manner was bad throughout and that the summing up was unfavourable."[72]

(*d*) After the trial, when Nand Kumar was held guilty by the Court he filed an application before the Supreme Court for granting leave to appeal to the King-in-Council but the court rejected this application without giving due consideration.

(*e*) Nand Kumar applied for mercy to His Majesty but his case was not forwarded by the Supreme Court. The Supreme Court was empowered by the Charter of 1774 to reprieve and suspend such capital punishment and forward the matter for mercy to His Majesty. Earlier in 1765, a native, named Radha Charan Mittre was tried in Calcutta for forgery under the Statute made applicable to Nand Kumar and death sentence was passed. A petition was sent to Governor Spencer from the native community of Calcutta requesting "either a reversal of sentence or a respite pending an application to the throne". The prayer was granted and Radha Charan Mittre got a free pardon from the King.

(*f*) Nand Kumar committed the offence of forgery nearly five years ago, *i.e.*, much before the establishment of the Supreme Court. Nand Kumar was sentenced to death under the English Statute of 1729 on a charge of forgery but this Act was not applicable to India because English law was introduced in India in 1726 and not in 1753.[73]

(*g*) Neither under Hindu Law nor under Mohammedan Law was forgery regarded a capital crime.

In view of the peculiar features of the trial, as stated above, and the events which took place before the trial, the Judgment of the Supreme Court in Raja Nand Kumar's case became very controversial. The trial and execution of Raja Nand Kumar shocked not only Indians but also foreigners residing in India. It was considered most unfortunate and unjust. The role of Chief Justice Impey became a target of great criticism. On their return to England, Impey and Warren Hastings were impeached by the House of Commons[74] and the execution of Raja Nand Kumar was an important charge levelled against them.

(*v*) *Opinions of Macaulay, Mill, Beveridge, Stephen etc.*—Many English historians expressed the view that Nand Kumar was tried and executed by Impey at the instance of Warren Hastings. "*Men will never agree,*" P. E. Roberts writes, "*as to the meaning of this somewhat mysterious sequence of events, for the key to them lies in the ambiguous and doubtful region of secret motives and desires. The incident created an extraordinary impression and it was naturally believed for a long time that Nand Kumar had paid the penalty of death nominally for forgery but really for having dared to accuse the Governor-General.*"[75] Those who accuse Impey and Warren Hastings allege that Hastings first tried to ruin Nand Kumar on a conspiracy charge, but after realising that it did not implicate Nand Kumar directly, he got him capitally indicted on a charge of forgery preferred ostensibly by Mohan Prasad.

72. H.E. Busteed, *Echoes from Old Calcutta*, p. 90.
73. Macaulay, "Essays on Warren Hastings", *Edinburgh Review*, 1841-42, October, p. 43.
74. For details *see*, P.J. Marshall, *The Impeachment of Warren Hastings*, Chs. II, III and IV, pp. 22-87.
75. P.E. Roberts, *History of British India*, p. 187.

J.F. Stephen had made a detailed study of Nand Kumar's case and justifies the conduct of both Impey and Warren Hastings in the trial of Raja Nand Kumar. He states, "Mohan Prasad was the real substantial prosecutor of Nand Kumar and that Hastings had nothing to do with the prosecution and that there was not any sort of conspiracy or understanding between Hastings and Impey in relation to Nand Kumar or in relation to his trial or execution."[76] Criticising Stephen's findings, Macaulay said, "*The ostensible prosecutor was a native. But it was then, and still is, the opinion of everybody—idiots and biographers excepted—that Hastings was the real mover in the business.*"[77] Beveridge charged Impey and Hastings with conspiracy on the supposition that no attempt had been made to prosecute Nand Kumar for forgery before May 1775. He claimed that Hastings in order to defeat Nand Kumar's charges, which were pending in the Council suborned Mohan Prasad to prosecute him in the Supreme Court.[78]

For holding the opinion that no conspiracy existed between Impey and Warren Hastings, Stephen states certain reasons. He points out that Nand Kumar was tried by the whole Court of four Judges and not by Impey alone. Apart from the Judges, the jury of twelve men was also there. All these, the Judges and jurors found Raja Nand Kumar guilty. But Beveridge alleges that *throughout the trial Impey manifested an ardent wish and determined purpose to effect the prisoner's ruin and execution and with this aim in view he summed up the evidence with "gross and scandalous partiality". Beveridge believes, this prejudiced the incompetent juries who were all foreigners, ignorant about Indian customs and conditions; and they held Nand Kumar guilty.*

The legality of Nand Kumar's trial was questioned in the impeachment proceedings of Impey,[79] before the House of Commons on the scope of the applicability of the Act of 1729 in India. During the debate on the impeachment motion, Sir Gilbert Elliot argued in detail that the law rendering forgery a capital offence did not extend to India.[80] Macaulay, Mill and Beveridge held the same opinion. Even Stephen appears to have had doubts on the legality of the case being tried under the Act of 1729.[81] Keith states, "English law was introduced by the Charter of 1726. The subsequent Charter of 1753 and the Act of 1773 could not possibly be regarded, as they were by Impey, as substantive reintroductions of English law up to that date and *in any case, to apply literally an English law as a mere miscarriage of justice. No Indian after him* (Nand Kumar) *was executed for the crime and in 1802 the Chief Justice* (not C.J. Impey) *expressly admitted that it was not capital.*"[82]

---

76. J.F. Stephen in *The Story of Nuncomar and Impeachment of Elijah Impey*, Vol. II at p. 37, wrote, "My opinion is that the trial was scrupulously fair, that the summing up was perfectly impartial, and gave every possible advantage to the prisoner."
77. Macaulay, "Essays on Warren Hastings", *Edinburgh Review*, 1841-42, October, p. 189.
78. Beveridge, *The Trial of Maharaja Nand Kumar*, p. 309.
79. The charges levelled against Elijah Impey covered forty-two printed pages. *See*, Home Misc., Vol. 372, pp. 343-86.
80. Parliament Debates (U.K.) 1788, Vol. 27, Cols. 416-22.
81. J.F. Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. 2, p. 48n.
82. Keith, *A Constitutional History of India*, p. 77; Morley, *Digest of Indian Cases*, Introduction, p. xxiii, Thompson and Garratt, *British Rule in India*, pp. 125, 357-9.

The most grievous charge, that Impey had to answer before the House of Commons was that when Nand Kumar had been convicted and sentenced to death, he corruptly refused to give respite to him pending the submission of his case for the consideration of the Sovereign. Stephen, while holding that Impey and other judges acted in good faith states, "I think that in omitting to respite Nand Kumar, the Judges exercised their discretion in good faith and on reasonable grounds, which was all that could be required of them."[83]

To Gillbert, Burke, Macaulay, Mill and Beveridge the failure to respite seemed to be motivated by the vilest design to accomplish the death of Hastings' accuser. Beveridge, in *The trial of Nand Kumar,* claims to have shown (and given some evidence for his contention) that a private secretary and dependent of Hastings exerted himself to prevent a respite being granted to the condemned man.[84] Criticising the role of the Supreme Court Keith remarks, *"No more odious crime has ever been committed by a British Court whether or not on the instigation of a British Governor-General"*. Beveridge expresses his resentment in vigorous words, "What I and every honest man who knows the facts blame Impey for, is that he allowed himself to be prejudiced by his partiality for Hastings, and his hatred of the majority and that he hanged Nand Kumar in order that speculators in general, and his friend and patron Warren Hastings in particular might be safe." Macaulay critically observes, "Impey acted unjustly in refusing to respite Nand Kumar. No rational man can doubt that he took this course in order to gratify the Governor-General. Hastings, three or four years later, described Impey as the man, 'to whose support he was at one time indebted for the safety of his fortune, honour and reputation'. These strong words can refer only to the case of Nand Kumar; and they must mean that Impey hanged Nand Kumar in order to support Hastings. *It is, therefore, our deliberate opinion that Impey, sitting as a Judge, put a man unjustly to death in order to serve a political purpose.*[85]

Dr. B.N. Pandey in his book, *"Introduction of English Law into India: The Career of Elijah Impey in Bengal, 1774-1783"*, has made a detailed study of the trial of Raja Nand Kumar in England. This is the latest work on the subject based on extensive study.[86] In his conclusions, Dr. Pandey has taken views similar to those of Stephen's and has supported Impey's decision by which the English Act of 1729 was extended to India.[87]

His conclusions are, however, not free from serious doubts. It is on the records that during the first four years of his administration of Bengal, Hastings remitted £ 122,000 to Europe, a sum which exceeded his officially recognised emoluments by

---

83. Stephen, *The Story of Nuncomar and Impeachment of Elijah Impey,* Vol. II, p. 85.
84. *See,* A.B. Keith, *Constitutional History of India,* p. 77.
85. Macaulay's "Essays On Warren Hastings" (Edited by V.A. Smith), *Edinburgh Review,* 1841-42, October, pp. 45-46.
86. Published in 1967 by Asia Publishing House, Bombay.
87. Dr. Pandey's conclusions may be stated as follows: That there existed no conspiracy between Impey and Hastings to ruin Nand Kumar. The defence story was concocted and Nand Kumar's witnesses were perjurers. Impey and the Judges found Nand Kumar guilty of forgery and legally executed him under the English Act of 1729 which was rightly introduced in India. It was not in furtherance of any political conspiracy that the Judges refused to respite Nand Kumar. *See,* Dr. B.N. Pandey, *The Introduction of English Law into India: The Career of Elijah Impey in Bengal,* 1774-83, pp. 43-109.

over £ 25,000.[88] From where did this extra income come?[89] Deriving full advantage of his political superiority, Warren Hastings used Indians as his tools to meet his political and personal ends. So long as they proved useful in his self-oriented missions full advantage was derived through them. On their becoming hostile Warren Hastings was ready to do the needful—either to condemn them or to get rid of them. Raja Nand Kumar was one of those unfortunate Indians who were valued very highly once upon a time by Warren Hastings. It appears that before the Judges of the Supreme Court were appointed, Raja Nand Kumar was in serious conflict with Hastings. Warren Hastings wrote, "I was never the personal enemy of any man but Nand Kumar whom from my soul I detested, even when I was compelled to countenance him."[90] With this background of events, Warren Hastings, while congratulating Impey on his appointment as Chief Justice of the Supreme Court, wrote, *"With respect to my situation I shall say nothing till we meet but that I shall expect from your friendship such assistance as the peculiar circumstances of my new office and connections will enable you effectually to afford me for the prevention and removal of the embarrassments which I feel I am unavoidably to meet with"*.[91] It is also necessary to remember that Warren Hastings and Impey studied in Westminister and since then they were very close friends.

It is submitted that Dr. Pandey has not correlated and interpreted the aforementioned facts and has not given full importance to them. With this background, if Nand Kumar's charges of bribery and corruption against Warren Hastings are considered, the existence of a serious conflict between Nand Kumar and Hastings becomes quite clear. In order to get rid of his enemy (Nand Kumar), Hastings, in the first instance, filed a criminal case of conspiracy against Nand Kumar and simultaneously Nand Kumar was prosecuted for forgery. Strong friendly ties between Impey and Hastings impaired the impartiality and independence of judiciary. The peculiar features of trial proceedings were widely condemned by Indians and enlightened critics in England. Nand Kumar was found guilty by the Judges and Jury, and an English Act of 1729 was conveniently used for passing a death sentence. Even the mercy petition was not forwarded to His Majesty and Nand Kumar was executed on 5th August 1775, leaving strong doubts that judicial murder[92] had been committed.

---

88. P.J. Marshall, "The Personal Fortune of Warren Hastings", *Economic History Review*, 2nd Series, xvii, (1964-65), pp. 292-93; *Louchlin Macleane's letter to Sulivan*, 18th January, 1774 (Manuscript in the Bodleian Library). Eng. His. c. 271 f. 2. *See also* P.J. Marshall, *The Impeachment of Warren Hastings*, p. 2145.
89. As written by Lord Macaulay in *Critical and Historical Essays*, Vol. III, p. 244, "The object of Mr. Hastings' diplomacy was at this time simply to get money.... by some means, fair or foul." as was quoted by Pandit Sunderlal : *Bharat men Angrezi Raj*, p. 166 (1939) rendered into Gujarati in 1946 by Jasani Prakashan Trust.
90. G.R. Gleig, *Memoirs of the Life of Warren Hastings*, Vol. III, pp. 337-38; *See also* Philip Woodruff, *The Men Who Ruled India*, Vol. I, p. 125.
91. G.R. Gleig, *Memoirs of the Life of Warren Hastings*, Vol. I (Hastings to Impey, 24th August, 1774) p. 453. *See also*, Warren Hasting's letter to Sullivan where he stated. "Nuncomar, whom I have cherished like a serpent till he has stung me is now in close connexion with my adversaries; and the prime mover of all their intrigues". *Secret Consult*, R.A., Vol. 27, p. 1478-9: Gleig, *Supra*, Vol. I, p. 506.
92. *See also* H. Beveridge, *The Trial of Maharaja Nand Kumar*, pp. 1-5.

P.E. Roberts said, *"But even if we hold it established that there was no judicial murder, there was certainly something equivalent to miscarriage of justice. For that, however, the Supreme Court in the first instance, Hastings' opponents on the Council subsequently, were mainly responsible.*[1]

(b) Case of Kamaluddin (1775)

This case is of historical importance as it reflects on a vital question relating to the *jurisdiction of the Supreme Court over the acts of Company's servants working in the capacity of Collectors of Revenue.* It is clear from subsequent developments that the Council came into serious conflict with the Court.

(*i*) *Facts and decision.*—Kamaluddin[2] was an ostensible holder of a salt farm at Hijili[3] on behalf of Kantu Babu,[4] who was the real farmer. In 1775 Kamaluddin, as a farmer, was in arrear of revenue. On this basis the Revenue Council of Calcutta issued a writ for Kamaluddin's committal without bail. Kamaluddin obtained a writ of *Habeas Corpus* from the Supreme Court to set him free on bail. The Supreme Court granted him bail. It was held by the Supreme Court that the return submitted by the Council were defective in form as it omitted to "express a power in the Council of Revenue to commit without bail or mainprize, although words to the same effect were inserted. Mr. Cottrell, the President of the Calcutta Revenue Council, admitted that it was customary in such cases to grant bail and, therefore, the Judges of the Supreme Court held that in a case of disputed account, the defendant should be granted bail till the inquiry regarding his obligation to pay was complete. The Judges further stated that Kamaluddin should not be imprisoned again until his under-renter had been called upon to pay the arrears and had proved to be insolvent.

(*ii*) *Conflict.*—At this action of the Judges of the Supreme Court, the Members of the Supreme Council expressed their resentment and stated that the Judges of the Supreme Court were "not empowered to take cognisance of any matter or cause dependent on or belonging to the revenue". According to them the Company was confirmed as Dewan of Bengal by the Regulating Act and the Supreme Council had exclusive jurisdiction. The majority of the Supreme Council, therefore, decided to order the Provincial Council to re-imprison Kamaluddin and to pay "no attention to any order of the Supreme Court or any of the Judges in matters which solely concern revenue". But Governor-General Warren Hastings refused to support the proposed steps of the majority of the Supreme Council.[5]

In his letter to the Court of Directors, Chief Justice Impey explained that a distinction should be drawn between claiming a jurisdiction over the original cause, which the Judges had not done, and an intervention on the part of the Supreme Court to prevent the Company's officers, "under the colour of legal proceedings

1. P.E. Roberts, *History of British India*, p. 188.
2. *See*, W.K. Firminger, *Select Committee of the House of Commons on the Affairs of the East India Company, Fifth Report*, Introduction, p. cclxiii.
3. Beveridge, *The Trial of Nand Kumar*, p. 235.
4. Kantu Babu was the famous Bania of Warren Hastings. He played an important role in the famous trial of Nand Kumar, where he stated that Nand Kumar's signature on the deed was a forgery.
5. When Kamaluddin participated in the trial of Raja Nand Kumar, the majority of the Supreme Council got an opportunity to express its resentment by condemning the role of Kamaluddin.

being guilty of most aggravated injustice".[6] He further stated, "This distinction, if attended to, is sufficient to clear away everything that can give the least alarm on account of the interests of Company, for the Court, allowing the custom and usage of the Collections to be law of the country, has only compelled the officers of the Government to act conformable to these usages, and not make use of the colour and forms of law to the oppression of the people".[7]

The case of Kamaluddin, therefore, was an eye-opener disclosing defective provisions of the Regulating Act due to which not only the Supreme Court and the Supreme Council came into conflict but also the gulf between Governor-General Warren Hastings and the three Members of his Council, who constituted the majority, gradually became wider and wider.

(c) The Patna Case (1777-79)

(*i*) *Issues involved.*—This case is important as a landmark in the legal history of India. Vital issues involved in this case included the (1) jurisdiction of the Supreme Court and the right of the Supreme Court to try actions against the judicial officers of the company for an act done in their official capacity. (2) Another important issue was, whether the Provincial Diwani Adalats which consisted of the Members of the Provincial Council were legally constituted Courts of Justice? The judgment of the Supreme Court not only provoked the Members of the Council and developed conflicts but also created panic in the local population of Calcutta.

(*ii*) *Facts.*—Shabaz Beg Khan, an Afghan military adventurer, came to India from Kabul. He settled at Patna, married Naderah Begum and earned a large amount of money.[8] In December 1776 he died at Patna without leaving any male or female issue. He left behind a large sum of money, valuables and property. It is alleged that as Shabaz Beg Khan did not have any issue he called Bahadur Beg, his nephew, to live with him. At the time of his death, Bahadur Beg was living with him.[9] After the death of Shabaz Beg Khan in 1776 his widow and nephew came into open conflict and litigation began between them, each claiming the whole property of the deceased. Naderah Begum claimed as a widow of the deceased on the basis of a dower deed and gift deed. Bahadur Beg, on the other hand, stated that as an adopted son he was living with his deceased uncle and, therefore, being his legal heir received a "Khelaut" (present) from the Governor-General.

After the death of Shabaz Beg Khan, Bahadur Beg took the first step and presented an application before the Provincial Council at Patna,[10] praying that the Mohammedan Law Officers of the Council *i. e.*, Kazi and Muftis, may be directed to ascertain the petitioner's right over the property of the deceased. He also pointed out that the widow of the deceased had embezzled some valuables of the deceased and that the same may be recovered from her for him. As Ewan Law, the Chief of Patna, stated, the object of Bahadur Beg's petition was to obtain, "the charge of

6. 19th September, 1775.
7. J.F. Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. II, pp. 134-35. *Eleventh Report of the House of Commons*, 1781, General Appendix, III, No. 14.
8. *Touchet Committee Report*, pp. 10-13; *See also*, B.N. Pandey, *The Introduction of English Law into India: The Career of Elijah Impey*, Ch. V, pp. 131-47.
9. *Home Miscellaneous Series*, Vol. 422, pp. 720-30. *See also*, W.K. Firminger, *Fifth Report of the Select Committee on the Affairs of the East India Company*, p. cclxxi.
10. On 2nd January, 1774, *Law Consultations* (India Office Library), Range 166, Vol. 82, pp. 679-80.

the widow and the possession of the estate and this is ever the case where the widow has a claim to any considerable inheritance." The Provincial Council, instead of deciding the case itself, passed the case to the Mohammedan Law Officers, *i. e.*, Kazi and Muftis. The *Parwana* issued by the Council to the Kazi and Muftis provided, "that an inventory of the property of the deceased in the presence of both the parties was to be made by them and consequently to collect the money and goods and seal them up and provide for their safe custody and to report to the Council as to rights of the parties according to the ascertained facts and legal justice".

The Mohammedan Law Officers carried out the directions of the Provincial Council very harshly while dealing with the widow. Mill gives an account which would lead the reader to suppose that the widow acted throughout with an insane violence, while James Stephen's account gives us the view, which was subsequently taken by the Chief Justice, that in this instance the widow was regarded by "the black officers" as a "proper object of rapine and violence". However, the widow Naderah Begum, being afraid, fled from her house with some of the title deeds and her female slaves and took shelter in a *Dirgah* (Muslim holy Shrine). The Law Officers posted a guard even at the gates of the *Dirgah* where Naderah Begum was taking shelter.

The Kazi and Muftis submitted their report to the Provincial Council on 20th January, 1777. From this report it appears that Bahadur Beg claimed his uncle's property as the adopted son of the deceased, while the widow claimed on the basis of *"Mehar Nama"* (Dower Deed), *"Hiba Nama"* (Gift Deed) and *"Ikrar Nama"* (Acknowledgment). The Mohammedan Law Officers reported that the will and deed of the gift were not genuine and were forged documents. Therefore, they recommended that the property excluding *altamagha*, which would not form part of the inheritance, may be divided into four parts. Out of which three parts were to be given to Bahadur Beg on the basis of consanguinity to the deceased and also as the heir of the deceased. The fourth part was left for the widow.[11]

The Provincial Council, accepting the recommendations of the Mohammedan Law Officers, ordered the division of the whole property into four parts. It also issued an order for the trial of the agents of the widow and Kojah Zacheriah on the charge of forgery in the Faujdari Adalat. The widow, Naderah Begum refused to accept the fourth share and declined to hand over her title deeds. She also refused to return to the family from *Dirgah*. Under the orders of the Council a regular guard was posted at the gates of *Dirgah*. This situation continued for a few months.

After tolerating continuous harassment for few months the widow Naderah Begum appealed to the Sadar Diwani Adalat against the decision of the Provincial Council. The Sadar Diwani Adalat consisted of the Governor-General and the Members of the Council. Due to their busy routine they found it difficult to consider this matter. Governor-General Warren Hastings was also in conflict with the majority of his Council Members. Warren Hastings taking the initiative wrote to Evan Law, Chief of Patna Provincial Council, for explanation, which was submitted. The matter

11. *Touchet Committee Report*, 1781, Report of the Kazi, Pat. App. 2, p. 230. *See also*, W.K. Firminger, *Select Committee of the House of Commons, Affairs of the East India Company, Fifth Report*, Vol. I, Introduction, pp. cclxxi-cclxxiv.

remained pending for a long time before the Sadar-Diwani Adalat without any action. Being disappointed, the widow, Naderah Begum filed a suit before the Supreme Court against Bahadur Beg, Kazi[12] and Muftis[13] for assault, battery, unlawful imprisonment for a period of six months and depriving her of the possession of her property. She also claimed damages amounting to six lac Rupees.[14]

The Supreme Court issued orders for the arrest of Bahadur Beg, Kazi and Muftis against whom Naderah Begum filed the suit. A bailiff was sent from Calcutta to arrest these persons and bring them from Patna for appearance before the Court. None of them was granted bail except the Kazi for whom the Provincial Council supplied the bail guarantee. The case was tried by the Supreme Court for ten days.[15] While delivering judgment, the Chief Justice declared that the assertions of the Kazi and Muftis that the will and deed of gift were forgeries, were unproved. "The documents on which the widow based her claim were not forgeries and that the Kazi and Muftis were not acting in good faith." "The circumstances," Sir Elijah Impey, C.J., said, "make us shrewdly suspect that this identical report (which was prepared by Kazi and Muftis) never had existence till it was fabricated for the purpose of this cause". The Supreme Court held the Law Officers of the Patna Provincial Council of Revenue as amenable to a charge of assault and false imprisonment in regard to actions taken by them as public officers. The Court awarded the damages Rs. 3,00,000 for plaintiffs and Rs. 9,208 as costs. As the defendants were not able to pay damages and cost, they were ordered to be imprisoned. The defendants were despatched to Calcutta under a guard of sepoys. The unfortunate old Kazi died on the way and the other three persons remained in prison at Calcutta until 1781 when an Act of British Parliament directed that they should be discharged.[16] The Council resolved in its meeting of 20th August, 1779 to file an appeal to the Privy Council against the judgment of Supreme Court. The Act of 1781 by its 27th clause authorised the defendants to appeal to the Privy Council. Although an appeal was filed on 28th July, 1784, it was not allowed to be dropped and was finally dismissed in 1789.

(*iii*) *Important points raised before the Supreme Court*—

(*I*) *Issue of Jurisdiction.*—The first and most important point raised before the Court was—in what sense Bahadur Beg and native law officers were subject to the jurisdiction of the Supreme Court?

It was proved that Bahadur Beg farmed the revenues of certain villages in Bihar. The Supreme Court, therefore, held that Bahadur Beg was in its jurisdiction as he was found to be a farmer of the revenues of the Company. He being *Ijardar* was also directly or indirectly in the service of the Company. Similarly, the other three persons were also servants of the Company and, therefore, were within the jurisdiction of the Court. This view of the Supreme Court was subsequently criticised on the basis of three factors, which may be stated as follows:—No doubt the Charter

12. Kazi Sadee.
13. Two Muftis—Mufti Barackatoolah and Mufti Ghulam Makhdoom.
14. *Touchet Committee Report*, p. 6.
15. The judgment was delivered on 3rd February, 1779. During the trial forty witnesses appeared and forty-six depositions were made by them. See, *Law Consultations* (India Office Library), Range 166, Vol. 82, pp. 319-30.
16. The Company executed a bond for the balance of judgment debts in favour of Naderah Begum.

of 1774 was not clear in laying down the jurisdiction of the Supreme Court but it was also not provided that the Court shall have jurisdiction over Zamindars and over any person by virtue of his interest in or authority over lands or rent within Bengal, Bihar and Orissa or by reason of his becoming surety for the payment of such revenues. In this case another important fact was that both the parties were Muslims to which the Mohammedan law of inheritance was to apply, and it was purely a matter of personal law to Mohammedans. Lastly, there was no written agreement between the parties to submit the case to the Supreme Court for a decision.

(2) *Issue of working method and procedure.*—Second important point related to the liability for the judicial officers of the Company who acted under the delegated authority of the Provincial Council. On behalf of Kazi and Muftis, judicial officers of the Patna Provincial Council, it was pleaded that they were judicial officers and acted under the delegated authority of the Provincial Council. It was also stated that the Provincial Councils of Revenue were acknowledged Courts of Judicature and that it was the established custom of the Provincial Councils to refer cases in which Mohammedans were parties and to which the Mohammedan law of inheritance would apply, to the Kazi and Muftis, who would hear the evidence on both sides and report to the Council. The Supreme Court, rejecting this plea, held that the proceedings of the Kazi and Muftis in this case were illegal. "The Provincial Council," the Judges said, "had but a delegated authority from the President and Council and it is an avowed maxim of the law of England, *delegatus non potest delegare*. The Provincial Council had no right to delegate to its law officers the hearing of the suit and to give a decision upon the basis of a mere report."

It was criticised subsequently, on the ground that the Kazi and Muftis discharged their duties as the regular law officers of the Provincial Council for which procedure was laid down by the Governor-General and Council at Calcutta. It was finally at the discretion of the Judges of Provincial Council either to accept or refuse the opinion of the native law officers while deciding the actual case. Thus the Judges of the Provincial Council were in fact responsible and not the native law officers. It appears that Judges of the Supreme Court rejected this important defence argument. Criticising the working of the native law officers, Warren Hastings, Governor-General wrote, "I cannot but take notice of the irregularity in the proceedings of the law officers, whose business was solely to have declared the laws. The Diwani Court was to judge the facts; their (*i.e.*, the law officers) taking on themselves to examine witnesses was entirely foreign to their duty; they should have been examined before the Adalat."[17] In the light of this observation, the decision of the Supreme Court appears to be right. James Mill's observations are not correct where he states that it was a "thirst for jurisdiction," or "lust for power" that incited the English Judges to interfere with the administration of justice in the Provinces.[18] In fact it was the prevailing corruption in the Members of the Patna Council, and their utter lack of interest in the administration of justice that induced the Judges of the Supreme Court to interfere in this sphere. C.J., Impey, was opposed to the irregular exercise of the powers by the Provincial Councils.

17. *Touchet Committee Report.* 1781. Pat App. 7, p. 236; *See also,* W.K. Firminger, *Fifth Report of the Select Committee of the House of Commons on East India Company,* Introduction, p. cclxxiii.
18. James Mill, *History of British India,* Vol. IV, p. 332.

(*iv*) *Effect of the Patna case on the Company's Government in India.*—The fact of the case and decision of the Supreme Court exposed the weakness of the Company's administrative machinery in India. It also pointed out the deteriorating state of the administration for justice in the country. In his decision Chief Justice Impey pointed out, "Those gentlemen of Patna who sit in two capacities—in one as a Council of Revenue and State, and the other as a Court of Justice—keep no separate books for their separate departments, nor make any memorandums in their books, in which all their proceedings are confounded when they sit as a Council of Revenue and when as Court of Justice and their books are the only records of causes. I believe we might almost say this is the only cause entered in the book."[19] It also proved that the Moffussil Courts under the Company's control failed to impart justice to the Indians.

Another important reaction of the Patna case was that the local Zamindars refused to accept the work of revenue collection for the Company. They were afraid of the jurisdiction for the Supreme Court. It is stated that as many as 40 Zamindars submitted their resignations to the Council after the judgment of the Supreme Court in the Patna case. Zamindars and the native law officers of the Company expressed their inability to co-operate with the Company's Council in the provinces as well as at Calcutta.

The Patna case also pointed out that the administration of justice under the Charter of 1773 was wholly inadequate. This case was directly responsible for many provisions of the Act of Settlement which was passed in 1781[20] to remove the evil effects of the Regulating Act. The Preamble of the Act of 1781 provided, "That the Act was passed for the relief of certain persons imprisoned at Calcutta under the judgment of the Supreme Court and also for indemnifying the Governor-General and Council and all officers who have acted under their orders or authority in the undue resistance made to the process of the Supreme Court." Unfortunately, the Patna case was made the subject of the second article of impeachment against Sir Elijah Impey, the Chief Justice of the Supreme Court.

(d) The Cossijurah Case (1779-80).—The conflicts, between the Supreme Council and the Supreme Court, which began after the Regulating Act, reached their climax in this case. While the Supreme Court issued orders to the Sheriff to use force in order to carry out its orders, the Supreme Council ordered its troops to defend the implementation of its orders. The situation became very explosive. The Supreme Court also claimed its jurisdiction over the whole native population which was strongly opposed by the Supreme Council. Due to these peculiarties this case is considered to be of great historical importance.

(*i*) *Facts.*—Raja Sundernarain, Zamindar of Cossijurah (Kasijora) was under a heavy debt to Cossinaut Babu (Kashinath). Though Cossinaut Babu tried to recover the money from the Raja through the Board of Revenue at Calcutta, his efforts proved in vain. He, therefore, filed a civil suit against the Raja of Cossijurah[21] in

19. *See.* Stephen, op. cit., Vol. II, p. 181.
20. Adequate compensation was granted by Act of 1781 to all those who suffered in the Patna case. *Select Committee*, 1782, *First Report, Minutes of the Court of Directors*, 27th June and 7th December, 1718, pp. 380-81.
21. *See* W.K. Firminger, *Select Committee of the House of Commons: Affairs of the East India Company, Fifth Report*, Vol. I, Introduction, p. cclxxv; B.N. Pandey, *Introduction of English Law in India: Career*

the Supreme Court at Calcutta. He also filed an affidavit on 13th August, 1777 stating that the Raja, being a Zamindar, was employed in the collection of revenues and was thus within the jurisdiction of the Supreme Court. The Supreme Court issued a writ of *capias* for the Raja's arrest. Being afraid of this arrest the Raja avoided service of the writ by hiding himself. The Collector of Midnapur, in whose district the Raja resided, informed the Council about these developments. The Council, after seeking legal advice from its Advocate-General, issued a notification informing all the landholders that they need not pay attention to the process of the Supreme Court unless they were either servants of the Company or had accepted the Court's jurisdiction by their own consent. The Raja was also specially informed by the Council and, therefore, his people drove away the Sheriff of the Supreme Court when that official came with a writ to arrest the Raja of Cossijurah.

(*ii*) *Conflict.*—The Supreme Court issued another writ of sequestration on 12th November, 1779 to seize the property of the Raja's house in order to compel his appearance in the Supreme Court. This time the Sheriff of Calcutta, with a force of sixty or seventy armed force men, marched to Cossijurah in order to execute the writ. They imprisoned the Raja and it is said that the Englishmen outraged the sanctity of the family idol, and entered into the *Zenana.* In the meantime the Governor-General and Council directed Colonel Ahmuty, Commander of the armed forces near Midnapur, to detach a sufficient force to intercept and arrest the Sheriff with his party and release the Raja from arrest. Colonel Ahmuty sent Lieutenant Bamford with two companies of Sepoys to arrest the Sheriff with his party. On 3rd December, 1779 Bamford, with the help of William Swainston, arrested the Sherrif and his party while they were returning and kept them in confinement for three days. Later on they were sent to Calcutta as prisoners. Council released the Sheriff's party and directed Colonel Ahmuty to resist any further writ of the Supreme Court.

Cossinaut Babu brought an action for trespass against the Governor-General and the members of the Council individually. At the first instance, they appeared in the Court but when they found that they were being sued for their acts done by them in their official capacity, they withdrew and refused to submit to any process of the Supreme Court. The Council declared that persons in Bengal, out of Calcutta, need not submit to the Court and assured that the Council would safeguard their interests even by the use of armed forces. The Supreme Court issued writs against all members of the Council except Governor-General Warren Hastings and Barwell. Impey, C.J., said, "As to the Governor-General and Barwell, we will not include them in the Rule because we will not grant a Rule which we cannot enforce". Army officials refused to allow the Supreme Court's officials to serve the writ to the Members of the Council. The Judges of the Supreme Court grew angry and felt insulted. As the Members of the Council were not served the writ, the Supreme Court took an action against North Naylor, Attorney-General of the Company. North Naylor was tried by the Supreme Court on the charge of the Contempt of Court on 3rd March, 1780. He was committed to prison and no bail was accepted because in the words of C.J., Impey, the punishment was "exemplary".

Chief Justice Impey commented, "It was not within the power of the Governor-General and Council or their Attorney to advise anybody on the question whether

---

of Elijah Impey, Ch. VII, pp. 176-96.

he was or was not subject to the jurisdiction of the Supreme Court". Though no action was taken against the Members of the Council, Impey maintained that while the Members of the Council were exempt from the criminal process in the Supreme Court, they were not exempt from civil action. Referring to the Councillors' plea that they were not subject to the Court's jurisdiction, Impey said, "That if they thought themselves not amenable to the Court, they ought to plead to the jurisdiction or demur to the plaint; and if they were discontent with our judgments, the Charter had given them a remedy by appeal."[22]

The Councillors further declared and conveyed to the Judges that if they were held answerable to the Supreme Court on the suit of an Indian, the respect for the Government in the minds of the Indians would decrease and the administration would be weakened.[23] The Supreme Court would not allow the Councillors to withdraw their appearance but it had no force or power to compel their appearance. The Councillors were strongly sticking to their own stand. They refused to submit to the authority of the Court and were ready to defy all the summons and orders issued by the Court. This sort of extraordinary situation created complete deadlock and any move for compromise was being considered impossible. At this critical stage, however, on 12th March, 1780 the plaintiff, Cossinaut Babu, withdrew his suit against the Governor-General, the Members of the Council and the Raja of Cossijurah.[24]

(*iii*) *Observations on certain vital issues.*—The Cossijurah case refers to two important questions for due consideration. (1) First whether Zamindars were subject to the jurisdiction of the Supreme Court? (2) Who was the competent authority to decide this issue? As regards the first question, the Council's policy towards Zamindars may be traced from its attitude in an earlier case, *the case of Futty Singh*.[25] The Council was successful in *Futty Singh* case as well as in the *Cossijurah* case to evade the judicial inquiry into the rights and status of the Zamindars. Having once committed themselves to protect the Raja of Cossijurah, the Councillors could not withdraw their protection without damaging their power and prestige.

This policy of the Council was devoid of any principle to protect and safeguard the interests of the Zamindars. In fact in the political interest of the Company it was also necessary to keep the Zamindars ignorant about their rights and status. There are many instances[26] to prove that the Zamindars and hereditary Rajas and Ranis were at times harassed and humiliated by the Revenue Councils of the Company. The Judges of the Supreme Court could not get an opportunity to enquire

22. *Impey to Weymouth*, March 12, 1780, p. 368.
23. *Touchet Committee Report*, 1781, App. 33, pp. 356-59.
24. *Impey Papers*, Vol. 16259, *Impey to Sulton*, 12th March, 1780, pp. 431-41.
25. In this case, a person named Jagmohan, obtained a decree from the Supreme Court against Zamin Futty Singh for the recovery of his debts. The Sheriffs declared the sale of the Zamindari of Futty S in the execution of the decree. The Governor-General and the Councillors applied to the She abstain from executing the Court's decree against the judgment debtor. In return the Cou assured the Sheriff that he will be legally defended by the Council against the Court. This a was given in order to prevent any inquiry into the status of the Zamindars by the Court.
26. Rani of Burdwan was interned in her house in 1777 and was insulted and humiliated for th revenue by the Council of Revenue, Burdwan. Saroop Chand, who was *Khazanchi* or Ca the Dacca Council was also harassed for arrears of revenue. Saroop Chand filed a writ of *h* before the Supreme Court against the Council which imprisoned him. *See*, Stephen, o p. 15 *et. seq.*

into the status of the Zamindars. Regarding the next question, the Judges of the Supreme Court held that the Court was the competent authority to determine the legal status of the Zamindars and the Council had no such power.

It appears to be a paradox that when Warren Hastings, Governor-General, and Impey, Chief Justice, were personal friends, the Council used force against the Court to implement its orders. It is on record that after the hostilities began and before January 1780, Hastings and Impey met several times in private and discussed the situation.[27] In his letter to John Purling, Warren Hastings wrote, "*I sincerely lament our difference with the Judges; but it was unavoidable. I think you will support us; if you do not, be assured Bengal, and of course India, will be lost to the British nation*".[28] The contents of this letter point out that Warren Hastings considered the interest of the British nation more important than his personal friendship with Impey and took a strong action to safeguard the Council's superior position, though after the death of Monson and Clavering the balance of power in the Council was in his favour. When the Force was used by the Council, Impey appeared to have lost hope of the Court's victory over the Council, still he declared, "I have no authority to command troops but I can put those who do command them in a situation to answer to his Majesty for the contempt of His Authority".[29]

"At the time when the Cossijurah troubles were at their height", W.K. Firminger remarked, "Calcutta was thrown into a state of wild excitement by other matters connected with the Supreme Court and with which the European inhabitants were more immediately concerned".[30]

When Warren Hastings ordered the Military to arrest the Sheriff of the Court, he declared, "*We are upon the eve of an open war with the Court*". Under these circumstances in March 1779 a petition, signed by all the prominent British inhabitants of Bengal, servants of the Company and Zamindars, was sent to the British Parliament against the excesses of the Supreme Court in Bengal. The Governor-General and the Council also submitted their petition to the British Parliament against the Supreme Court's activities in Bengal. As a result of this petition, a Parliamentary Committee[31] was appointed. The Committee presented a detailed report on the conflict between the Supreme Court and the Council. Parliament, therefore, passed an Act of Settlement in 1781.

(e) Radha Charan Mitra's case: (1775).—After the Sadar Fauzdari Adalat was shifted from Calcutta to Murshidabad in 1775 administration of criminal justice was left with Nawab Mubarikuddoaula who was a sovereign prince completely free from interference of the Supreme Court. Hastings lodged a complaint of conspiracy against several persons, one of whom was Radha Charan, the Vakil of the Nawab. The members of the Council however wrote to the Supreme Court complaining that as a Vakil (a representative) of the Nawab, Radha Charan was entitled to the rights,

27. *Touchet Committee Report*, 1781, App. 26, pp. 369-74. *See also* Impey's letter to Thurlow dated 11th January, 1780, *Letter Book of Impey*, Vol. 16259, p. 313.
28. Letter dated 14th March, 1780. *See* G.R. Gleig, *Memoirs of the Life of Warren Hastings*, Vol. II, pp. 292-93.
29. *Touchet Committee Report*, Impey in *Rex* v. *Naylor*, p. 355.
30. W.K. Firminger, *Select Committee of the House of Commons on East India Company, Fifth Report*, Vol. I, Introduction, p. cclxxvi.
31. *Touchet Committee*.

privileges and immunities allowed by the Law of Nations. The case was heard on 28th June 1775 and arguments with proof were submitted that the Nawab was a sovereign prince, administering criminal justice, possessing a royal mint coining money and maintaining troops but the Court rejected the plea and accepted the arguments put forward on behalf of Governor-General Warren Hastings and others that the Nawab was fully under the control of the Company and performed no act of sovereignty.[32]

This case according to Jain[33] is a precursor of the more famous Nand Kumar case. Radhacharan was condemned to death in 1765 for committing forgery. This was too much and at the instance of the representations of the inhabitants of Calcutta he was pardoned. This case shows that *the result of introduction of the English law into India was deplorable. And this process soon claimed Nand Kumar as sacrifice at its altar.*

(f) Saroop Chand's case.—Saroop Chand was a surety (Malzamin) responsible for payment of revenue of the Company from Duckan (Dacca) Sevagepore Paragana. Balance due was fixed at Rs. 10,000/- to which he disputed. In the capacity as a treasurer of revenues of the Dacca Provincial Division he was found in default to the treasury to the extent of Rs. 66,745/-.

As regards first claim his contention was that he had advanced a sum of Rs. 10,000/- to one John Shakespeare, one of the members of the Council. John admitted that he had some financial transactions with Saroop Chand but denied this particular transaction. However due to non-payment of both these dues the Provincial Council committed him to prison till he paid the dues. Saroop Chand therefore filed a writ of Habeas Corpus before the Supreme Court which released him on his giving security to answer any suit that might be brought against him. The Court held that :

> "(*a*) in so far as revenue dues are concerned, to imprison a man without bail was an arbitrary abuse of power, and
>
> (*b*) regarding liability as treasurer, it was a matter of contract and the Council had to take appropriate Civil proceedings, as it cannot be a judge in its own cause and decide its own demands."[34]

(g) Gora Chand Dutt v. **Hosea.**—Gora Chand sued Mirza Jalleel for the recovery of some amount. Hosea, the superintending member of the Murshidabad Council not only dismissed the action brought by Gora Chand but also made a decree against him accepting a counterclaim made by the defendant in a statement made before him. He also seized the properties of the plaintiff even in the absence of any suit filed by Jalleel. Thereafter Dutt sued Hosea for the aforesaid irregularity committed by him. The Advocate General of the Company opined that Hosea's irregularity was serious and indefensible. The Council, however took the view that it was for the first time that an action had been brought against the acts done in judicial capacity *i.e.* as Diwani Adalat and therefore it wanted to know whether such an action was maintainable. The Supreme Court was of the view that it would not

32. B.B. Misra: *The Judicial Administration of the East India Co. in Bengal*, p. 144; Rama Jois: *Legal and Constl. Hist. of India*, 1984, Vol. II, p. 127; Jain. *Outlines of Indian Legal History*, 1972, p. 62.
33. *Ibid.*
34. Misra: *The Judicial Administration of the East India Co. in Bengal*, pp. 217-32; Jain: *Outlines of Indian Legal History*, 1972, p. 110; R.Jois: *Legal & Constit. Hist. of India*, 1984, Vol. II, p. 128.

interfere in such cases, unless there were complaints of manifest corruption. The Court further pointed out that the only remedy against such irregularities of Diwani Adalat was an appeal to Sadar Adalat. Though the decision was in favour of the Company's Court the case revealed the serious irregularities which were being committed by them.[35]

A survey of the history of seven years from 1774 to 1780 shows that the provisions of the Regulating Act, 1773 and the Charter of 1774 created many problems and conflicts. The chain of events and the trial of strength in the Cossijurah case pointed out the serious growth of conflicts between the judiciary and the executive. Not only the Governor-General and Council but the inhabitants of Bengal also submitted their petitions to the King in England. As expressed by Jois, the executive did not relish the interference of the Supreme Court in whatever it did while collecting revenue, the officer disliked it because it entertained cases against their oppressive actions; the Europeans hated it because it came in the way of their exploiting local people for their personal advantage and the natives also disliked it on account of the oppressive procedures like "arrest on mesne process", and on account of their actions taken against muslim law officers in Patna case and against Zamindar of Cossijurah and the hanging of Raja Nand Kumar. *The Cossijurah case which indicated an explosive state of affairs acted as a catalyst for undertaking further reformation of the Administrative structure by the British Parliament.*[36] A Select Committee was, therefore, appointed under the Chairmanship of Burke to inquire into the administration of justice in Bengal. On the basis of its report the British Parliament again intervened and the Act of 1781[37] was passed.

7. Act of Settlement, 1781

Salient Features.—The Preamble of the Act of 1781 stated, "Whereas it is expedient the lawful Government of Bengal, Bihar and Orissa should be supported". In the collection of revenue, "the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges". The Act was passed in order to remedy "the ruinous mistake" of the Regulating Act of 1773. It was aimed to grant relief to certain persons imprisoned at Calcutta under a judgment of the Supreme Court and also to indemnify the Governor-General and Council and all officers who acted under their orders or authority. The Act of 1781 was passed in order to explain and amend the provisions of the Regulating Act. Some important provisions of the Act of Settlement[38] may be briefly summarised as follows:

(*i*) The Act declared that the Governor-General and Council from the jurisdiction of the Supreme Court for all things done or ordered by them in their public capacity and acting as G.G. and Council. (*ii*) However, the G.G. and Council and any person acting under their orders had no immunity, before English Courts. (Ss. 4-7). (*iii*) Revenue matters and matters arising out of its collection were excluded from the

35. B.B. Mishra: *The Judicial Administration of the East India Co. in Bengal*, pp. 250-51; Jain: *Outlines of Indian Legal History*, 1972, p. 111; R. Jois: *Legal & Constitutional History of India*, 1984, Vol. II, pp. 128-29.
36. Rama Jois: *Legal and Constitutional History of India*, 1984, Vol. II, Part-3, Ch. 2, p. 132.
37. 21 Geo. III, c. 70.
38. *See* W.A.J. Archbold, *Outlines of Indian Constitutional History*, p. 67.

jurisdiction of the Supreme Court. (*iv*) Under S. 17 of the Act English law was not applicable to the natives. Hindu and Mohammedan personal laws were preserved in matters relating to succession and inheritance to lands, rents, goods and in matters of contract and dealings between parties. (*v*) Where parties were of different religion their cases should be decided according to the laws and usages of the defendants.[39] (*vi*) The Supreme Court was empowered to have jurisdiction in actions for wrongs to trespass, and in civil cases where parties had agreed in writing to submit their case to the Supreme Court. (*vii*) It was also provided that the Supreme Court would not entertain cases against any person holding judicial office in any county courts for any wrong or injury done by his judicial decision. Persons working under the authority of such judicial officers were also exempted (S. 24). (*viii*) The Parliament recognised, by the Act of 1781, Civil and Criminal Provincial Courts. These Company's Courts were existing independently of the Supreme Court. It was one of the most important provisions of the Act of 1781 as it completely reversed the policy of the Regulating Act. (*ix*) The Act provided that the Sadar Diwani Adalat will be the Court of Appeal[40] to hear appeals from the county courts in civil cases. It was recognised as Court of Record. Its judgment was final and conclusive except upon appeal to the King-in-Council in civil cases involving Rs. 5,000 or more. Sadar Diwani Adalat was presided over by the Governor-General and Council. It was also empowered to hear and decide cases of revenue and undue force used in the collection of revenue.[41] (*x*) The Act of 1781 authorised the Governor-General and Council to frame Regulations for the Provincial Councils and Courts.[42] This rule-making power was independently exercised by the Governor-General and Council under the Act of Settlement. Earlier, under the Regulating Act, the power of the Governor-General and Council was limited by the controlling power (approval) of the Supreme Court. (*xi*) The Act recognised the right of the family heads or the manager of the family to inflict certain punishments on the members of the family. (*xii*) *Indemnity*.—The Act of 1781 provided for the release of all the defendants who were arrested in the Patna case. The Governor-General and Council gave security for payment of damages awarded to them. They were also allowed to file an appeal to the King-in-Council against Supreme Court's judgment. The Act also provided that the Governor-General and Council, Advocate-General and all persons acting under their orders, so far as the same was related to the resistance of any process of the Supreme Court from 1st January, 1770 to Ist January, 1780, were to be indemnified and harmless from any action or prosecution due to the said disobedience of the orders of the Supreme Court.

8. Major defect of the Act:

(*a*) *Break to "Rule of Law" by favouring the Executive*.—On the whole, *the British Parliament, by enacting the Act of Settlement 1781 favoured the Governor-General and Council as against the Supreme Court.* It was clearly a policy decision for the British Parliament. The Britishers realised that in order to acquire territory in India and to establish the British Empire in India it was important to support the

39. *See* G.C. Rankin, *Background to Indian Law*, p. 9.
40. Section 21.
41. Section 22.
42. Section 23.

Governor-General and Council. *They refused to allow the Supreme Court to introduce English principles of independence of the judiciary* and *the rule of law in India.* Ilbert criticised this policy as a legislative reversal, dilatory and expensive.[43] Cowell views this as a break to impose upon Indians a policy to which they were opposed and were determined to subvert.[44]

(*b*) *Other Defects*:

(*1*) *Undefined relationship between the Indian territories & the British Crown.*—Though the Act of 1781 succeeded in removing many defects of the Regulating Act, still some of them continued to exist. Even after the Act of Settlement, the relationship between the Indian territories and the British Crown was not quite clear. There was neither any policy statement to this effect nor any provision was made in the Act. It appears that the British Parliament intentionally avoided to declare its policy at this state of territorial acquisition by the English Company in India.

(2) *"British Subjects": An unclear term.*—In both the Acts, the term "British Subjects" is used but nowhere is it made clear, whether any Indian natives were to be comprehended under this term. It gives an impression that both Hindu and Mohammedan inhabitants were excluded from the meaning of "British Subjects".

(*3*) *Jurisdiction of the dual Courts uncertain.*—Referring to one more defect in the Act of 1781, Grey stated, "There was no reply in the Act, on the question, whether the Provincial Courts were to have a concurrent jurisdiction with the Supreme Court or an exclusive one?"[45] The distinction between the Presidency Towns and the Moffussil which originated due to the Mughal Empire and the Company's factories, continued to exist for a long period of time. The settlement of problems by the Act of 1781 was, according to Cowell, "crude and unsatisfactory".[46]

9. Supreme Court at Calcutta

The Supreme Court of Judicature was established at Fort William, Calcutta, in 1774. Earlier, it was on the recommendation of a Committee of the House of Commons that the Regulating Act[47] was passed by the British Parliament in 1773. It empowered the King to establish by Charter or Letters Patent, a Supreme Court at Fort William. In pursuance of the provisions of the Act of 1773 the King issued a Charter on 26th March, 1774 establishing the Supreme Court at Calcutta. The Mayor's Court was abolished and its records and proceedings were delivered to the Supreme Court. It was a Court of Record.

(*a*) *Constitution and Jurisdiction.*—The Supreme Court consisted of one Chief Justice and three Puisne Judges. All of them had to be Barristers and to be appointed by the Crown. They were to have jurisdiction and authority as the Justices of the Court of the King's Bench in England. All the writs, summons and orders were issued in the King's name and attested by the Chief Justice. The Charter of 1774

43. C. Ilbert, *The Government of India*, pp. 60-61.
44. Cowell, *History and Constitution of the Courts and Legislative Authorities in India*, pp. 61-62.
45. Sir C. Grey's Minute. See, *5th Appendix to the Third Report of the Select Committee of the House of Commons*, p. 1145.
46. Cowell, *History and Constitution of the Courts and Legislative Authorities in India*, p. 63.
47. For details, *see* paras 1 to 3 of this Chapter.

appointed Elijah Impey as the first Chief Justice and Robert Chambers, Stephen, Ceaser LeMaister and John Hyde as the first Puisne Judges.

The Supreme Court was authorised to try and determine all actions and suits that might arise within Bengal, Bihar and Orissa against British subjects and against the inhabitants of India, with British subjects and when such Indian inhabitants agreed in writing that the matters in dispute should be determined in the Supreme Court.[48] The Supreme Court was also a Court of Equity, Court of Oyer and Terminer and Gaol Delivery for Calcutta, a Court of Ecclesiastical jurisdiction and a Court of Admiralty.

(*b*) *Effect of Acts: 1781 to 1861.*—The exercise of wide jurisdiction of the Supreme Court at Calcutta created many conflicts[49] between the Supreme Court and the Council of East India Company. In order to avoid such conflicts between the Supreme Court and the Council, the British Parliament passed the Act of Settlement in 1781. By this Act it was *inter alia* declared that the Supreme Court, thereafter, should have no jurisdiction over the Governor-General and the Council for any act or order made or done by them in their public capacity. The Supreme Court was deprived of its jurisdiction in revenue matters. It was clearly laid down that no action for wrong or injury should lie in the Supreme Court against any person exercising a judicial office in the county courts for any judgment, decree or order of such Courts.

The Act of Settlement, 1781 restricted the territorial limits of jurisdiction of the Supreme Court to the town of Calcutta. The personal law of the Indians was also directed to be administered in the Supreme Court. The powers and the jurisdiction of the Company's Courts and the Supreme Court were thus separated and the independence of each was specially preserved. The dual system of the Courts continued. Since 1781 the Supreme Court at Calcutta enjoyed the confidence of the litigants.[50]

In 1784 the Statute of George III provided that all his Majesty's subjects and servants of the Company were amenable to all the Courts of Justice in India and England for all criminal offences committed in the territories or in the State of any native Prince. In 1793, the Admiralty jurisdiction of the Supreme Court was extended and the Court was authorised to try all offences committed on the High Seas by means of juries of British subjects.

In 1858, the Act for better Government of India was passed by the British Parliament. In September 1858, the Directors of the East India Company transferred the whole of their possessions in India to the Crown. By a proclamation on Ist November, 1858, the transfer of the Company's Government to the Queen was announced. In August 1861 the British Parliament passed an Act for the establishment of High Courts in India. In pursuance of the Act, Letters Patent was issued on 14th May, 1862 which defined the jurisdiction and powers of the High Court of Judicature at Fort William in Bengal.

---

48. Morley, *Administration of Justice in India*, pp. 5-22.
49. From 1774 to 1780 famous cases were: *Trial of Raja Nand Kumar; Commal-ud-Din's* case; *Cossijurah* case. For details *see* para 6 of this Chapter.
50. Cowell, *History and Constitution of Courts and Legislative Authorities in India*, p. 63.

The Company's Courts were also taken over by the Crown. The District Courts were made subordinate to the High Court. Thus, for the first time, all the Courts in Bengal became the Crown's Courts and were brought under one unified system of control by the High Court of Judicature at Calcutta.

10. Supreme Courts at Madras and Bombay

At Madras and Bombay, the conditions were not similar to those of Calcutta, and therefore, for a long time it was not considered suitable to establish Supreme Courts in these provinces. The establishment of the Supreme Court at Calcutta was on an experimental basis and the authorities preferred to wait and see its fruitful results before establishing such a court anywhere else. In the meantime, when it became necessary to introduce changes in the existing Mayor's Courts, the Company authorities advised Parliament to establish Recorder's Court at Madras and Bombay. Thus the Supreme Courts were established only after the abolition of the Recorder's Courts.

(*i*) *Recorder's Courts.*—The Mayor's Courts, which were re-established by the Charter of 1753 at Madras and Bombay, were abolished by an Act[51] of the British Parliament in 1797 and the same Act authorised the Crown to issue a Charter[52] to establish the Recorder's Courts in their places. The Recorder's Court, which was also declared as a Court of Record, consisted of a Mayor, three Aldermen and a Recorder. The Recorder, who was the President of the Court, was appointed by His Majesty from amongst the lawyers having at least five years' standing at the Bar.

Jurisdiction: The Recorder's Court exercised jurisdiction in civil, criminal, ecclesiastical and admiralty cases over the British subjects residing within the British territories, subject to the Madras and Bombay Governments respectively, and also over those residing in the territories of native Princes who were in friendly alliance with the Company. They were empowered to frame rules of practice and were authorised to act as Courts of Oyer and Terminer and Gaol Delivery. The jurisdiction of the Recorder's Courts was similar to that of the Supreme Court at Calcutta subject to the restrictions imposed by the Act of 1781. The personal laws of Hindus and Mohammedans were safeguarded and the Governor and Council and officers working under their orders were declared immune from the jurisdiction of the Recorder's Courts. From their decisions direct appeals were allowed to the King-in-Council. The Recorder's Courts enjoyed better reputation and were more effective than the Mayor's Courts specially due to the presence of professional legal experts on the Bench. Another important feature was that the Court was granted both civil and criminal jurisdictions which were previously entrusted to the Mayor's Court and the Court of Governor-in-Council respectively. Somehow, even the Recorder's Courts could not survive for long due to the growing demand for more reforms in the machinery of the administration of justice and, therefore, ultimately they gave way to the Supreme Courts at Madras and Bombay.

---

51. George III, c. 141.
52. In 1798 the Crown issued the Charters by which Recorder's Courts were established at Madras and Bombay. The first Recorders at Madras and Bombay were Sir Thomas Strange and Sir William Syer respectively.

(*ii*) *Supreme Court at Madras.*—In 1800 the British Parliament passed an Act[53] empowering the Crown to establish a Supreme Court at Madras in place of Recorder's Court. The Crown, by Letters Patent issued on 26th December, 1800, abolished the Recorder's Court and established the Supreme Court at Madras[54] which came into being on 4th September, 1801. The powers of the Recorder's Court were transferred to the Supreme Court and it was also directed to exercise similar jurisdiction and to be subject to the same restrictions as the Supreme Court of Judicature at Calcutta. Sir Thomas Strange, who was already working as the Recorder, was appointed Chief Justice of the Supreme Court and the two other Puisne Judges were Henry Gwillim and Benjamin Sullivan. The Supreme Court continued its functioning at Madras till the High Court of Judicature was established in its place by the Indian High Courts Act, 1861.[55]

(*iii*) *Supreme Court at Bombay.*—The Recorder's Court continued to function in Bombay up to 1823 when by an Act[56] of the British Parliament the Crown was authorised to abolish the Recorder's Court and in its place to establish a Supreme Court at Bombay.[57] The Crown's Charter establishing the Supreme Court was issued on 8th December, 1823 and the Supreme Court was formally inaugurated on 8th May 1824. It consisted of a Chief Justice Sir E. West and two other puisne Judges who were Sir Charles Chambers and Sir Ralph Rice.

Powers & Authority: The Supreme Court at Bombay was invested with full powers and authority as was exercised by the Supreme Court of Judicature at Calcutta, subject to one exception. By Section 30 of its Charter, the Supreme Court at Bombay was prohibited from interfering in any matter concerning revenue even within the town of Bombay. Natives were also exempted from appearing before the Supreme Courts at Madras and Bombay unless the circumstances compelled their appearance in the same manner as in a native Court. The jurisdiction of the Supreme Court was strictly limited to the town and Island of Bombay. It had no appellate jurisdiction over the Company Courts in the moffussil. Regarding maritime crimes, the Charter restricted powers of the Supreme Court at Bombay to such persons as would be subject to its ordinary jurisdiction. This was in conflict with the provisions of the Charter Act of 1813 which authorised the Supreme Courts at Calcutta and Madras to take cognizance of all such crimes committed by any person, if the ordinary jurisdiction was limited to British subjects.

(*iv*) *Conflicts between the Supreme Court and the Government of Bombay.*—The Crown by issuing the Charter of 1823 intended that the Supreme Court will act as a check upon the Company's Government; but this object was not achieved due to peculiar conflicting situations which arose during the period 1828 to 1858, between the Chief Justice Sir E. West and Governor Elphinstone.[58]

53. 39 & 40 Geo. III. c. 79.
54. V.C. Gopalratnam, *A Century Completed: A History of the Madras High Court*, p. 88.
55. By the Indian High Courts Act, 1861 the Queen was empowered to establish by Letters Patent High Courts at Calcutta, Madras and Bombay and on their establishment the old Chartered Supreme Courts and the old Sudder Adawlat Courts were abolished. The jurisdiction and the powers of the abolished courts were transferred to the new High Courts.
56. 4 Geo. IV, c.71.
57. P.B. Vachha, *Famous Judges, Lawyers and Cases of Bombay: A Judicial History of Bombay During British Period*, pp. 27-30.
58. Earlier the Recorder's Court at Bombay punished many highly placed Government officials, who were

As early as 1826, the Supreme Court at Bombay came into conflict with the Government when the Supreme Court rejected the draft law which was sent by the Bombay Government to it, under the Charter of 1807,[59] for its approval. The Government proposed a law prohibiting the publication of any newspaper except by persons holding a licence, which was revocable at will, from the Governor. Sir E. West, the Chief Justice of the Supreme Court, rejecting the draft law declared that there was nothing in Bombay to justify such a restriction on the liberty of its subjects. When the viewpoint of the Chief Justice was criticised by certain newspapers, the Chief Justice condemned the papers as Government papers. But the Governor denied that any newspaper was backed by the Government.[60]

(*a*) *Cases of Moro Raghunath & Bappoo Gunness*:—In 1828 another conflict arose when Moro Raghunath, a boy of 14 years, was detained by his grandfather for over a year at Poona and a relative of the boy moved the Supreme Court for the issue of writ of *Habeas Corpus*. The Advocate-General opposed the writ petition on the ground that the boy and his father were not within the Court's jurisdiction as they were natives residing at Poona. Ignoring this plea the Court issued the writ. In September 1828 in another case of Bappoo Gunness, the Supreme Court issued writ of *Habeas Corpus* to the jailor to produce before it the prisoner Bappoo Gunness who was arrested under the orders of the Company's Court. The Governor-in-Council directed the jailor not to send the prisoners to the Supreme Court and stated that the Supreme Court had no authority to discharge a person imprisoned under the orders of the native court. At this attitude of the Government, in April 1829 the Chief Justice Sir John Grant, was embroiled in a violent conflict with the Bombay Government and closed the Court *suo motu*. The Chief Justice sent a petition to His Majesty against the Government's intervention in the Court's process and prayed for the issue of direction to the Government "for the due vindication and protection of the dignity and lawful authority of His Majesty's Supreme Court at Bombay."

(*b*) *Decision of Privy Council*:—The petition was considered by the Privy Council and its report was affirmed by His Majesty. The Privy Council reported[61] against the Supreme Court.

In was stated[62]

(*a*) That the writ were improperly issued,

---

found guilty of corruption and other misdemeanours. Governor Elphinstone disliked firm steps taken up by the Recorder's Court and expressed his indignation. In 1823 Sir E. West, when he was the Recorder of the Recorder's Court at Bombay, dismissed Erskine, a favourite of Governor Elphinstone, from the Company's services on the charges of corruption. The Governor felt insulted and subsequently whenever he got an opportunity showed discourtesy towards the Chief Justice. Thus the conflicts continued developing between them in future too. *See* Drewitt, *Bombay in the Days of George IV*, pp. 56-214.

59. Charter of Geo. III issued in 1807 granted legislative powers to the Governors and Councils of Bombay and Madras subject to the approval of Recorder's Court and the Supreme Courts respectively. In Bombay, the Supreme Court replaced the Recorder's Court and, therefore, it began to exercise its power to approve or reject the draft law referred by the Government for its approval. Similar power was granted to the Supreme Court at Calcutta by the Regulating Act.

60. Colebrooke, *Life of M. Elphinstone*, Vol.II, pp. 176-80.

61. *In re* the Justices of the Supreme Court of Judicature, 1 Knapp P.C.1. See also *Ryot of Garabandho* v. *Zamindar of Parlakimedi*, 701-A, 129, 161. For details regarding issue of writs, *see* Chapter on "*History of Writs in India*" in this book.

62. Rama Jois: *Legal & Constitutional History of India*, 1984, Vol. II, p. 141.

(*b*) that such writs should be directed against a person who is personally subject to the civil and criminal jurisdiction of the Supreme Court,

(*c*) that the Court had no power to issue writs to the Gaoler or officer of a native court as such officer, the Supreme Court having no power to discharge persons imprisoned under the authority of a native court,

(*d*) that the Supreme Court is bound to notice the jurisdiction of the native court, without having the same specifically set forth in the return to a writ of *Habeas Corpus*,

Though the order was reversed there can be no doubt that unless the order was stayed by the Privy Council the Government at Bombay was bound to obey its order. Therefore, the action taken and the reaction expressed by Justice Grant, was a shining example for judicial independence and fearlessness.[63]

Referring to certain instances of conflict between the Supreme Court and the Government of Bombay, the Bombay City Gazetteer stated: "... In 1830, after the death of Sir, J. Dewary the sole Judge on the Bench, the Court was closed for a month; in 1841, a great contempt case occurred just prior to the arrival of Sir Erskine Perry, and at a moment when Sir H. Roper was alone on the Bench; while in 1858 the Court was again embroiled with the Bombay Government on the question whether the Police Commissioner had any legal right to remove a prisoner to Thana Jail without the sanction of the Supreme Court. The friction which from time to time occurred was to some extent engendered by the fact that the Supreme Court had nothing whatever to do with the ordinary administration of justice in the moffussil."[64]

In spite of all the above stated conflicts, the Supreme Court functioned at Bombay up to 1862 when the High Court of Judicature was established at Bombay under the Indian High Courts Act, 1861. Gradually the purity and the prestige of the judicial administration went on increasing in Bombay.

11. Laws administered in the Supreme Courts

The Supreme Courts of Calcutta, Madras and Bombay were empowered to exercise civil, criminal, equity, ecclesiastical and Admiralty jurisdictions. The laws, which were applied and administered by the Supreme Court may be classified under the following eight headings.[65]

(*i*) The Common law as it prevailed in England in 1726 and which has not subsequently been altered by Statutes specially extending to India or by Acts of Governor-General-in-Council.

(*ii*) The Statute law which prevailed in England in 1726 and which has not been altered by the Legislature Council of India.

(*iii*) The Statute law expressly extending to India which had been enacted since 1726; not repealed as yet and Statutes extended to India by Acts of Governor-General-in-Council.

---

63. Rama Jois: *Legal & Constitutional History of India*, 1984, Vol. II, p. 141.
64. Quotation cited by P.B. Vachha in *Famous Judges, Lawyers and Cases of Bombay: A Judicial History of Bombay during the British Period* at p. 29; for a detailed account of conflicts between executive and judiciary in Bombay, *see*, pp.191-200.
65. W.H. Morley, *Administration of Justice in British India*, pp. 22-24.

(*iv*) The civil law as applied in the Ecclesiastical and Admiralty courts in England.

(*v*) Regulations made by Governor-General-in-Council and Governors-in-Council and registered in Supreme Courts prior to the Chapter of 1833.

(*vi*) The Acts of Governor-General-in-Council passed under the Charter of 1833.

(*vii*) The Hindu Law and usages in actions regarding inheritance and succession to lands, rents, goods and all matters of contracts and dealing between party and party in which a Hindu was a defendant.

(*viii*) The Mohammedan Law and usages in actions regarding inheritance and succession to lands, rents, goods, and all matters of contracts and dealing between party and party in which a Mohammedan was a defendant.

6

Role of Cornwallis in Judicial Reforms

"Cornwallis was faced with two difficult tasks — to simplify the complicated and expensive machinery of administration of justice and to uproot corruption from the Company's servants in administration."...

"Although much had been done by Warren Hastings to perform and organise branches of the public service, the main foundations of the existing administration of justice in India were laid in the time of Lord Cornwallis."

—John Strachy, *India*

"...It was the emphasis rather than the principle that was new... and hence the solidity of the work of Cornwallis."

—*The Cambridge History of India*, p. 437

"...(he) had set the Company's ship of state on a new course, and had brought in justice and integrity to redress corruption and power politics."

—V.S. Smith: *The Oxford History of India*, 3rd Edn., p. 538

SYNOPSIS

1. Company's Government before Cornwallis
   - (*a*) Pitt's India Act, 1784: Important Provisions
   - (*b*) Lord Cornwallis
     - (*i*) Conditions by Cornwallis
     - (*ii*) Specific Mission of Cornwallis
     - (*iii*) Advisors of Cornwallis
2. Judicial Reforms of Cornwallis
   - (*a*) Judicial Plan of 1787
   - (*b*) Criminal Judicature:
     - (*i*) Reforms in 1787
     - (*ii*) Reforms in 1790
     - (*iii*) Mohammedan Criminal Law
   - (*c*) Judicial Plan of 1793
     - (*i*) Cornwallis Code
     - (*ii*) Separation of Judicial and Revenue Functions
     - (*iii*) Reorganisation of civil courts
     - (*iv*) Native Law Officers
     - (*v*) Courts to control executive machinery
     - (*vi*) Abolition of court fees
     - (*vii*) Reforms in criminal courts
     - (*viii*) Legal profession
     - (*ix*) Uniform pattern of Regulations
     - (*x*) Permanent settlement of land revenue
3. Estimation of Scheme of Cornwallis
4. The Hierarchy of Courts

Lord Cornwallis, who succeeded Warren Hastings,[1] came to India in September 1786 and continued as Governor-General up to 1793. During this period he introduced several important changes in the judicial system of India. His rule marks an epoch in the history of British administration in India. Reforms were introduced in the administration of civil and criminal justice, and great success was achieved in combating corruption and he was associated with the Permanent Settlement of Bengal, Bihar and Orissa, where the prevailing level of land revenue assessment was made "perpetual" in 1793.

1. Company's Government before Cornwallis

The Regulating Act had succeeded neither in establishing a clear control of the Directors over the Company's servants, nor in strengthening the powers of Parliament over the Company. Apart from this, the combined forces of Parliament and

1. Warren Hastings' departure from India was followed by twenty months' rule by John Macpherson, a senior member of the Council. After Macpherson in 1786 Lord Cornwallis was appointed Governor-General. He was sent from England to India in September 1786.

that of the Directors failed to recall Warren Hastings in May 1782. It was considered a sad commentary on the existing situation.[2]

Pitt the Younger, when he became Prime Minister of England, was called upon to deal with the problems not only relating to the administrative machinery of India but also the constitution of the Company and the necessary machinery of the Crown to control it.

(a) Pitt's India Act, 1784: *Important Provisions.*—In order to strengthen the power of the controlling machinery of the Company's Government in England, the Act introduced vital changes by setting up a Board of Control and recognising the Court of Directors. As expressed by Dr. Kapoor in *Constitutional History of India* (2nd edn. p. 17) *the Governor General had two masters to obey, the Court of Directors and the Board of Control, and he could afford to disobey neither. Out of this conflict of authority emerged the theory of the "man on the spot" and it became thenceforward the central theme of the British system of administration in India.* Some important provisions of the Pitt's[3] India Act, 1784,[4] may be stated as follows:—

(*i*) *Board of Control.*—A Board of six Commissioners was set up in England, which was called Board of Control. It consisted of a Secretary of State, the Chancellor of Exchequer and four other members from the Privy Council[5] to be appointed by the Crown. The Secretary of State was to act as Chairman of the Board having a casting vote.

(*ii*) *Authority of the Board.*—The Board was authorised to superintend and control all the revenue and civil activities and the military forces held by the British in the East Indies. The Directors of the Company were required to supply to the Board, copies of all communications received from India and of all resolutions, orders and minutes of their proceedings and their despatches to Indian authorities. The orders and despatches had to be approved by the Board.

(*iii*) *Court of Proprietors sacked of its power.*—The Court of Proprietors was completely deprived of its power to counter the orders and resolutions of the Directors, which had secured due approval of the Board of Control.

(*iv*) *Power and Privileges of the Board of Directors.*—The Court of Directors was allowed to retain its full powers in the appointment, reduction and retrenchment of all the civil and military servants of the Company. The Commercial privileges

---

2. Three constructive proposals emerged from this period. The first was Dunda's Bill, 1783, a centralising measure, which was rejected by the British Parliament. The second was Fox's India Bill, 1783, which provided to supersede both the proprietors and directors with seven Commissioners appointed by the Crown. The Bill was rejected with the fall of the Fox-North Coalition Ministry. King George III invited Pitt the Younger to form a new Cabinet. Thus the third measure was Pitt's India Bill which actually passed into law in August 1784.
3. If it is the distinction of Lord Cornwallis to have been the first Governor-General to purify successfully the administration of India; it is no less the distinction of Pitt the Younger to have been the first minister to provide for the same high principle such sanctions in an Act of Parliament that the evils ceased altogether and became mere matters of history. *See also,* Sir V. Chirol, *India Old and New,* 73.
4. 24 Geo. II Sess. 2, c. 25. For Pitt's Speech at the first reading, *see* P. Mukharji, *Indian Constitution : Indian Constitutional Documents,* 25-28.
5. Subsequently modified to any two Secretaries of State, the Chancellors of the Exchequer and two Privy Councillors. By the Charter Act of 1793 instead of two Privy Councillors any two persons could be appointed upon the Board.

of the Court of Directors were left intact and it was empowered to appeal to the King-in-Council in case of any encroachment on its rights by the Board.

(*v*) *Company's Central Government.*—As regards the Central Government of the Company in India, the Act provided that it will consist of three other members besides the Governor-General.[6] Out of the three members one was to be the Commander-in-Chief of the British Forces in India. More effective, a casting vote was given to the Governor-General. In the appointment of the Governor-General, the Directors were required to secure prior approval of the Crown. The Directors were given full powers in the appointment of the members of the Council and Governors. But the Crown was empowered to recall a Governor-General or any Governor in case it so desired. Resignations of the high officials were required to be in writing.[7] The Governor-General and Council were not authorised to declare war on another power without the express permission and authority of the Court of Directors or at least of the Committee of Secrecy. In sudden emergency cases the presidencies were allowed to enter into such treaties which were subject to the ratification of the Governor-General and Council. In the case of specific direct orders from the Directors, the presidencies were allowed not to obey the Governor-General and Council. But in such cases the presidencies were required to send immediately a copy of such direct orders to the Governor-General.

(*vi*) *British Possessions.*—All the Company's possessions in India were, for the first time, stated as the "British Possessions".

(*vii*) *Government of Presidencies.*—The Government of the presidencies was to consist of a Governor and Council of three members. One of these was required to be the Commander-in-Chief of the Company's forces in the presidency. The Governor and Councillors were appointed by the Court of Directors. The Crown reserved the right to recall or remove any of them. The presidencies were completely made subordinate to the Governor-General and Council. In case of disobedience the Governor of a presidency was liable to be suspended. They were required to send copies of papers on all matters to the Governor-General.

(*viii*) *Measures for checking corruption.*—Apart from these vital constitutional changes, the Act also made provision to regulate the presents and to check corruption amongst the servants of the Company holding high posts. It was provided that receiving presents would be considered to be an extortion and Company officers on their retirement were to declare on oath the fortunes they possessed. A dismissed servant would not be restored to his office. Acts of receiving or giving up office were considered misdemeanours. A special court was set up to try these offences. The Governor-General and Governors were given special powers to arrest a person within the European Settlements in any Native State, who was suspected of having unlawful correspondence with those authorities. By another important provision of the Act, all the subjects of His Majesty whether in the service of the Company or not, were brought under the jurisdiction of the Courts in Great Britain and India, for any crime committed in the territories of an Indian State.

---

6. The Regulating Act provided for four other members of the Council besides the Governor-General.
7. This provision was specially made in order to obviate the possibility of the repetition of the trouble created at the time of Warren Hastings' resignation in 1777.

(ix) Dual Government.—The most important feature of the Pitt's India Act, 1784, was that it introduced a dual Government for the Company's affairs in England. The control of the purely commercial functions was placed entirely into the hands of the Director, while for the control of the Company's political functions the responsibility was given to the Board of Control. The Board represented the Crown, while the Directors represented the Company. Consequently the power of the Court of Proprietors to influence political decisions in India came to an end.

(b) Lord Cornwallis

(i) Conditions by Cornwallis.—Before accepting his appointment as Governor-General, Cornwallis laid down two conditions, that the Governor-General will have power to override his council and the office of the Governor-General and the Commander-in-Chief will be united under one person. The conditions, as laid down by Lord Cornwallis,[8] were accepted and the Governor-General became the effective ruler of British India under the authority of the Board of Control and the Court of Directors. He was also successful in preventing any repetition of the embarrassments from which Hastings suffered.[9] The Governor-General and Council now became the Governor-General-in-Council and this position continued up to 1947.

(ii) Specific Mission of Cornwallis.—Certain specific instructions were given to Lord Cornwallis in three matters: *First*, to deal with the problem of land revenue; *secondly*, improvement in the administrative machinery; *thirdly*, to introduce reforms in the judicial system. The instructions contemplated the reuniting of the functions of Revenue Collector, Civil Judge and Magistrate in one and the same person as it would lead to simplicity, justice and economy. As a matter of policy, civil justice was to be allowed to continue under the European judges. Regarding criminal jurisdiction, it was stated that the powers of trial and punishment must, on no account, be exercised by any other than the established officers of the Muslim judiciary. European ideas of justice were to be introduced into the judicial system of India. The Governor-General was specially required to keep a strict watch on the methods by which the servants of the Company became rich.[10] In short *(i) economy, (ii) modification, and (iii) purification were the aims of the mission.*

(iii) Advisors of Cornwallis.—Though Cornwallis had little knowledge regarding Indian affairs, he was fully aware of the defects of the Regulation Act, and the Act of Settlement and of the role of Warren Hastings in India. It was specially due to this fact that Cornwallis accepted the Governor-Generalship only when the Military Command was united with his office and the Governor-General was made independent of his Council. Sound government in the interest of the inhabitants was henceforth the touchstone of the policy rather than an enlargement of the Company's investment or an increase in territorial revenues. The haphazard expansionism of the

8. Cornwallis came with such advantages as no predecessor ever had. He was Commander-in-Chief as well as Governor-General and his rank set him above the necessity of trucking to anybody....He was indifferent to pecuniary gain and adulation, a man of sturdy courage, honesty...*See.* Thompson and Garratt, *Rise and Fulfilment of British Rule in India*, 171.

9. Pitts India Act, 1784 gave Governor-General Cornwallis enlarged powers, which experience had shown he so badly needed to overrule the inferior Presidencies.

10. Cornwallis' main task throughout his term was to reinstate British reputation in India. He had much perplexity from two main centres of mischief left by Hastings, "the Augean stables of Benares and Lucknow". In "Benares...a scene of the grossest corruption and mismanagement" *See* Cornwallis Correspondence Part II, 194 (Cornwallis August 8, 1789 and November 1786).

preceding thirty years was stopped and the change proved to be a stopping-place rather than a change of direction but it was nevertheless effective and significant. Due to his inexperience in Indian affairs, Cornwallis largely depended on his advisers.[11] Fortunately, he found the following persons as his advisors : (1) Sir John Shore,[12] an expert on revenue matters. His help was "invaluable" to Cornwallis, as he observed.[13] (2) Jonathan Duncan, who later became Governor of Bombay. (3) Charles, who became Chairman of the Directors. (4) James Grant, who became President of the Board of Control. (5) Charles Stuart, the Commercial expert, and (6) Sir William Jones, an eminent Oriental Scholar and Judge of the Supreme Court.

2. Judicial Reforms of Cornwallis

When Lord Cornwallis came to India in 1786, he was greatly dissatisfied with the existing system of the administration of justice. Warren Hastings before returning to England separated the work of collecting revenue from administration of justice. Civil justice was administered in local civil courts, namely Moffussil Diwani Adalat and Sadar Diwani Adalat. For criminal cases there were separate courts. The final authority in civil cases directly and in criminal cases indirectly was with the Supreme Council. Lord Cornwallis found that the whole system was complicated, illogical, wasteful and suspected of being corrupt. He had already received instructions from the Directors to remove all these abuses. Thus, Cornwallis was faced with two difficult tasks—to simplify the complicated and expensive machinery of administration of justice and to uproot corruption from the Company's servants in administration.

Cornwallis reformed the whole system of civil and criminal justice by a method of trial and error. In the judicial system Cornwallis introduced reforms in three instalments—in 1787, 1790 and 1793 respectively.

(a) Judicial Plan of 1787.—The Directors gave instructions to Lord Cornwallis to bring simplicity, economy and purity into the judicial system. The existing separation of the revenue and judicial functions was removed and both the functions were united.[14] Separation of revenue and judicial functions brought about by Hastings in his plan was not to the liking of the Company and the Company combined them in one person in the name of economy and efficiency through Cornwallis who was in favour of the merger.[15] This made the work of revenue collection more important than justice.[16] The existing 36 districts were reorganized and the number of districts was reduced to 23. Each district was in the charge of a Collector, an Englishman. In each district the Collector was responsible for the collection of revenue, to decide cases and matters relating to revenue. He was also to act as the Judge in the Moffussil Diwani Adalat of the District and decide civil cases. The Collector was also entrusted with magisterial powers in his district.

11. *See* A.B. Keith, *A Constitutional History of India*, 1600-1935, 105.
12. Cornwallis held strongly that no man in the ordinary service should be promoted to the highest place. But he swayed the gratitude to Sir John Shore....and his praise of him helped to procure his appointment as his successor.
13. *See* Philip Woodroff, *The Men Who Ruled India*, Vol. 1, 146-48.
14. W.H. Morley, *The Administration of Justice in British India*, 53-54.
15. Rama Jois: *Legal & Constitutional History of India*, Vol. 2, 1984, 152.
16. Aspinall: *Cornwallis in Bengal*, Chapters 2 & 3; Jain, 1966, 196, quoted in Rama Jois: *Legal History*, Vol. 2, 1984, 153.

Though the Collector was given all these powers, he was advised to keep his various functions separate from each other, as far as possible. His revenue functions in the revenue court were known as *Mal Adalat*. From the Collector's revenue court, first appeal was to go to the Board of Revenue at Calcutta and final appeal lay with the Governor-General-in Council on the executive side.

The Collector, in the capacity of a Judge, was to hold the Moffussil Diwani Adalat. Apart from civil cases, the Court was also required to decide cases and claims concerning succession and boundary disputes of Zamindars. The Collector was instructed to have due consideration of the prevailing local customs or usages while dealing with the succession to Zamindaries *etc.* Appeal from Moffussil Diwani Adalat lay to the Sadar Diwani Adalat in matters involving more than Rs. 1,000. Sadar Diwani Adalat consisted of the Governor-General and Members of his Council. They were assisted by the Native Law Officers. Where the valuation of the suit was £ 5,000 or more, a further appeal was allowed to the King-in-Council in England.

In order to assist the Collector in deciding civil cases, an Indian Registrar was also appointed in each district civil court to try petty cases up to Rs. 200. Decrees passed by the Registrar were required to be countersigned by the Collector. This system was introduced in order to avoid any injustice to litigants.

While discharging his duties as a Magistrate in each district the Collector was empowered to arrest, try and punish the criminals in petty offences. In the case of graver offences, where the punishment of imprisonment was expected to be of more than 15 days, the arrested accused was sent to the nearest Moffussil Nizamat Adalat for trial and punishment. All Europeans who were not British subjects were placed on the same footing in criminal matters as the Indians and the Moffussil Faujdari Adalats were authorised to try and punish them.

Though by the judicial reforms of 1787, Cornwallis united the judicial office and administration in the hands of one Englishman i.e. Collector, it was considered a better step to suit the then existing conditions than the earlier separation of judiciary and executive.

(b) Criminal Judicature

(*i*) *Reforms in 1787.*—In 1787 when Cornwallis introduced reforms in the civil and revenue courts, he purposely avoided introduction of any major reforms in the criminal courts. It appears that he wanted more time to study the functioning of the criminal judicature and its role in suppressing crimes. After gaining sufficient experience from 1786 to 1790, Cornwallis realised that the prevailing system of the administration of criminal justice was very defective and futile.[17] Robberies, murders and other crimes relating to life and property of the natives, were increasing, dacoits and murderers were protected by Zamindars, conditions of prisons were highly unsatisfactory, judges and law officers were paid low salaries, persons eager to amass money joined these posts, there was no security of tenure of these posts, cases were therefore delayed on account of collusion between judges and offenders and there was no standard of imposing punishments.[18] He found that these evils were growing

17. *See* Aspinall, *Cornwallis in Bengal*, Chs. II and III.
18. Rama Jois: *Legal History*, Vol. 2, 1984, Part III, Ch. 5, 153-154.

due to two main causes. First, the defective state of the Mohammedan criminal law; secondly defects in the constitution of the trial Courts due to which they failed to deal with criminals. Apart from this, he was also convinced that it was necessary to check the prevailing corruption amongst the native courts and officers.

(*ii*) *Reforms in 1790.*—In order to improve the law and order situation and punish the criminals severely, Cornwallis introduced vital reforms in 1790.[19] He realised that it would be a blunder to leave the administration of justice in the hands of the natives. He was very doubtful about the honesty of the Muslim officers, and, therefore, as a matter of principle he decided not to give any important judicial and administrative office of responsibility to any Indian.

Cornwallis resolved to abolish the authority of the Nawab over criminal judicature. This was the most important aspect of the plan as that power was assumed by the Governor-General and Council under the name of *Sadar Nizamat Adalat*. Reza Khan, who was so far *Naib Nazim*, was dismissed from his office and the *Sadar Nizamat Adalat* was again shifted from Murshidabad to Calcutta. The Governor-General and Members of his Council presided over the *Sadar Nizamat Adalat*. They were assisted by the Chief *Qazi* of the Province and two *Muftis* who expounded the law and issued *Fatwa*. *Sadar Nizamat Adalat* decided cases in appeal on the basis of the report of the trial Magistrate, proceedings of the Circuit Court and written pleadings and defence of the parties. At this time the Chief *Qazi* and two Muftis assisted the Appellate Court in deciding the cases.

Moffussil Faujdari Adalats were abolished. The whole Diwani area was divided into four Divisions of Calcutta, Murshidabad, Dacca and Patna. In each Division a criminal Court was established which was called the Court of Circuit. The Court of Circuit was not a stationary Court but was a moving or circulating Court going from district to district in its respective circuit division. An appeal from the Circuit Court lay to the *Sadar Nizamat Adalat* at Calcutta.

Each circuit was divided into various districts. In each district, the Collector was to act as Magistrate. The Magistrate's was the lowest criminal Court. It tried and punished criminals in petty offences. In grave offences the Magistrate was to send the criminal to the Court of Circuit for trial and punishment.

(*iii*) *Mohammedan Criminal Law.*—Cornwallis was convinced that the Mohammedan Law was defective, punishments prescribed were cruel and corruption in courts was rampant. In 1790 Cornwallis introduced certain very important reforms in the Mohammedan criminal law and all *Nizamat Adalats* were instructed to decide cases according to the modified rules of Mohammedan law. Punishment for murder, it was ordered, was now to be given on the basis of the intention of the party rather than the manner and the instrument employed. Blood-money was abolished.[20] Cruel punishments were abolished. Evidence of non-Muslims was admitted as valid. Salaries and allowances of the judges and native officers were increased in order to check corruption.

---

19. In 1790 Lord Cornwallis sent a questionnaire to all magistrates inviting their comments on the existing crimes and ways and means to suppress them and punish the criminals. In the light of these findings and his experience, Cornwallis introduced reforms on 3rd December, 1790 in the law of crimes and the Courts.

20. Judicial Regulation XXVI: T.K. Banerjee, *Background to Indian Criminal Law*, 71.

On the whole in 1790 the judicial reforms of Cornwallis were aimed at improving the criminal courts, criminal law and the persons who were entrusted with the difficult task of administering criminal justice. In fact these reforms not only granted security to life and property of the people, but also improved the law and order situation in general.

(c) Judicial Plan of 1793

(i) Cornwallis Code.—After gaining sufficient experience in Indian affairs from 1787 to 1793, Cornwallis realised that the changed conditions required major changes in the civil and revenue set-up. No doubt, in his reforms of 1787 Lord Cornwallis merged all the civil, criminal and revenue powers in the authority of the Collector of the district. It was done so partly due to the instructions given by the Court of Directors and partly due to his initiative to introduce economy, simplicity and to uproot corruption and for the stability and permanency of the Government in the country. It was in 1793 that Cornwallis realised that the time was ripe enough to introduce judicial reforms in Bengal, Bihar and Orissa. *A set of regulations,*[21] *which were prepared by Lord Cornwallis, were known as the "Cornwallis Code". They dealt with the commercial system, with civil and criminal justice, with the police and with the land revenue. The regulations were intended to ensure disciplined administration and prevent any return to the chaos and abuses of the past.*[22] Cornwallis attempted to codify the existing law and procedure into the form of Regulations, a work in which Sir William Jones, a remarkable Orientalist, took a leading part. It was an honest attempt to establish the rule of law in India.[23] In the words of M.P.Jain *"This scheme forms the high water mark in the whole of Indian Legal History, as it was based on certain postulates which are regarded as essential and fundamental for the organisation of the judicature in any civilised country."*[24] A brief account of the Regulations, classified under subject-headings, may be given as follows:

(ii) Separation of judicial and revenue functions.—The Revenue Officers were deprived of their judicial powers. By Regulation II of the Code of 1793, *Mal Adalats* or revenue Courts were abolished. The trial of these suits was transferred to the Moffussil Diwani Adalats. The Collector was entrusted only with the collection of revenue.[25] All the judicial powers of the Collector were taken away and given to the Diwani Adalats which were reorganized. The Collectors thus became merely administrative officers to collect revenue of the districts. Ordinary civil courts were empowered to try civil as well as revenue cases. An appeal from the civil courts in revenue cases lay to the Board of Revenue and from the Board of Revenue to the Governor-General-in-Council.

(iii) Reorganisation of Civil Courts.—Cornwallis reorganised the civil courts and appointed twenty-eight judges in the districts, and further strengthened the four Courts of Circuit, which now also became civil courts of appeal. The four Courts of Circuit were called Provincial Courts of Appeal having headquarters at Patna,

21. A set of 48 Regulations was prepared with the assistance of Sir George Barlow.
22. V.A. Smith, *The Oxford History of India*, 629.
23. Thompson and Garratt, *Rise and Fulfilment of British Rule in India*, 196.
24. Op. cit., 20.
25. The Collectors were deprived of their vast powers which were given to them in 1787. *See also* Charles Ross, *The Correspondence of Charles, the First Marquis Cornwallis*, Vol. 1, 278.

Dacca, Calcutta and Murshidabad. Each of them was to be presided over by three covenanted servants of the Company. These Courts were empowered to hear appeals from the District Diwani Adalats. In cases involving sums less than Rs. 1,000, their decision was final. Where the amount exceeded Rs. 1,000, a second appeal was allowed to the Sadar Diwani Adalat. If the valuation of the suit was £ 5,000 or more, a further appeal was allowed to the King-in-Council.

Steps were also taken to establish subordinate civil courts to decide minor cases. In each district *Sadar Amins* and Commissioners were appointed to decide cases up to Rs. 50. Subsequently, they were known as Munsiffs. The Munsiffs were selected out of the landholders or their agents who were expected to do the job honorarily and were getting some commission on the sums involved in the litigation. Indians were allowed to be Munsiffs but were not eligible to hold any judicial post. The subordinate judiciary received orders from the Sadar Diwani Adalat. It was created in order to save time and expenditure of the parties and also to impart speedy administration of justice.

Regulation XIII provided for the establishment of the Registrar's Court to try suits up to Rs. 200 in each district. It was made compulsory that the Registrar's decisions should be countersigned by a Judge of the District Diwani Adalat and were also made subject to revision by the Judge.

Every judgment or order was to be pronounced in the open Court. Judges were prohibited from corresponding with the parties whose cases were pending before them (Regulation III).

(*iv*) *Native Law Officers*.—It was provided that the personal laws of Hindus and Mohammedans would be applied in cases relating to marriage, inheritance, caste, religious usages and institutions. The Native Law Officers were, therefore, authorised to assist all the Courts by expounding the Hindu and Mohammedan laws as the cases required. Regulation XII specially provided that all Native Law Officers belonging to various Courts would be appointed by the Governor-General-in-Council.

(*v*) *Courts to control executive machinery*.—Section 10 of Regulation III provided that not only Collectors but all other executive officers of the Government would be subject to the Court's jurisdiction for their official acts and it was also stated that they would be personally liable for any violation of the Regulations. The object of introducing this provision was to observe the rule of law. It was really a very courageous and bold step taken by Lord Cornwallis. The injured party had a remedy to approach the court against the corruption and excesses of the executive officers. Lord Cornwallis expected that the change in the system "will effectually prevent, in future, the tyranny and oppression which has been so frequently exercised throughout the country by native officers employed in the collections, and compel the Collectors to adhere strictly to the Regulations and instructions prescribed for their guidance".

(*vi*) *Abolition of court fees*.—In order to make justice cheap, Lord Cornwallis abolished the court fees which were imposed earlier in 1787. It was provided that apart from the pleader's fee and the actual charge of summoning the witnesses, no other fees would be charged from the litigants. Though this reform was based on

good intention, its evil effects came to light after 1793 when there was a great increase in the litigation.

(vii) Reforms in criminal courts.—Though in 1790 vital changes were introduced in the administration of criminal justice, in order to keep the whole administration of justice integrated and co-ordinated, certain changes were again introduced in 1793. With this aim in view Regulation IX provided for some modifications in the old set-up.

The Magisterial powers of the Collectors were taken away and the Judges of the Diwani Adalats were empowered to exercise this jurisdiction. The Judges exercised Magisterial powers together with their civil jurisdiction. The Collector was left only to look after the collection of revenue in his district. The Courts of Circuit which were created in 1790 and the Provincial Courts of Appeal which were proposed in 1793 were united and thus four Provincial Courts of Appeal and Circuit were established to deal with civil and criminal matters. The Provincial Courts of Appeal and Circuit were established at Calcutta, Patna, Murshidabad and Dacca respectively.

(viii) Legal profession[26].—Cornwallis realised the importance of well-organised and regulated professional lawyers. Earlier the parties were appearing before the Courts either in person or through their agents. *By Regulation VII of 1793, the profession of law was created and organised in India.* It was given due recognition by the authorities. It was a necessity in order to assist the illiterate litigants who were unaware of the technical procedure of the Courts and also the technicalities of the law. Steps were suggested to assure the litigants about the integrity, legal qualification and competence of the members of the legal profession. Those who joined the legal profession were given certificates after they qualified in the prescribed minimum requirements of education and honesty. It was expected that the learned members of the legal profession would also assist the judges in administering justice according to the laws as laid down by the Regulations from time to time. Each pleader had to take an oath to this effect. Those who were found guilty of misconduct including misbehaviour could be punished. Those charging exorbitant fees could be dismissed. For fraud with their clients and malpractices they could be proceeded against and dilatory tactics by them made them responsible for damages.

(ix) Uniform pattern of Regulations.—So far Regulations were issued without any prescribed uniform system. Some of them were in manuscript form, others were printed but no uniform pattern was adopted in drafting them. Regulation XLI of the Code of 1793 removed the grave defects in the drafting of the Regulations. *It provided that henceforth Regulations would contain a preamble which will state the reasons for enacting the Regulation.* Every Regulation was to have a title to express in brief the subject-matter of the Regulation. Whenever any Regulation was modified full reference to the original Regulation was required to be given. It was made necessary to divide each Regulation into sections and sections were divided into sub-sections and clauses, which were duly numbered in serial order. It was made compulsory to keep a complete and regular Code of all the Regulations passed during each year. It facilitated their ready references while administering justice. It

26. For details, see separate Chapter on "Legal Profession" in this book.

enabled the members of the legal profession and the public to know what the law was on a particular point. This *process of the collection of Regulations, periodically in a set-form, introduced certainty and uniformity of law.*

(*x*) *Permanent settlement of land revenue.*—The whole rural life of the Bengal Presidency was disturbed due to the prevailing uncertainty about the collection of land revenue. Cornwallis took special interest in solving this difficult task. In 1789 as a result of Sir John Shore's efforts a settlement for ten years was made. In 1793 Cornwallis urged Pitt and Dundas to sanction the permanence of the settlement.[27] Sir John Shore opposed it and insisted on ten years' settlement. The Directors accepted Cornwallis' suggestion and on 22nd March, 1793 the Permanent Settlement was sanctioned.[28] The Zamindars were regarded as landowners. They were required to pay nine-tenth of the revenue collection to Government through the Collectors and the Talukdars and those holding less land were required to pay directly through sub-Collectors. Efforts were also made to protect the cultivators and ryots from oppressions and corruption of Revenue Officers.

"The Permanent Settlement" said Smith, "restored rural order in Bengal and provided the conditions of agricultural development, but it replaced the organic ties between the two classes of rural society by an impersonal cash-nexus. The two classes henceforth became unrelated and hostile. Order and progress were secured but social justice was not done.[29]

Thus the whole system under the Regulations of 1793 introduced many reforms. Sir George Barlow assisted Cornwallis in drafting a single set of 48 Regulations which was printed and issued on 1st May, 1793, was known as the "Cornwallis Code". It gained such a great reputation amongst the Anglo-Indian administrators that in 1797-99 it was introduced into Bombay and forced upon Madras in 1802.

3. Estimation of scheme of Cornwallis

John Strachy said, "Although much had been done by Warren Hastings to perform and organise branches of the public service, the main foundations of the existing administration of justice in India was laid in the time of Lord Cornwallis."[30] Another view, expressed in the Cambridge History, states, "Although the policy that Cornwallis came to enforce in 1786 was new, it was not wholly new. *In every direction Cornwallis built on the foundations already laid or begun to be laid by his predecessors and specially by Hastings. It was the emphasis rather than the principle that was new.* Every aspect of reform was foreshadowed in the work or in the projects of Hastings and hence the solidity of the work of Cornwallis."[31]

It will be worthwhile to analyse these opinions in the light of the reforms introduced by Warren Hastings and Cornwallis from time to time. In 1772 Warren Hastings prepared a plan to remedy the defects of the Dyarchy which was introduced by Clive in 1765. Under the Plan of 1772, Warren Hastings assumed whole responsibility to administer civil justice in Bengal, Bihar and Orissa. But he left criminal justice with the Nawab. The Collector in each district, was thus Adminis-

27. *See* C.H. Philips, *The East India Company*, 1784-1834, 69.
28. Ross, *Cornwallis*, Vol. II, 182-212; *Cambridge History of India*, Vol. V, 450-51.
29. V.A. Smith, *The Oxford History of India*, (3rd. Edn.), 536.
30. *See* John Strachy, *India*.
31. *The Cambridge History of India*, 437.

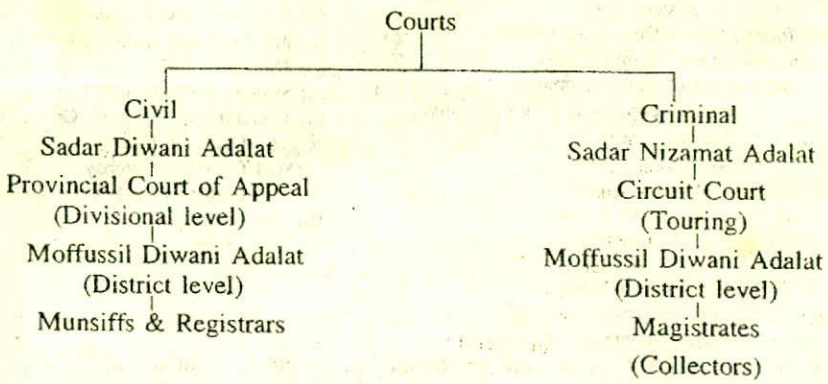
trator, Judge and Magistrate in 1772. In 1787 Cornwallis gave similar wide powers to the Collector though at the instance of the instructions which he received from the Directors. Cornwallis' reforms in 1787 were aimed at three things: (*i*) economy, (*ii*) modification, and (*iii*) purification. Later on in 1790, Cornwallis introduced reforms in the criminal justice, similar to what Warren Hastings did in the administration of civil justice. Two most important features of Cornwallis' reforms of 1793 were the (*1*) separation of revenue from judiciary and (2) to subject the actions of the executive authority to judicial review. This was foreseen and partially implemented by Warren Hastings in 1780.

Even though it may be admitted that Cornwallis gave new emphasis to the scheme of Warren Hastings, still Cornwallis deserves great credit as it was his initiative and judgment which emphasised the need of such reforms at this particular time. Cornwallis introduced reforms to meet the existing requirements and also due to the instructions from England which he implemented as commands of superiors. It can, therefore, be concluded that Cornwallis, to a great extent, built the Empire on the foundations laid by his predecessors, especially by Warren Hastings. With this background one can see great truth in Smith's observations, *"Taking it all in all, Cornwallis had set the Company's ship of State on a new course, and had brought in justice and integrity to redress corruption and power politics."*[32]

The scheme did not make it possible for any Indian to hold any judicial post except that of a Munsiff. This was a major defect and due to this not only the self-respect of an Indian was hurt but it told upon the very efficiency of the administration of justice also. Due to their lack of knowledge of local laws, customs and traditions the English judges fumbled and could not appreciate the law and the facts involved in a case. This was no small defect. The Company Directors noticed this and tried to remove it progressively.

4. The Hierarchy of Courts:

The following courts came into existence due to the plan:



32. V.A. Smith, *The Oxford History of India*, (3rd. Edn.), 538.

7

Progress of Judicial Reforms (1793-1833)

"The early years of the 19th century saw a radical change in the constitution of the court. The long period during which the Governor-General and members of the Bengal Council had been the judges of the court came to an end. They were replaced by covenanted servants of the Company who were not members of the government. The transition began in 1801, and although it was not completed for some years the foundation of the independence of the court had been laid."

Orby Mootham: *The East India Co.'s Sadar Courts, 1801-1834,* Edn. 1983, p. 5

There is an utter want of connection between the Supreme Court and the Presidency Courts, and the two sorts of legal process which are employed by them...the exercise of the powers of the one system is viewed with jealousy by those who are connected with other...

Sir Charles E. Grey in *The Reports on the Affairs of the East Indies,* (1832) Appendix, p. 75

SYNOPSIS

1. Result of Reforms by Cornwallis
2. Reforms of Sir John Shore (1793)
   - (*a*) Changes Introduced in 1794
     - (*i*) Appeal provisions
     - (*ii*) Steps for adjustment of accounts
     - (*iii*) More powers to Collectors
   - (*b*) Alterations introduced in 1795
     - (*i*) Steps to combat arrears
     - (*ii*) Procedural reforms
     - (*iii*) Imposition of court fee
   - (*c*) Further changes made in 1797
     - (*i*) Increase of court fee
     - (*ii*) Number of Judges reduced
     - (*iii*) Preparation of Code
3. Reforms of Lord Wellesley (1798)
   - (*a*) Separation of Judicial function from executive
   - (*b*) Appointment of Sadar Ameens
   - (*c*) Adalat System extended
4. Reforms of Lord Cornwallis (1805)
5. Reforms of Lord Minto (1807)
   - (*a*) Number of Judges increased
   - (*b*) Judicial function mixed with executive
   - (*c*) Magistrates' powers increased
   - (*d*) Jurisdiction of courts
   - (*e*) G.G. to appoint Chief Judge
6. Lord Hastings and the Administration of Justice (1813)
   - (*a*) Charter Act of 1813
   - (*b*) Reforms in civil courts
   - (*c*) Reforms in criminal courts
7. Reforms of Lord Amherst (1823)
   - (*a*) Status of Sadar Ameens raised
   - (*b*) Powers of Magistrates and Court of Circuits expanded
   - (*c*) Judicial powers to Collectors
8. Judicial Reforms of Lord Bentinck (1828)
   - (*a*) Abolition of Circuit Courts
   - (*b*) Power of Sadar Ameens, District & City Judges increased
   - (*c*) Establishment of Sadar Nizamat Adalat and Sadar Diwani Adalat at Allahabad
   - (*d*) Practice of Sati declared an offence
   - (*e*) Indians appointed judicial officers
   - (*f*) Abolition of Provincial Courts of Appeal
   - (*g*) Civil and revenue jurisdiction given to Collector
   - (*h*) Charter Act of 1833
9. The Independence of the Judges
   - (*a*) *Ooman Dutt* v. *Kunhia Singh*
   - (*b*) *Government* v. *Purtab*
   - (*c*) *Mylapilly Yerregudoo case*
   - (*d*) *Oake case*
10. Dual System of Courts (1834-1861)
    - (*a*) Hierarchy of Company Courts
      - (*i*) Courts in Calcutta
      - (*ii*) Courts in Bombay
      - (*iii*) Courts in Madras
    - (*b*) The law applied
    - (*c*) Procedure
11. Defects of the system

Before the High Courts were established at Calcutta, Bombay and Madras, two sets of courts were existing there. The Presidency Towns had their own courts and the moffussil areas were having different courts. The Supreme Courts and Recorder's Courts in the Presidency Towns were the Crown's Courts. In the moffussil areas

the Courts were the Sadar Diwani Adalats and the Sadar Faujdari Adalats, which represented the authority of the East India Company.

During the period 1793 to 1861 several Governor-Generals were appointed. Though many of them were busy tackling the political problems and strengthening the British Empire in India, some of them showed keen interest in improving the existing Adalats system by introducing certain important reforms. A brief account of these judicial reforms is given below.

1. Result of Reforms by Cornwallis (1793)

In 1793 Sir John Shore succeeded Lord Cornwallis as Governor-General. Earlier, even Lord Cornwallis recognised his qualities and his valuable assistance in introducing reforms. Sir John Shore, being a member of the Indian service and having experience under Cornwallis, was fully aware of the existing Indian conditions. When the changed circumstances, after Cornwallis left India, required reforms, he made his own contribution by altering, modifying the old and by introducing new reforms in the judicial system of India.

Sir John Shore realised that the permanent settlement of land revenue was not working well. Defects of Cornwallis' plan were gradually becoming noticeable. The recourse to the courts was wholly ineffective as a means of protection to the *ryots* against the Zamindars. Litigation amongst the richer sections of the society also increased. On the whole, litigation choked the courts and the sales of estates became frequent.[1] In civil courts undecided cases accumulated and it affected the normal routine of the collection of revenue. It was not merely a temporary phase. However, in 1794, steps were taken to make certain alterations in the existing set-up.

2. Reforms of Sir John Shore (1793)

(a) Changes introduced in 1794.—In 1793 the Registrar's Court was empowered to decide civil suits up to Rs. 200. It was also provided that the Registrar's decision would be valid only when it was countersigned by the judge of the Diwani Adalat expressing his approval. Though the provision of counter-signature was based on good intentions and for the better administration of justice, in actual working it created many difficulties.

(i) Appeal provisions.—In 1794, Regulation VIII provided that the decrees of the Registrars were to be final in all civil suits up to the valuation of Rs. 25.[2] Where the valuation of the suits was more than Rs. 20 an appeal was allowed to the Provincial Courts of Appeal. It relieved the judges of the Diwani Adalats from the time-consuming task of countersigning the Registrar's judgments.

(ii) Steps for adjustment of accounts.—The Regulation also authorised the judges of the Diwani Adalats to refer to the Collectors for scrutiny and report of cases involving adjustment of accounts. After receiving the Collector's report it became easy for the Diwani Adalats to give a final decision in cases concerning rent or revenue or other matters. The findings of the Collector's report were not binding on Judges and they were free to decide the cases according to law.

---

1. A.B. Keith, *A Constitutional History of India*, 43.
2. Regulation VIII of 1794. *See* W.H. Morley, *The Administration of Justice in British India*, 61.

(iii) More powers to Collectors.—In 1793 the collection of revenue and administration of justice were separated, but in 1794 they were combined in order to dispose of arrears of cases and to secure collection of revenue without difficulty.

(b) Alterations introduced in 1795

(*i*) *Steps to combat arrears.*—In 1794 only minor modifications were made by Sir John Shore to deal with the large number of cases which were in arrears. In spite of these reforms, there was no improvement in the number of arrears in courts. In 1795 by Regulation XXXVI reforms were introduced with a view to readjust the mutual relationship of the Civil Courts. By the reforms of 1794 the Diwani Adalats were given some relief and the work was shifted to the Court of Appeal to deal with petty cases up to Rs. 200. It increased the judicial work of the Courts of Appeal. As there were only four Courts of Appeal, the litigant parties faced great inconvenience in coming to the Court from very long distances.

(*ii*) *Procedural reforms.*—Regulation XXXVI of 1795 provided that in petty cases appeals from the Registrars were to go to the District Diwani Adalats whose decision was final with no further appeal. The decisions of the Munsiffs were now subject to one appeal only to the District Diwani Adalats. Munsiffs decided cases up to Rs. 50. This reform reduced the number of appeals in petty civil cases up to Rs. 50. The Registrars were empowered to decide civil suits up to the valuation of Rs. 200. From their decision an appeal lay to the District Diwani Adalat which was the final appellate authority in such petty cases. The District Diwani Adalats were authorised to hear all civil cases in which valuation was more than Rs. 200. An appeal in these cases was allowed to the Provincial Courts of Appeal. Where the valuation was more than Rs. 1,000, a further appeal was allowed to the Sadar Diwani Adalat.

To have better control over all lower courts and for speedy disposal of cases Regulation XXXVI of 1975 provided for maintenance of a disposal-register of cases in arrear. It was inspected by a higher court periodically.

(*iii*) *Imposition of court fee.*—Another important reform which completely changed the future course of litigation, was the imposition of court fee. Earlier in 1793 Lord Cornwallis abolished court fee. But this resulted in filing a great number of cases and accumulation of arrears. Court fee was therefore imposed not only on new cases but even on pending cases. If not paid within a fixed date those cases would be dismissed and it actually so happened. Apart from court fees certain other levies were also imposed on calling and summoning of witnesses, on filing exhibits and on interlocutory petitions. Though Macaulay[3] had strongly criticised the imposition of court fees, considering the circumstances and the condition of the Courts in 1795, there appears to be sufficient justification for the levy. Contrary to Macaulay's opinion it was a wise step taken by Sir John Shore to improve the administration of justice.

(c) Further changes made in 1797:

(*i*) *Increase of court fee.*—In 1797, Sir John Shore further increased the court fee and it was made compulsory to use special stamped papers for filing papers in the court. This step was taken to check the litigation before Courts.

3. Dharkar, *Lord Macaulay's Legislative Minutes*, 220-24.

In order to avoid unnecessary delay in the disposal of cases, Regulation XII provided that the decrees of the Provincial Courts of Appeal were final in cases of money or personal property up to Rs. 5,000 in value. In all suits involving more than this amount, the decisions of the Provincial Courts of Appeal were made appealable to the Sadar Diwani Adalat. Rules were framed to govern the appeals to be made to the King-in-Council from the decisions of the Sadar Diwani Adalat. It was provided that the petition of such appeals should be filed within a period of six months and the valuation of suit must be £ 5,000 or more.

(*ii*) *Number of Judges reduced.*—The British Parliament introduced certain reforms in the administration of justice in India by passing the Act of 1797. The Act reduced the number of the Judges of the Supreme Court at Calcutta to three *i.e.*, a Chief Justice and two puisne Judges.

(*iii*) *Preparation of Code.*—The Act also recognised and confirmed the preparation of a Code of Regulations[4] enacted by the Governor-General in Council and registered in the Supreme Court. The Courts were required to administer justice according to those Regulations.

3. Reforms of Lord Wellesley (1798)

In May 1798, Lord Wellesley[5] arrived in India and succeeded Sir John Shore as Governor-General. Wellesley took keen interest in removing the defects of the existing judicial system. He introduced certain major reforms to improve the administration of justice. Expressing his views regarding the separation of the Sadar Adalats from the Government, Wellesley wrote, "A conscientious discharge of the duties of the Sadar Diwani Adalat, and the Nizamat Adalat would of itself occupy the whole time of the Governor-General in Council...it will at once be evident that it is physically impossible that the Governor-General in Council can ever dedicate that time and attention to the duties of these courts which must necessarily be requisite for their due discharge."[6]

(a) Separation of Judicial function from executive.—Lord Wellesley was against the concentration of judicial, legislative and executive powers in the Governor-General-in-Council. It was not possible for the Governor-General to devote time to preside over the Sadar Diwani Adalat and Sadar Nizamat Adalat. It was, therefore, that Regulation II of 1801 provided that the Sadar Diwani Adalat and the Sadar Nizamat Adalat were to be presided over by three judges selected and appointed by the Governor-General-in-Council. It was laid down that the Chief Judge would be a member of the Council but the Commander-in-Chief and the Governor-General were not allowed to occupy the judicial post. The other two judges were to be convenanted civil servants of the Company having wide experience of judicial work in the Provincial Courts of Appeal. It was also declared that the Sadar Adalats will be open courts and two judges will form the quorum of the court to carry out its function.

(b) Appointment of Sadar Ameens.—In order to expedite the disposal of the pending judicial work, in Zilas and Cities, Head Native Commissioners, also known

4. Dharkar, *Lord Macaulay's Legislative Minutes*, 220-24.
5. *See* P.E. Roberts, *India under Wellesley.*
6. Lord Wellesley's Letter to the Directors, dated 9th July, 1800, *See* A.B. Keith, *Speeches on Indian Polity*, Vol. I, 179.

as Sadar Ameens, were appointed. They were authorised to decide cases valuing up to Rs. 100, which were referred by the Judges of Zila and City Courts. The Judges were authorised to nominate Sadar Ameens with the prior approval of the Sadar Adalat from amongst persons of ability and past experience. In Zilas and Cities, Assistant Judges were also appointed to dispose of the arrears of the judicial work. They were required to decide appeals from the Courts of Registrars or Native Commissioners and original suits which the Judges of Zila and City Courts referred to them.[7]

(c) Adalat System extended.—During Lord Wellesley's period, the Adalat system was extended to ceded and conquered territories. In 1801 the Nawab Vizier ceded the Subedari of Oudh to the Company. The ceded Provinces were divided into seven districts — Gorakhpur, Allahabad, Cawnpore, Farrukhabad, Etawah, Bareilly and Moradabad. In each district a civil servant of the Company was appointed judge and Magistrate and another civil servant as Collector. Registrars, Sadar Ameens and Munsiffs were appointed to decide civil cases up to the valuation of Rs. 20, Rs. 100 and Rs. 50 respectively. At Bareilly a Court of Appeal and Circuit was established just like in Bengal. The jurisdiction of the Sadar Adalats at Calcutta was also extended to the ceded districts. In 1805 the conquered Provinces along with the ceded territories were divided into five districts — Agra, Aligarh, Saharanpur North, Saharanpur South and Bundelkhand. These districts were placed under the control and administration of judicial and revenue officers just like the ceded districts of Oudh.

4. Reforms of Lord Cornwallis (1805)

In July 1805 Lord Cornwallis came to India for the second time and succeeded Lord Wellesley. In spite of his short term in India, Cornwallis[8] introduced a very important reform in the constitution of the Adalats. It was specifically provided that the Chief Judge will not be a member of the Council. From this time onwards a covenanted civil servant of the Company was to be appointed Chief Judge. Wellesley, though he improved the constitution of the Adalats, retained the Chief Judge as a member of the Council. Lord Cornwallis' step was a distinct improvement over his predecessor's judicial reforms as his aim was to separate judicial functions from the executive and legislative.

5. Reforms of Lord Minto (1807)

Lord Minto[9] was appointed Governor-General of Bengal Government of the Company in July 1807. He introduced certain changes in the judicial set-up to improve the existing conditions of the administration of justice.

(a) Number of Judges increased.—By Regulation XV of 1807,[10] Lord Minto increased the number of judges of Sadar Adalats from three to four.

7. Regulations XVI and XLIX. *See also* Morley, *The Administration of Justice in British India*, 62.
8. Lord Cornwallis died at Ghazipur in India in October, 1805. He was regarded by Pitt "as an infalliable cure for all ills". See *Oxford History of India*, 604; Marshman, *History of India*, 279.
9. Sir George Barlow succeeded Lord Cornwallis after his death in July, 1807, Lord Minto succeeded Sir George Barlow. See *Lord Minto in India and Life and Letters*, 1751-1806 (three vols.), Edited by Countess of Minto.
10. 23rd July, 1807. *See* W.A.J. Archhold, *Outlines of Indian Constitutional History*, 132.

(*b*) *Judicial function mixed with executive.*—Out of these four judges, the Chief Judge was appointed a member of the Governor-General's Council. In this way Lord Minto, following Lord Wellesley's approach, mixed judicial function with legislative and executive. In his defence Lord Minto stated that the Chief Judge was appointed member of the Council in order to achieve economy. But in fact it was done so with a view to save any friction between the executive and judiciary. The number of the Judges of the Sadar Adalats was increased from three to four specially to dispose of the arrears of the judicial work earlier.

(*c*) *Magistrates' powers increased.*—The Magistrates' powers and jurisdiction were also increased. They were authorised to punish offenders with a fine up to Rs. 200 and punishment not exceeding six months.[11]

Regulation VIII of 1808 provided that the persons who committed the offence of robbery with open violence were liable to the punishment of transportation for life. If the charge or robbery was proved, on conviction such case was to be referred to the Sadar Nizamat Adalat. In the same year, a Superintendent of Police for Bengal and Orissa was appointed for the detection of the persons charged with or suspected of dacoity and other offences.

(*d*) *Jurisdiction of courts.*—The original jurisdiction of Zila and City Courts was restricted to such cases where the valuation of the suit was not more than Rs. 500. The Provincial Courts were empowered to have original jurisdiction in cases involving more than Rs. 500.[12]

(*e*) *G.G. to appoint Chief Judge.*—Due to the great increase in cases before the Sadar Adalats it was considered necessary to increase the number of judges. To deal with such a situation, Regulation XII of 1811 authorised the Governor-General to appoint a Chief Judge and such numbers of judges as were considered necessary from time to time to dispose of the cases. Now onwards the Chief Judge was not required to be a member of the Council. Thus the judicial function was separated from the executive and legislative.

6. Lord Hastings and the Administration of Justice (1813)

After Lord Minto, in 1813, Lord Hastings[13] was appointed Governor-General. During his period of ten years' stay in India from 1813 to 1823, Lord Hastings introduced many reforms in the civil and criminal judicature of the country. Certain definite steps were also taken to modify the basis of Cornwallis' system.

(*a*) *Charter Act of 1813.*—The special importance of the Charter of 1813 lies in the fact that the sovereignty of the Crown over the Company's territorial acquisitions of India was clearly proclaimed. The powers of the Board of Control in England were considerably enlarged. The Charter Act 1813, says Dodwell H.H. (in *The Cambridge History of India*, Vol. 5, p. 595, quoted by Dr. Kapur, op. cit., p. 21) allowed the territorial acquisitions of the Company to continue for another twenty years under the Company's control "without prejudice to the undoubted sovereignty of the Crown of the United Kingdom *etc.*, in and over the same". But

11. *See* T.K. Banerjee, *Background to Indian Criminal Law*, 154.
12. Regulation XIII, *see* W.H. Morely, *The Administration of Justice in British India*, 63-68.
13. *See* H.T. Prinsep, *History of the Political and Military Transactions in India during the Administration of Marquess of Hastings.*

"at what moment that sovereignty came into being still remained a riddle. This claim was announced formally to the diplomatic world and was recognised by the French, the Dutch (in treaty of Paris in 1814) and the convention with the Netherlands. The position of the British Government in India was, thus, placed "beyond question internationally". (*ibid.*, p. 596).

The Provincial Governments in India were empowered by the Charter of 1813 to make laws, regulations and articles of war for their native armed forces and authorise the holding of Courts-Martial. The territories of India were considered the property of England and persons entering without licence were to be treated as interlopers. For a case of trespass or assault committed by these Europeans on the people of India and for cases of small debts to them, they were placed under the jurisdiction of the Justices of the Peace. Those trading, residing or holding movable property at a distance of more than ten miles from a presidency town, were placed, for civil cases, under the jurisdiction of Civil Courts, while for criminal matters, special arrangements were to be made. It was also provided that those Englishmen who had their residence at a distance of more than ten miles from a presidency town, would necessarily register themselves with the District Court. Special penalties were provided for theft, forgery, perjury and coinage offences, as the existing provisions of a common statute law were considered inadequate to deal with them.

(*b*) *Reforms in civil courts.*—In order to discourage the parties from entering into litigation, Lord Hastings increased the court-fees. Compulsory fee was prescribed for every process and every paper that was filed in civil courts.[14] In the opinion of the Court of Directors it was necessary to increase the number of Indian Judges, Munsiffs and Sadar Ameens, to deal with the increasing litigation and court work. They considered that this increase in the number of native judges would not involve any extra expenditure to the Government.[15] They were not favourable to the augmenting of the number of European Judges as it would not effect the economy in the administration of justice. In 1814 the jurisdiction of Munsiffs was increased from Rs. 50 to Rs. 64 and they were authorised to try cases of money and personal property against natives. The decisions given by the Munsiffs were not to be final. An appeal from them lay to the District Diwani Adalats.

The Sadar Ameens were empowered to decide original suits, referred by the Zila and City Judges, up to the valuation of Rs. 150. Before 1814 their power was limited up to Rs. 100 only. From decisions of the Sadar Ameens an appeal lay to the Zila and City Judges whose decision was considered final. It was specifically provided that neither Sadar Ameens nor Munsiffs were authorised to hear any suit in which a British subject or some European or American was a party.

The Registrars were authorised to hear and decide original suits up to the valuation of Rs. 500 which were referred to them by the Zila and City Judges. An appeal from the Registrar's Court was allowed to the Zila and City Judge's Court. Sometimes, the Registrars were also given powers to hear appeals from the Munsiffs and Sadar Ameens and their decisions in such appeals were considered final. This

14. Regulation XIII of 1814.
15. Munsiff's were not yet made salaried officers of the Government. They were paid on a commission basis for their judicial work.

step was taken in order to quicken the administration of justice and dispose of the arrears of work.

In 1814 the Zila and City Courts were empowered to decide civil cases up to the valuation of Rs. 5,000. The post of the Assistant Judge was abolished. An appeal lay to the provincial Courts and from the decision of the provincial Court to the Sadar Diwani Adalat. In each provincial Court the number of Judges was also increased from three to four who were given the powers to exercise civil and criminal jurisdiction. From their decisions in all cases an appeal was allowed to the Sadar Diwani Adalat. The Sadar Diwani Adalat exercised original civil jurisdiction only in cases involving valuation of Rs. 50,000 or more.

(*c*) *Reforms in criminal courts.*—Certain reforms, which were introduced by Lord Hastings with a view to improve the working of criminal courts, may be stated as follows:

It was realised in 1821 that the reforms of 1814 were not sufficient to improve the machinery of justice, and it was necessary to raise the status of the Indian Judges. Therefore, Regulation III of 1821 introduced certain changes. The Magistrates were given powers to refer to Native Law Officers and Sadar Ameens, cases of petty offences for trial, and they were authorised to punish offenders by imprisonment for a term not exceeding fifteen days and a fine up to Rs. 50. According to the proposals of the Court of Directors, the Company's Government authorised the Collectors of Revenue to exercise magisterial powers also wherever it was considered necessary.

In 1818 the jurisdiction of the Magistrates and the joint Magistrates was enlarged and they were authorised to try persons who were charged with the offences of theft and burglary and attempt to commit such crimes. In criminal cases where the criminal was punished with imprisonment for more than six months, the Circuit Court was empowered to revise such cases. Where the theft was of property worth more than Rs. 300, the thief was prosecuted before the Court of Circuit.

Efforts were also made to deal with the unnecessary delay in the administration of justice and to dispose of the arrears of work. By Regulation III of 1821 the Governor-General-in-Council was authorised to give special powers to the Assistant Magistrates to punish criminals in cases which were referred to them for disposal by the Magistrates.

In 1823 the Court of Circuit and the Sadar Nizamat Adalat were given more powers. In the same year the qualification regarding the appointment of a Judge of the Sadar Adalat was rescinded. In 1814 it was laid down that for the post of a Judge of Sadar Adalats, it was necessary for a person to have three years' experience as a Judge of a Provincial Court or in all nine years' judicial experience.

Apart from these, Lord Hastings introduced many other reforms. He took special interest in reorganising the police force to deal with criminals and to maintain law and order in the country. He realised the necessity of removing the defects in the existing Mohammedan Law of Crimes in order to check and control criminal acts and the criminal tendency of people in India. In 1820 new penalties were laid down to prevent and punish *begari* and *dharna*. It was also provided for the arrest of persons on security grounds.

7. Reforms of Lord Amherst (1823)

In August 1823 Lord Amherst[16] was appointed Governor-General. He continued in office up to 1828. Certain important reforms, which he introduced in the judicial sphere, may be briefly stated as below:

(*a*) *Status of Sadar Ameens raised.*—In order to carry out the directives of the company's Directors to improve the administration of justice in India, Lord Amherst in 1824, by Regulation XIII, provided that Sadar Ameens would be paid regular salaries instead of commission so far paid. This raised their status attracting honest persons. Jurisdiction of the Sadar Ameens was increased in civil cases, in 1827. They were also authorised to try civil cases in which European British subjects were parties. Gradually the court of Sadar Ameens gained importance and status in the judicial machinery.

(*b*) *Powers of Magistrates and Court of Circuits expanded.*—In criminal cases where it was necessary to obtain more information from certain accused persons regarding the main crime, Regulation X of 1824 authorised the Magistrates and Superintendents of Police to pardon such persons. It assisted the police in investigating the crimes and punishing the persons who were really responsible for committing the crimes.

The Courts of Circuit were given more powers to punish criminals in cases of culpable homicide not amounting to wilful murder. In 1825 the Circuit Courts were authorised to pass final sentences. Earlier, the Circuit Courts were required to refer such cases to the Sadar Nizamat Adalat but after 1825 the Circuit Courts enjoyed full powers. The punishment of flogging of women was stopped.

(*c*) *Judicial powers to Collectors.*—The Collectors were given powers to investigate and summarily decide cases relating to rent disputes which the judges referred to them. Certain rules were framed to guide the Collectors in deciding rent cases. In this respect they were also given powers like the Civil Court to call and examine witnesses. Lord Amherst's initiative to give judicial power to Collectors became a matter of controversy and criticism subsequently.

8. Judicial Reforms of Lord Bentinck (1828)

In July 1828, Lord William Bentinck[17] succeeded Lord Amherst as Governor-General. During his seven years' stay in India *i.e.*, from 1828 to 1835 he introduced several reforms of great importance in various fields.[18] He showed keen interest in improving the machinery of the administration of justice. With this aim in view *he reorganised and consolidated the whole system of civil and criminal courts. His contribution is, therefore, considered very important in the legal history of India.* A short account of his judicial reforms is given below:

16. *See* Anne Thackerey Ritchie and Richardson Evans, *Lord Amherst*. When Lord Hastings retired in January 1823, John Adam was appointed officiating Governor-General. He vacated the post when Lord Amherst was appointed Governor-General in August 1823.
17. Lord William Bentinck was a younger son of the 3rd Duke of Portland, Prime Minister of England from 1807 to 1809.
18. *See* Thompson and Garratt, *Rise and Fulfilment of British Rule in India*, 280-86. *See also* T.G.P. Spear, "Ellenborough and Bentinck". *Proceedings of Indian History Congress*, 1939.

(*a*) *Abolition of Circuit Courts.*—Lord Bentinck realised that the existing system of Circuit Courts with very wide territorial jurisdiction was responsible for many defects in the administration of justice in civil and criminal cases. Long delays in deciding the cases increased the arrears of cases. It became very difficult for the Court to complete the circuit within six months. As the Provincial Courts of Appeal, the Circuit Courts were also required to discharge appellate functions in civil cases. As criminal courts these courts created more difficulties for the prosecution as well as the witnesses, as it was not possible for them to hold their sessions in each district regularly. As a consequence of delay in criminal justice, prisoners suffered in jails without trial for a long time. *The Circuit Courts*, said Lord Bentinck, *became "the resting place for those members of service who were deemed unfit for higher responsibilities".*

Lord Bentinck, therefore, decided to abolish the system of Circuit Courts. In place of the Circuit Courts Regulation I of 1829 he appointed Commissioners of Revenue and Circuit to control the working of the Magistracy, Police, Collectors and other revenue officers. Each Commissioner was put in charge of a small territory in order to enable him to visit frequently different places which were under his jurisdiction. They were given powers of the Court of Circuit and the Board of Revenue with some modification to suit the requirements. The Provinces of Bengal, Bihar and Orissa were divided into twenty divisions. In each division a Commissioner was appointed. They were required to hold sessions of gaol delivery in Zilas and Cities at least twice a year. The Regulation provided that the employment of the Mohammedan Law Officers was optional.

Regulation II of 1829 provided that the appeals from the Magistrates or Joint Magistrates were to lie to the Commissioner of division. The decision of the Commissioner was final and conclusive. By Regulation VI of 1829 the powers of the Magistrates were increased and they were authorised to pass a sentence of imprisonment up to two years with labour, together with corporal punishment.

(*b*) *Power of Sadar Ameens, District and City Judges increased.*—The Magistrates were authorised to refer criminal cases to Sadar Ameens or Principal Sadar Ameens for investigation. Their power was only limited to work as investigating officers and to report to the Magistrates. They were not authorised to make any decision.

It was realised after the reforms of 1829 that the expected results of speedy trial of criminal cases was not forthcoming. It was found that the Commissioners of Revenue and Circuit were given too much work. Therefore, the Governor-General-in-Council was authorised by Regulation VII of 1831 to empower any Zila and City Judge not being a Magistrate to hold criminal sessions, whenever it was felt that the pressure of work on the Commissioners was too much. Zila and City Judges were empowered to try all commitments made by Magistrates in their respective jurisdictions and to hold goal deliveries at least once a month. Gradually, due to unexpected increase in the judicial and revenue work it became difficult for the Commissioners to dispose of the whole work in their district adalats. It gave rise to the creation of District and Sessions Courts in each district which decided civil and criminal cases.

(*c*) *Establishment of Sadar Nizamat Adalat and Sadar Diwani Adalat at Allahabad.*—In order to avoid unnecessary delay and improve the administration of justice it was considered necessary to reduce the territorial jurisdiction of the Calcutta Sadar Court. In 1831, therefore, a Sadar Nizamat Adalat was established at Allahabad for the North-Western Provinces with the same powers as were given to the Calcutta Sadar Court.[19]

In 1831, a Sadar Diwani Adalat was also established at Allahabad for the North-Western Provinces to decide civil cases. It was given the same powers as were vested in the Calcutta Sadar Diwani Adalat.

(*d*) *Practice of Sati declared an offence.*—In 1829 Lord Bentinck took a very bold step to abolish the prevailing inhuman rite of the practice of *Sati*.[20] According to the practice of *Sati* a Hindu widow was forced to burn herself with the dead body of her husband. It was declared an offence and was punished like culpable homicide. Abetment of the offence was also made punishable. Due to the introduction of this important reform Lord Bentinck became very popular amongst the educated elite of Hindus in India.

(*e*) *Indians appointed judicial officers.*—Lord Cornwallis declared his policy to exclude Indians from judicial officers. It was severely criticised by Indians and in due course the Directors of the Company also suggested that Indians must be employed as judicial officers. Lord Bentinck disliked the old policy of Lord Cornwallis and favouring the suggestion of the Directors appointed Indians in the civil and criminal courts of the country.[21] This policy resulted in economy as the English Judges were highly paid while Indians were available at a small salary. Apart from this he gained confidence and loyalty of Indians. Indians were gradually appointed to hold judicial offices. In 1832 the Commissioners of Circuit and Sessions Judges were authorised to take the assistance of respectable natives in criminal trials either by referring some matter to them as Panchayat for investigation or by calling them to the Court as assessors or as Jury. The powers of the Principal Sadar Ameens, Sadar Ameens and the Indian Law Officers were extended regarding the passing of sentence in certain cases.

In the sphere of civil justice also, respectable Indians were appointed as judicial officers. After 1831 the powers of the Indian Judges were gradually increased. As such the pecuniary jurisdiction of the Munsiffs was extended to Rs. 300; the Sadar Ameens were authorised to decide original suits up to a valuation of Rs. 1,000 referred to them by the Zila and City Judges; appeals from Munsiffs and Sadar Ameens lay to the Zila and City Courts whose decisions were final. The Governor-General was given power to appoint in any district or city, one or more Principal Sadar Ameens to decide original suits up to Rs. 5,000 in value. The Courts of Registrars were abolished and their cases were transferred to the Principal Sadar Ameens and Sadar Ameens.

---

19. Regulation II, *see* W.H. Morley, *The Administration of Justice in British India*, 73.
20. It meant the burning of widows on the funeral pyres of their husbands. This evil custom frowned on by the Mughals, had increased in Bengal under British Administration and its prohibition had been considered by every Governor-General since Wellesley. In fact, Bentinck acted where others had merely talked. *See* Vincent A. Smith, *The Oxford History of India*, Third Edition, 588, 647-8.
21. Regulation XVII.

(*f*) *Abolition of Provincial Courts of Appeal.*—In order to improve the civil judicature, Lord Bentinck introduced a new Scheme in 1831. By Regulation V of 1831 all functions of the Provincial Courts of Appeal[22] were transferred to the District Diwani Adalats. Thus the Provincial Courts of Appeal were abolished[23] and the original jurisdiction of the District Diwani Adalats became unlimited. By Regulation VIII of 1833 the Governor-General was empowered to appoint any number of additional judges in a district on the recommendation of the Sadar Diwani Adalat. It is, therefore, clear that by introducing the new scheme, Lord Bentinck intended to simplify the judicial process and reduce the cost and time of the administration of civil justice. The appointment of Indian judges further assisted Lord Bentinck in carrying out his scheme.

(*g*) *Civil and revenue jurisdiction given to Collector.*—Suits relating to rent were transferred to the exclusive congnizance of the Collectors of revenue who were empowered to decide summarily. Their decision was final, subject to a regular suit to be instituted in the civil courts. The cases relating to rent and revenue were transferred to the Collector in order to make the Collector's task easier in the collection of revenue.

(*h*) *Charter Act of 1833.*[24]—*It was one of the most important charters which played an important role in shaping the future course of the legislative and judicial development of India.* The charter allowed the company to retain its territorial possessions in India for the next twenty years. The Act of 1833 established an All India Legislature with general and wide powers to legislate. The Governor-General at Calcutta was made the Governor-General of India. By adding a Law Member to the Governor-General's Council and the abolition of the right to legislate by regulation in the Provinces, the opportunity for centralisation of law was provided by the Act. The Act established the First Law Commission for India. The Law Member was to preside over the Law Commission, which was empowered to inquire into existing laws and courts. The Act of 1833 stated, "it is expedient that such laws as may be applicable to all classes should be enacted". Necessity of a general system of judicial establishments and police was also referred to the Law Commission. Priority was given by the Law Member to the needs of the common man who was going to moffussil Courts to get justice.

9. The Independence of the Judges

During this period also, as in the past, conflicts continued between the judiciary and the executive. This was so because as can be seen from the preceding chapters, regulations passed in Bengal, Madras and Bombay[25] alike emphasised the need for the judicial functions of the Government to be administered by courts of justice distinct from the legislative and executive authority of the State. But the duties of the Sadar Courts were not exclusively judicial and in the exercise of their administrative functions, the Sadar Courts of Bengal and Madras appear to have been

22. Thompson and Garratt, *Rise and Fulfilment of British Rule in India*, 266-70.
23. They became "proverbial for their dilatoriness and uncertainty of decision. *See* Demetrius C. Boulger, *Lord William Bentinck*, 61.
24. For details, *see* Chapter on the Law Commission in this book.
25. Beng. Regn. 2 of 1801, S.1; Mad. Regn. 4 of 1806, S.1, Bom. Regn. I of 1820, S.1, quoted in Orby Mootham's *The East India Company's Sadar Courts*, 1801-1834, (1983), Ch. XVIII, 161.

regarded as branches of the executive. The Presidency Governments and the Directors in London were issuing directions to the Courts and being under close scrutiny the judges were being asked explanations regarding their disposals.[26] In Bombay the Sadar Court came into conflict with the Supreme Court over the problem of Criminal jurisdiction in case of *R.* v. *Pandurang Hirajee*[27]. The office of judge seems not to have been held in the same high regard in Madras[28] as in the other Presidencies. In cases pertaining to misconduct by servants of the Company and of offences against the State the opinion of the court was treated with little respect. *Mylapilly case* and *Oakes case* are its apt examples. In Bengal also the conflict was apparent as can be seen from the cases of *Ooman Dutt* and *Purtab*. The facts and decision in these cases are given below. It should be noted that in view of the Government, if the courts were left uncontrolled it would amount to abandoning the most sacred duty of the Supreme power.[29]

(*a*) *Ooman Dutt* v. *Kunhia Singh*[30], (1822) 3 S.D.A. 144.—The question at issue in this case was whether the plaintiff Ooman Dutt under the Hindu Law, was an adopted son and entitled to a half share in certain property.

A suit had been filed in December 1809 and was dismissed by the Zillah judge in May 1813. The appeal to the Provincial Court of Appeal was dismissed in January 1816. A special Appeal to the Sadar Diwani Adalat was admitted in the same year and came up for hearing before the third judge in July, 1820. He referred certain questions with regard to the validity of the form of adoption to the Court's pundits. As a result of their answers the Judge in the following month put a supplementary question to the Law Officers and he later directed the trial court to take further evidence of local custom with regard to the adoption of a boy in the Krit(r)ima form. In September 1821, the third Judge, now sitting with the fourth Judge, called upon the pundits for a further exposition of the law, and this was furnished in the following November.

At this stage of the proceedings the third and fourth Judges considered it desirable to seek the assistance of the second Judge "with reference to the nice point of Mithila law under consideration". The latter gave a judgment in December 1821 upholding the legality of the plaintiff's adoption. The respondent's pleader, however, appearing before the fourth Judge, disputed the correctness of the pundit's opinion on which the second Judge had based his decision; and the opinion of the Law Officers was again sought. On 22nd January, 1822 the appeal again came before the third Judge and the pundit's answers were read to him. He differed from the view taken by the second Judge and "recommended" that the appeal be dismissed. On the next day the appeal came before the fourth Judge who once again referred a further question to the pundits. They filed their answers in February, and they were of the opinion that the alleged adoption was invalid. On the 15th of April, 1822, six years after the appeal had been admitted, the fourth Judge declared his

---

26. Beng. Regn. 2 of 1801, S.1; Mad. Regn. 4 of 1806, S.1, Bom. Regn. I of 1820, S.1, quoted in Orby Mootham's *The East India Company's Sadar Courts*, 1801-1834, (1983), Ch. XVIII, 161, 162, 150.
27. *Ibid.*, Bombay Courier, 14th & 21st March, 1829. For facts of the case *see* Ch. 5-10 (*iv*).
28. *Ibid.* 163.
29. *Ibid.* 166.
30. Mootham, *The East India Co.'s Sadar Courts*, 1801-1834, Edn. 1983, Ch. 3.

full concurrence with the third Judge as to the propriety of rejecting the claim, and the appeal was finally dismissed.

(*b*) *Government* v. *Purtab*[31] *1823, 2 N.A.R. 248*,—In 1816, in the course of a robbery with violence four villagers were murdered. The suspects absconded and a proclamation was issued by Nizamat Adalat under Regulation 9 of 1808 calling upon them to surrender within a named period. After this period expired, in 1821 the defendants were apprehended, tried in the Circuit Court for murder and sentenced to death.

Regulation 9 provided that a proclaimed person who failed to give himself up within the prescribed period could be tried only for contumacy and that it was only if he were acquitted on that charge that he could be brought to trial for the offence for which he had been proclaimed. When therefore the proceedings of the murder trial came before the Nizamat Adalat for confirmation that the Chief Judge [Leycester] directed that the defendants be put on trial for contumacy in not having complied with the terms of the proclamation. This was done, they were found guilty and sentenced to transportation for life, subject to confirmation by Nizamat Adalat.

Out of the five Judges Smith Justice and the third Judge agreed that the original offence was outside the ambit of Regulation 9 of 1908. The proclamation was illegal and the defendant should therefore be acquitted. The Chief Judge held the conviction legal while the fifth Judge held the charge as proved but gave no opinion on legality of the proclamation. The fourth Judge held the proclamation legal and the conviction proper. It was pointed out by Smith Judge that the validity of proclamation was not considered by the Chief Judge and the fifth Judge, and unless they agreed with the fourth Judge in holding the proclamation as legal the conviction on the contumacy charge could not be upheld.

Courtney Smith managed to show the recorded minutes to the Chief Judge before the charge was prepared for signature. However, the Chief Judge declared the proclamation to be legal but the fifth Judge thought it to be illegal and to this the second Judge rejoined. He could now point out that three out of five Judges were of the opinion that the proclamation was illegal and that the contumacy trial must be quashed. The Chief and the fourth Judges however adhered to their opinions and Courtney Smith recorded yet a further minute remarking that as all the judges had now expressed their opinions on the legality of the proclamation "there can be no reason for further delay in issuing a sentence which three Judges out of five approve."

It appears that the prisoners were accordingly acquitted in the contumacy charge because the court proceeded to consider the conviction on the murder charge before it. Smith Judge opined that a trial *de novo* on that charge was unnecessary and the other judges agreed with him. Conviction was therefore affirmed but in the circumstances the death sentence was replaced by one of imprisonment for life.

(*c*) *Mylapilly Yerregndoo case*[32].—M. Yerregndoo was tried in 1824 on a charge of murder. The trial court declared him to be not guilty. The presiding Judge agreeing with the court acquitted the prisoner and discharged him (under Madras Regulation 7 of 1802). During routine examination of Calendar of persons for trial the court

31. Mootham, *The East India Co.'s Sadar Courts*, 1801-1834, Edn. 1983, Ch. 4.
32. M.J.C., 1st July, 1825, Fol. 1475, p/323/93, Mootham: *The East India Co.'s Sadar Courts*, Edn. 1983, 96-97.

called for the records asked the Judge for reasons for concurring in the acquittal and ordered for Yerregndoo's arrest. He was tried and held guilty of murder and robbery and was sentenced to 39 lashes with life imprisonment. Criminal judge W.G. Monk at Chicacole where the warrant was sent for execution questioned the legality of the sentence and brought his doubts to the notice of the Foujdari Adalat. But the judges did not doubt their authority to interfere "whenever it may appear to them that such interference was required for the ends of public justice". A request by Monk to refer the matter to the Governor-in-Council was refused as such a course, "would involve abandonment of the functions vested in them by law and in fact amount to participation in an irregularity which it is the proper duty of the court to correct". Monk, who appears to have been a man of courage and determination, then addressed a letter to the Government in which he submitted that not only the sentence was illegal but that where the lawfulness of an act of Foujdari Adalat was in question, an appeal must be open to the Government, otherwise the Court would virtually legislate for itself.

The Governor-in-Council did not consider that Mouk had acted irregularly or that the Court by forwarding his letter would have abandoned any functions vested in it by law, and he called upon the court for a full explanation.

The Court's reply was discursive. In essence it was that as the law imposed a duty on a circuit judge to satisfy himself that the Futwa of his Law Officer was in accordance with Mohammedan law, and as the Judge was frequently ignorant of that law, it was effectual for the effective administration of justice that the Court should be able, in a fit case, to set aside an acquittal. This the Court could do under its general supervisory authority and specifically in the exercise of its revisionary powers under Section 25 of Regulation 10 of 1816; and as the proceedings in the Foujdari Adalat were a continuation of the trial, no question of double jeopardy arose. The Court's view was clearly ill-founded and the Governor in Council said so. The Court's powers were entirely derived from the Regulations. As the trial Judge had seen no cause to disapprove of his Law Officer's declaration that Mylapilly was not guilty he had no alternative but to pass an immediate sentence of acquittal and order the discharge of the prisoner. That sentence was final; the case was closed, and Section 25 of Regulation 10 could not be so construed as to give the Foujdari Adalat power to reopen it. As to the Court's view that it had an inherent power to intervene the Governor in Council was "unable to perceive, how an authority so great, and of so extraordinary a nature as that in question, could with any colour of reason be regarded as inherent in the constitution of the Court, while there was nothing in the Regulations that could be referred to as giving it". He had already remitted the sentence or so much of it as remained unexecuted, and he now informed the Court that unless it changed its opinion on the construction of Section 25 of Regulation 10 he proposed that it be made clear by an amending Regulation that the law was in conformity with the views of the Government. The judges appear to have accepted the Government's interpretation of the section for it remained unaltered.

(d) Oake case[33].— Robert Oakes was the Collector of Rajahmundry. There were many complaints against him for misconduct and corruption. In 1817, the Governor

33. Mootham, *The East India Co.'s Sadar Courts*, 1801-1834, Edn. 1983, Ch. 11, 107 and 113-115.

in Council appointed a special Commissioner under Regulation 3 of 1809 to hold an enquiry. The basis of the charges, of which there were eight, was that Oakes had grossly neglected his duties, engaged in private trade and, in particular, had permitted his former private servant, to the latter's distinct pecuniary advantage, to interfere in the management of the district. Oakes did not attend the enquiry. The Commissioner forwarded his report, which was favourable to the accused officer to the Sadar Adalat, the judges of which were required to submit the proceedings to the Governor in Council with their opinion "whether any and what facts against the party accused appear to have been established". The judges, Scott and Greenway were of the opinion that none of the charges, except that of being engaged in private trade, had been established. This opinion was not accepted by the Governor in Council with whom lay the responsibility of passing such a final order as appeared to him just and proper. He considered that the Court had erred in applying to the proceedings the strict technical rules appropriate to a criminal trial, and that the evidence was amply sufficient to justify a finding of guilt on six of the charges.

The Directors took a more serious view of the matter. The judges, they concluded, had viewed the proceedings from a narrow legalistic view point, and had failed to appreciate that they were not concerned with a trial but with an investigation into the conduct of a public officer for the purpose of enabling the Government to decide whether there were grounds for his prosecution or the taking of any other action against him.

The Judges had taken the view that precision in framing of the charges against Oakes was of paramount importance. They held the charges to be, in law, badly framed, and by failing to be sufficiently specific had in more than one instance disclosed nothing which called for an answer. Much of the evidence adduced at the hearing was accordingly irrelevant.

The difference of approach of Court and Government to the evidence at the enquiry is well illustrated by a reference to the first charge. It was in these terms:

For dereliction of public duty and violation of the provisions of Section 36, Regulation 2, 1803, in permitting a certain native, Ramaswamy Naidu, not in the employ of the Government and formerly a private servant of the said Collector to interfere in the public business of his office and in the management of the district under his charge.

That charge, in the judges view, "does not contain an allegation of a single act on the part of the Collector, from which his permission of, or connivance at, the interference of Ramaswamy in the public business of the office, and in the management of the district under his charge, could be inferred. The Collector, therefore, had no specific charge to deny or explain." The Directors regarded the matter very differently from the view point of a breach of duty to which serious consequences were attached. As to the lack of precision of the charges, the Directors took a practical view. If Oakes had any doubt as to the case he had to meet, his doubts would have been resolved had he attended the enquiry and heard the evidence.

But the Directors were not only critical of the judges' approach to the proceedings; they had also failed to be impartial and had displayed a bias in favour of the accused officer. Summing up their views they said that the proceedings had been the occasion of a display of "laxity in the discharge of public duty and a most

dangerous leaning towards a delinquent", which had convinced them that an interposition of their authority was "required for upholding that high sense of duty and that spirit of inflexible impartiality which are so peculiarly necessary in persons filling the important offices under our Government." They had, they said, "too complete an experience of the unfitness of Mr. Scott and Mr. Greenway for the due discharge of the duties with which they had been entrusted", any they directed that they be removed.

10. Dual System of Courts (1834-1861)

After Lord William Bentinck minor reforms were introduced in the Company's Courts by Lord Auckland,[34] Lord Ellenborough[35], Sir Henry Hardinge[36] and Lord Dalhousie[37] as Governor-Generals. During the period 1834 to 1861 *i.e.*, before the High Courts were established two sets of courts were administering justice in India.[38] The King's Courts and the Company's Courts formed the dual system of courts having their separate jurisdictions.

In each Province *i.e.*, Bombay, Calcutta and Madras, a Supreme Court was established which derived its authority from the King in England. Their jurisdiction was mainly limited to the Presidency towns respectively. The original jurisdiction of the Supreme Courts was extended to five classes of persons, namely, (*i*) British subjects throughout India in all civil and criminal cases; (*ii*) inhabitants of Calcutta, Madras and Bombay within fixed limits, whether natives or others in all civil and criminal cases; (*iii*) native subjects, servants of the company or any British subject for acts committed with limitations in certain civil matters; (*iv*) native subjects in civil matters for transactions by which they had bound themselves by bonds to be amenable to the Supreme Courts; and (*v*) all persons for maritime crimes.

(a) **Hierarchy of Company's Courts.**—Apart from the King's Courts, in each Province the company also established a hierarchy of civil and criminal courts. These courts were known as Company Courts. They exercised their jurisdiction outside the Presidency towns and the Sadar Diwani Adalat and Sadar Nizamat Adalat were the highest Company's Courts in each Province. They were given appellate jurisdiction in civil and criminal cases respectively and had no original jurisdiction. They were also empowered to supervise the working of the subordinate courts of the company. Appeals from Sadar Diwani Adalats lay to the Privy Council. The Company's Courts were established in order to meet the requirements of Indians who were residing beyond the Presidency towns. In many respects the Company's Courts differed from the King's Courts. The hierarchy of Company's Courts in each Province, *i.e.*, Calcutta, Bombay and Madras, was as follows:

(*i*) *Courts in Calcutta.*—Before the enactment of the High Courts Act, 1861 there were six types of civil and eleven types of criminal courts of the company to administer justice in the Province of Calcutta. In order of hierarchy the civil courts were: Sadar Diwani Adalat, City Courts, Zila Courts, Courts of Principal Sadar

34. He was Governor-General of India from 1836 to 1842.
35. He remained Governor-General of India from 1842-1844.
36. He was appointed Governor-General of India in 1844, and remained in his office up to 1848.
37. He was Governor-General of India from 1848 to 1856.
38. See *Encyclopaedia of the General Acts and Codes of India*, Vol. 9, Edited by T.B. Sapru, 2-3 (1942); Mootham: *The East India Co.'s Sadar Courts*, 1801-1834, Edn. 1983, Ch. 1, 5.

Ameens, Courts of Sadar Ameens and Courts of Munsiffs. Eleven types of criminal courts in order of hierarchy were: Sadar Nizamat Adalat, Courts of Sessions Judges, Courts of Joint Magistrates, Courts of City Magistrates, Courts of Zila Magistrates, Courts of Assistant Magistrates, Courts of Deputy Magistrates, Courts of Principal Sadar Ameens, Courts of Sadar Ameens, Courts of Law Officers of City Courts and Courts of Law Officers of Zila Courts.

(ii) Courts in Bombay.—There were six types of civil and five types of criminal courts of the Company in Bombay before the establishment of the High Court. In order of hierarchy the civil courts were: Sadar Diwani Adalat, Zila Courts, Courts of Assistant Judges, Courts of Principal Sadar Ameens (Native Judges), Courts of Sadar Ameens (Native Commissioners) and Courts of Munsiffs. The five sets of criminal courts were: Sadar Nizamat Adalat, Courts of Judicial Commissioners of Circuit, Courts of Sessions Judges, Courts of Joint Judges in certain Zilas and Courts of Assistant Sessions Judges. Apart from these, offences of a petty nature were decided by the Heads of Villages and District Police Officers.

(iii) Courts in Madras.—The Company's judicial machinery in Madras consisted of eight sets of civil courts and nine sets of criminal courts before the High Court of Madras was established. In order of hierarchy the civil courts were: Sadar Diwani Adalat, Zila Courts, Courts of Assistant Judges, Courts of Subordinate Judges, Courts of Principal Sadar Ameens, Courts of Sadar Ameens, Courts of District Munsiffs and Courts of Village Munsiffs. Nine sets of criminal courts, in order of hierarchy, consisted of: Sadar Nizamat (*Faujdari*) Adalat, Courts of Sessions Judges, Courts of Subordinate Judges, Courts of Magistrates, Courts of Joint Magistrates, Courts of Assistant Magistrates, Courts of Principal Sadar Ameens, Courts of Sadar Ameens and Courts of District Munsiffs. Apart from these, petty offences were also tried by the Heads of Villages and the District Police Officers.

(b) The law applied.—The King's Courts and the Company's Courts applied different laws. The Supreme Courts mostly applied English law, both civil and criminal, with certain exceptions relating to Hindus and Mohammedans. In the case of Hindus and Mohammedans, whenever they were parties to a suit, the law of the defendant was always applied. English law of procedure governed the procedure of the Supreme Courts. They also applied such rules and regulations of the Company's Government which were registered in the Supreme Courts.

The Company's Courts in the Moffussil area applied only the Regulations of the Government which were passed before 1834. After 1834 uniform Acts of the Governor-General in Council were applied in all the three Provinces. English law was not applied by the Company's Courts. In matters relating to succession, inheritance and marriage with respect to Hindus and Muslims, the personal laws of Hindus and Muslims were applied respectively. In other cases also customary law was ascertained and applied. In cases for which there was no ascertainable law or custom, the Judges were required to exercise their discretion according to justice, equity and good conscience.[39] English Judges, while applying their discretion, mostly applied English law as far as it suited Indian conditions.[40] In criminal cases Mohammedan Law of Crimes, as modified by the Regulation, was applied by the

39. Dr. J. Duncan M. Derrett, *Justice, Equity and Good Conscience in India*, 64 Bom LR 129, 145.
40. Cowell, *History and Constitution of the Courts and Legislative Authorities in India*, 224.

Moffussil Courts in Bengal and Madras Provinces. In Bombay a regular code superseded the Muslim law of crime.

(c) Procedure.—As regards the procedure, the Supreme Courts adopted the procedure of the English Courts. On the other hand, there was no uniform procedure laid down for the Company's Courts. Whatever was prescribed by the Provincial Regulations was being followed from time to time. In certain respects the procedure not only differed from Province to Province but also from Court to Court. In spite of this diversity the Company's Courts mostly followed English law of evidence as far as it was accessible to them. But there was no law binding to adopt the English law of evidence. Customary law, as derived from *Hedaya* and Muslim Law Officers, was also followed subject to the provisions of the Regulations.

11. Defects of the System

The existence of the dual system of Court *i.e.*, King's Courts and Company's Courts created many difficulties and conflicts. The jurisdiction of the Supreme Court was never clearly defined and frequently it came in conflict with the jurisdiction of the Moffussil Courts. New problems arose regarding concurrent jurisdictions of the two sets of Courts. Laws applied by the King's Courts and the Company's Courts were different and created conflict embroidered with confusion. The Supreme Court claimed superiority and declared that any interference with the execution of its process in the moffussil was contempt of Court.[41] In certain cases the Moffussil Courts complained that the decrees of the Supreme Court were interfering with their prior decrees. It was, therefore, realised that there was a necessity to co-ordinate and correlate the functions of the two sets of the Courts. As early as 1829 the Chief Justice of the Supreme Court at Calcutta, Sir Charles E. Grey stated, "There is an utter want of connection between the Supreme Court and the Presidency Courts, and the two sorts of legal process which are employed by them...the exercise of the powers of the one system is viewed with jealousy by those who are connected with the other..."[42]

Criticising the role of the Supreme Courts, the Court of Directors stated in their despatch thus: "A judicature utterly uncontrollable by the Government and on the contrary controlling the Government recognizing the highest authorities of the State only as private individuals, and the tribunals which administer justice in all its forms to the great body of the people only as foreign tribunals, is surely an anomaly in the strictest sense of the word.[43]

As expressed by Orby Mootham[44] the early years of the 19th century saw a radical change in the Constitution of the Court. The long period during which the Governor-General and members of the Bengal Council had been the judges of the Court came to an end. They were replaced by the convenanted servants of the Company who were not members of the Government. The transition began in 1801,

---

41. *Aga Mohammed Jaffer* v. *Mohammed Saduck*, ID(O.S.)IV, 363, see also *Umesh Chandhari* v. *Prem Chandhari*, *Parl. Papers*, 1831, Vol. 6, App. V, 20-28, quoted in Jain: *Indian Legal Hist.*, 1972, Ch. 19, 338-339.
42. *Report on the Affairs of the East Indies*, Appendix, 75 (1832).
43. Despatch No. 44 of 1834, Paras 55 and 56.
44. *The East India Co.'s Sadar Courts*, 1801-1834, Edn. 1983, 5.

and although it was not completed for some years, the foundation of the independence of the court had been laid.

Growing conflicts between the King's Courts and the Company's Courts gradually strengthened the case for amalgamation of the Supreme Courts and Sadar Courts. In order to achieve uniformity, certainty and efficiency it was considered necessary to bridge the gap by legislative measures.

8

Establishment of the High Courts

"The purpose of establishing the High Courts was to effect a fusion of the Company's Courts and the Supreme Courts and not to fuse the laws as well. That was a much more complicated work which could be effected only gradually and in course of time."

"The High Courts were expected to improve the tone of the administration of justice in India, strengthen the highest court of judicature and elevate the character of the lower courts by placing them under its supervision." Jain: *Indian Legal History*, 1972, pp. 349-350

SYNOPSIS

1. Early efforts to unite

Efforts to unite the two sets of Courts began much earlier than 1861. In fact as a matter of policy it was considered better first of all to introduce basic uniformity in the laws according to which justice was administered. When it was achieved, separate sets of the judicial institutions were united in one system in 1861. As early as 1833, the Charter Act of 1833 empowered the Governor-General-in-Council with the help of the Law Member, to legislate for all provinces. It is an important landmark in the legal history of India. The centralisation of legislative machinery

introduced unification in laws and removed conflicts and confusion which were created by the enactment of Regulation Laws by legislature of the different provinces. The Charter Act of 1833 declared that the Acts passed by the Governor-General-in-Council will be binding on all Courts of the country including all the Supreme Courts. It also laid special emphasis on the enactment of uniform law in certain important fields to govern all persons without any distinction of caste and religion. In order to carry out this policy the Charter Act of 1833 appointed the First and Second Law Commission.[1] The Indian Penal Code, the Civil Procedure Code and the Criminal Procedure Code were the achievements of the Commission.

In 1858 the East India Company was abolished and the assumption of direct responsibility of the Government of India by the Crown made the problem of uniting the two sets of Courts much easier. Uniform Codes were passed and the next step to amalgamate the Supreme Courts and Sadar Adalats was to implement uniformity in the administration of justice. The object was achieved by the Indian High Courts Act of 1861[2].

2. The Indian High Courts Act, 1861

About 1852, it was urged upon the Parliamentary Committee for East Indian affairs, that it was desirable that the Supreme Court and the Sadar Adalats in each Presidency should be consolidated, so as to combine the legal learning and the judicial experience of the English barristers. Moreover, with Lord Dalhousie's conquests and annexations, the Company's territories and responsibilities increased. However the Company could not match the responsibilities. There was maladministration on wide scale and this led to repugnance of the people of India to foreign rule. And the first War of Independence in 1857 by the Indian people made the political change inevitable which resulted in the Crown's assumption of the entire sovereignty of British India and Parliament's direct responsibility for its government. This required the complete overhauling of the judicial system too. As a result, the Indian High Courts Act, 1861 was passed on 6th August, 1861.[3]

Earlier while introducing the Bill of 1861, Sir Charles Wood said, "We shall have one Supreme Court, one Sole Court of Appeal instead of two; and ... the Superior Court thus constituted, will, I hope, improve the administration of justice generally throughout India."[4]

The Act of 1861 empowered the Crown to establish, by Letters Patent, High Courts of Judicature at Calcutta (for the Bengal division of the Presidency of Fort William), Madras and Bombay abolishing the Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat (*Faujdari*) Adalat. The jurisdiction and powers of the High Courts were to be fixed by Letters Patent. The Crown was also empowered to establish a High Court in the North-Western Provinces.

Sections 2 and 3 of the Act made provisions for member of Judges, their qualifications and their tenure.

---

1. For details, *see* Chapter XIV.
2. Orby Mootham: *The East India Co.'s Sadar Courts*, 1983, 6.
3. 24 & 25 Vict., c. 104 Act contained in all 19 sections, for gist of provisions *see* Rama Jois: *Legal & Constitutional History of India*, 1984, Vol. II, Ch. 9, 200-201 ; P.B. Vachha, *Famous Judges, Lawyers & Cases of Bombay*, 1962, Ch. 5, 42-53.
4. Hansard's *Parliamentary Debates* (U.K.), Vol. 163, 647.

Each High Court was empowered to have supervision over all Courts subject to its appellate jurisdiction. The High Court was also given the power to call for returns, to transfer any suit or appeal from one Court to another and to make general rules. Her Majesty could by grant of Letters Patent[5] enlarge their jurisdictions.

3. Letters Patent establishing High Courts

On the authority of the 1861 Act Letters Patents[6] were issued establishing High Courts at Calcutta, Bombay and Madras.

(a) High Court of Judicature at Calcutta.—The Letters Patent empowered the High Court to enrol and remove Advocates, Vakeels and Attorneys-at-Law. It was constituted to be a Court of Record.[7]

(*i*) *Jurisdiction and powers.*—The jurisdiction of this Court was ordinary original civil jurisdiction. The Act XV of 1919 defined its limits. The jurisdiction of the Small Cause Court was distrinct and separate. In addition it was empowered to try and determine as a Court of Extraordinary original jurisdiction, any suit falling within the jurisdiction of any Court within or without Bengal but subject to its superintendence.

The Letters Patent also conferred appellate jurisdiction besides jurisdiction in regard to persons and estates of infants and lunatics and relief of insolvent debtors at Calcutta. In addition to this original criminal jurisdiction and Admiralty, Probate and Matrimonial jurisdictions were also conferred on it so as to make it a High Court having all the jurisdictions possessed by the Supreme Court. Consequently on its appellate side, the High Court, therefore, replaced the then Company's Appeal Courts at Calcutta *viz.*, the Sadar Diwani Adalat and Sadar Nizamat Adalat.

(*ii*) *Procedure.*—As regards procedure, the High Court was given the power to make rules and orders in order to regulate all proceedings Civil and Criminal which were brought before it. An attempt was made to bring uniformity to the rules of procedure of all High Courts and Subordinate Courts.

An appeal in any matter, not being of criminal jurisdiction, from the decision of the High Court was allowed to the Privy Council, provided that the sum or matter in issue was of the value of not less than Rs. 10,000. The High Court was also empowered to certify that the case was a fit one for appeal to the Privy Council.

(b) High Court of Judicature at Bombay.—By Letters Patent on 26th June, 1862 the Queen established the High Court of Judicature at Bombay.[8] It abolished the existing Supreme Court, Sadar Diwani Adalat and Sadar Nizamat (*Faujdari*) Adalat.

The Letters Patent establishing the High Court at Bombay was similar to that which was issued for the High Court of Judicature at Calcutta. The Bombay High Court[9] was, therefore, given all those powers which were given to the Calcutta High Court.

---

5. Section 9.
6. Dated 14-5-1862 and 26-6-1862.
7. For gist of the provisions *see* Rama Jois: *Legal & Constitutional History of India*, 1984 Edn., Vol. II, Ch. 9, 201-203.
8. The High Court was installed at Bombay on 14th August, 1862. *See* P.B. Vachha, *Famous Judges, Lawyers and Cases of Bombay: A Judicial History of Bombay*, 54-56 "*The High Court of Bombay*", 64 Bom LJ 33, 49.
9. In 1899 the High Court of Bombay was removed from Hornby or Admiralty House to the new High

The establishment of the Bombay High Court was a landmark in the history of the judicial system in Bombay. It led to the introduction of a uniform system of law and procedure throughout the Presidency of Bombay and thereby contributed to the growth of judicial system and rule of law in Bombay. It now has a Bench at Nagpur. Independence and legalism is the most valuable legacy left to us by the English lawyers and judges of the Bombay High Court.[10]

(c) High Court of Judicature at Madras.—By Letters Patent issued on 26th June, 1862 the Queen established the High Court of Judicature at Madras[11] and on its establishment the chartered Supreme Court and the Sadar Diwani Adalat and Sadar Nizamat (*Faujdari*) Adalat were abolished at Madras. Their jurisdiction and powers were transferred to the High Court at Madras.[12] The Letters Patent stated the jurisdiction and powers of the Madras High Court to be similar to the jurisdiction and powers of the Calcutta and Bombay High Courts.

(d) High Court of Judicature at Allahabad.—Under the power given by the Indian High Courts Act, 1861,[13] the Crown issued Letters Patent on 17th March, 1866 establishing a High Court of Judicature at Agra for the North-Western Provinces. The Sadar Diwani Adalat and Sadar Nizamat Adalat, were both abolished after the establishment of the High Court at Allahabad. The provisions of the Letters Patent of 1866 were similar to those of the Letters Patent of 1865 except in certain respects. The Allahabad High Court, as is well known, was not given any ordinary original civil jurisdiction, jurisdiction in insolvency matters as given to the Presidency High Courts, nor admiralty and vice-admiralty jurisdiction.[14] This was so because the three High Courts inherited the jurisdictions of both, the Supreme Court and the Sadar Adalats and the Allahabad H.C. was only the upgradation of Sadar Adalat which was functioning for the North West provinces.[15] In 1875 the High Court was shifted from Agra to Allahabad and was known as the High Court of Judicature at Allahabad.

The constitution, jurisdiction, powers and privileges of the Allahabad High Court were similar to those of the Presidency High Courts with the exceptions as stated above.

In Oudh a Judicial Commissioner's Court was established in 1865. It was declared the highest Court of Appeal for the territory of Oudh by the Oudh Civil Courts Act, 1877. The Oudh Courts Act of 1925 raised the status of the Judicial Commissioner's Court to the status of the Chief Court of Oudh. Thus, in the State of United Provinces[16] two separate Courts of Appeal were working, one at Lucknow and the other at Allahabad. After the Independence it was considered necessary to amalgamate the two Courts. On 26th July, 1948 the United Provinces High Courts (Amalgamation) Order, 1948 was issued which amalgamated the Courts of Lucknow and Allahabad and constituted one High Court in the name of the High Court of

---

Court building.

10. Supra note 9.
11. *See* V.C. Gopalaratnam, *A Century Completed: A History of the Madras High Court*, 1862-1962, 102.
12. The High Court at Madras was opened on 16th August, 1862.
13. Section 16 of the Indian High Courts Act, 1861.
14. E.J. Trevelyan, *The Constitution and Jurisdiction of Courts of Civil Justice in British India*, 71-76.
15. Rama Jois: *Legal and Constitutional History of India*, 1984, Vol 2, 204.
16. The name "United Provinces" was changed to "Uttar Pradesh".

Judicature at Allahabad. Since then a Bench of the Allahabad High Court is working at Lucknow.

4. Advantages of Unification

It should be remembered that for over a period of eighty years two separate and parallel systems of Courts continued to work in Presidencies and the moffussil areas; they were (1) the Royal Courts or Crown's Court, and (2) the Adalats of the Company. The sources of power and authority of these courts were different. Their jurisdictions were vague and ill-defined and this confusion brought about several conflicts which may be compared with the conflicts of the Common Law Courts and the Chancery Courts in England during the 17th century. There, the Judicature Acts of 1873 and 1875 brought about the fusion of the two systems of administration of justice without affecting the nature of the substantive rights at law and in equity. In India, the fusion of the two systems of administration of justice, the Supreme Courts and the Sadar Diwani Adalats, brought about by the Indian High Courts Act, 1861 was a major and significant step towards the process of the evolution of High Courts. This significant measure had the following apparent advantages:

(1) The number of courts was decreased, (2) The dual control came to an end, (3) High Court supervised the lower Courts, (4) The quality of work of the lower courts improved, (5) Efficiency of the Judges improved, (6) Procedures were simplified, (7) The appellate procedure also became uniform. D.R. Jain[17] has rightly observed therefore, that "the High Courts thus improved the tone of the administration of justice in India, strengthened the highest court of judicature and elevated the character of the lower courts by placing them under its supervision". (8) However one more advantage that oozed from unification was the acceleration of the process of codification because removal of disparities in different laws was a precondition for efficient governance, (9) Lastly, the clash and conflicts between the two systems gradually decreased and there emerged simplicity, harmony and efficiency.

5. Indian High Courts Act of 1865 and 1911

(a) High Courts Act, 1865.—The Governor-General-in-Council was authorised by the High Courts Act, 1865 to make necessary alterations in the territorial jurisdiction of the chartered High Courts which were established under the High Courts Act of 1861. The power of the Governor-General was made subject to the approval of the Crown.

(b) High Courts Act, 1911.—The Indian High Courts Act, 1911 empowered to establish High Courts in any territory within the Indian dominions. Under the Act of 1911 a High Court could be established for any territory whether or not included within the limits of another High Court. It was considered that the power to establish new High Courts under the Act of 1861 was exhausted after the Allahabad High Court was established and, therefore, the Act of 1911 was passed. The Act of 1911 raised the maximum number of Judges in each High Court from sixteen to twenty, which included the Chief Justice also.

---

17. *Outlines of Indian Legal History*, 1972, 350.

6. The Government of India Act, 1915

The Government of India Act, 1915 was passed by the British Parliament in order to consolidate and re-enact the existing statutes concerning the Government of India and the High Courts. The provisions of the High Courts Acts of 1861 and 1911 were re-enacted.

The Act of 1915 provided for the constitution, jurisdiction and powers of the High Courts. Each High Court was to consist of a Chief Justice and as many other Judges as were appointed by His Majesty. It stated qualifications for the appointment of a Judge of the High Court. The High Courts were given original appellate, including admiralty jurisdiction in respect of offences committed on the high seas. They were declared Courts of Record and were given power to make rules for regulating the Court's practice. They were not authorised to exercise any original jurisdiction in revenue matters or to set aside any act ordered or done in collecting revenue according to the local usage and custom. They had powers of supervision over all subordinate Courts under their respective jurisdictions.

While exercising their original jurisdiction in suits against the inhabitants regarding inheritance and succession to land, rents and goods, and contracts between party and party the three Presidency High Courts of Calcutta, Madras and Bombay were empowered to apply the personal law or custom having the force of law when both parties were subject to the same custom of law. The law or custom of the defendant was to be applied only where the parties were subject to a different personal law or custom.

The Act of 1915 also empowered His Majesty to establish new High Courts in any territory.

(a) High Court at Patna.—In exercise of the powers given by the Act of 1915 His Majesty, by Letters Patent dated 9th February, 1961 established a separate High Court at Patna. Its necessity was realised due to the proclamation of the Governor-General of India to form a separate Province of Bihar and Orissa. Earlier, they were under the territorial jurisdiction of the Calcutta High Court. The Patna High Court was given the same status as that of the Allahabad High Court and therefore was given the same privileges and powers.

Orissa was separated from Bihar as a province in 1936. A separate Orissa High Court was established only after Independence by the Orissa High Court Order, 1948.

(b) High Court at Lahore.—As early as 1865 the Indian Legislature established a Chief Court at Punjab.[18] The status of the Chief Court was raised to the High Court in 1919. George V, by a Charter, under the authority of the Government of India Act, 1915, established a High Court at Punjab on 21st March, 1919. It exercised jurisdiction over Punjab and Delhi territories with powers similar to the Allahabad High Court.

After Independence, India was partitioned in 1947 and Lahore formed a part of Pakistan. Therefore a separate High Court for Punjab was created which had jurisdiction over Delhi and present Himachal Pradesh. It has now been succeeded

18. Act No. XXIII of 1865.

by the High Court of Punjab & Haryana at Chandigarh, the High Court of Delhi at New Delhi and the Himachal Pradesh High Court at Simla.

7. The Government of India Act, 1935

The British Parliament by enacting the Government of India Act, 1935, gave a new constitution to regulate functions of the Legislature, Executive and Judiciary of India. The Act contained many provisions regulating the establishment, constitution, jurisdiction and powers of the High Courts. Some important provisions of the Act relating to High Courts are briefly stated as follows:

(a) Number of Judges.—The Act of 1935 provided that every High Court would be a Court of Record consisting of a Chief Justice and other Judges as appointed by His Majesty from time to time. The provision of the Act of 1911, fixing the maximum number of Judges as twenty, was dropped and the Act of 1935 empowered the King-in-Council to fix number of Judges from time to time for each High Court.[19]

(b) Removal of Judges.—Another important provision of the Act of 1935 was regarding the appointment and removal of High Court Judges. The Act provided that the Judge of a High Court will be appointed by His Majesty under the Royal Sign Manual. The Governor-General-in-Council was empowered to appoint additional Judges. The Judge of the High Court was to hold his office up to sixty years of age and he could be removed earlier by his Majesty only on the ground of misbehaviour or on infirmity of mind or body. The Judge was likely to be removed if the Privy Council, on a reference made to it by His Majesty, recommended the removal. This provision introduced and recognised the principle of independence of the judiciary from the executive. Before 1935, the Judges of the High Courts were to hold office during His Majesty's pleasure.

(c) Qualifications.—As regards the minimum qualifications of a person to be appointed a Judge, the Act provided that barristers and advocates of ten years' standing were qualified for High Court Judgeship. It was also laid down that a member of the Indian Civil Service of ten years' standing was also qualified to be appointed a Judge of any High Court in India. If he remained as High Court Judge for three years he was declared qualified for holding the office of the Chief Justice of a High Court.

(d) Jurisdiction.—The jurisdiction of the existing High Courts, the law administered in it and the powers of the Judges continued the same under the Act of 1935 as they were before it. The prohibition which was imposed on the three Presidency High Courts in 1915 on their original jurisdiction to take cognizance of any matter concerning revenue was allowed to continue.

(e) Salaries.—The Act of 1935 made specific provision for the salaries, allowances and pensions of the Judges of the High Courts, that it would be fixed by His Majesty on their appointment. It was also provided that none of these would be changed to the disadvantage of a Judge after his appointment. This important provision ensured the independence of the judiciary from any executive interference.

19. For a comparative study of the Acts of 1911 and 1915 *see* Rama Jois: *Legal & Constitutional History of India*, 1984, Vol. 2, 207-208.

(f) Administrative control.—The administrative control of the High Courts was placed in the Provincial Government by the Act of 1935.[20] Though it was a very controversial issue as the Statutory Commission recommended for the administrative control of the Central Government. In order to meet the basic plea of the Statutory Commission, the Act of 1935 took adequate care to safeguard the judicial independence of the Judges and to save them from any political pressures. It can, therefore, be concluded that the Government of India Act, 1935 established a strong judiciary and by safeguarding the service matters of the Judges of the High Courts, strengthened the independence of judiciary.

(g) Appeals.—Provision was also made for an appeal to the Federal Court from any judgment, decree or final order of a High Court.[21]

The Government of India Act, 1935 empowered His Majesty to issue Letters Patent constituting a High Court or reconstituting an existing High Court for that Province or part of it.[22] The Nagpur High Court was established under the Act of 1935, a brief account of which is as follows:

(h) High Court at Nagpur.—The Judicial Commissioner's Court for Central Provinces was replaced by the High Court at Nagpur. His Majesty established it by Letters Patent dated 2nd January, 1936 under the Government of India Act, 1935. Its jurisdiction, and powers were similar to those of the Allahabad High Court. After reorganisation of States in India, Nagpur was merged with Maharashtra. The Madhya Pradesh High Court which was at Nagpur was shifted to Jabalpur with a Bench at Gwalior and now at Indore also.

8. High Courts established during 1947 to 1950

During the period from 15th August, 1947 to 26th January, 1950, *i.e.*, after the Independence to the date when the Constitution of India came into force, seven High Courts were established at different places.

(a) High Court for Punjab.—India was partitioned at the time of Independence. Lahore High Court remained in the Pakistan territory. A High Court for Punjab was, therefore, established at Simla by the Governor-General[23] under the Indian Independence Act, 1947. In 1966 upon reorganisation of the State of Punjab, the High Court was designated as the High Court of Punjab and Haryana.

(b) High Court for Assam.—In exercise of the powers conferred by the Government of India Act, 1935 as adopted by the Indian Provisional Constitution (Amendment) Order, 1948, on the motion of the Assam Legislature, the Governor-General established a High Court at Gauhati for Assam.[24] Accordingly the jurisdiction of the Calcutta High Court was restricted to the territorial limits of West Bengal, as Calcutta was known after the partition of India in 1947. In between it became the High Court for Assam and Nagaland. After the N.E. Areas Reorganisation Act, 1971 it is designated as Gauhati High Court (the High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura).

---

20. The Government of India Act carried out the suggestion of the Joint Select Committee.
21. For Appeals from High Courts, *see* Chaps. VIII, X and XI of this Book.
22. *See* N. Rajagopala Aiyangar, *Commentary on the Government of India Act*, 1935, 230-33, 243-51.
23. The Governor-General issued the High Courts (Punjab) Order, dated 11th August, 1947.
24. The Governor-General issued the Assam High Court Order, dated 1st March, 1948.

(c) High Court for Orissa.—Just like the High Court for Assam, the Governor-General established a High Court at Cuttack, for Orissa, by the Orissa High Court Order dated the 3rd April, 1943. Accordingly the jurisdiction of the Patna High Court was reduced to the State of Bihar only. The High Court for Orissa was given the same powers as were given to the Patna High Court and it follows its practice and procedure.

(d) High Court for Rajasthan.—The High Court of Rajasthan was established at Jodhpur by the Raj Pramukh of Rajasthan under the Rajasthan High Court Ordinance, dated 21st June, 1949. It was given all powers and jurisdiction just like that of the Allahabad High Court. A Bench also functions at Jaipur.

(e) High Court for Travancore-Cochin (Kerala).—For Travancore-Cochin a High Court was established at Ernakulam by an Ordinance in 1948 which was repealed by the Travancore-Cochin High Court Act, 1949. Later on, this State was known as Kerala. The Kerala High Courts Act, 1958 laid down the jurisdiction, powers and authority of the Kerala High Court.

(f) High Court for Mysore.—Even before Independence, the Mysore High Court existed in Mysore under the Mysore High Court Act, 1884. It was a princely State at that time. After the Independence of Indian States and reorganisation of States the Mysore High Court Act, 1961 was passed to regulate jurisdiction and powers of the High Court. With the change in the name of the State, it is now the Karnataka High Court.

(g) High Court for Jammu and Kashmir.—Even before 1947 there existed the Jammu and Kashmir High Court. It was established by the Maharaja of the State by Letters Patent dated 28th August, 1943. It was given civil, criminal, original and extraordinary jurisdiction. After the Constitution of Jammu and Kashmir came into force, the Jammu and Kashmir High Court continued to do the judicial work. The High Court meets at Jammu and Kashmir.

9. High Courts after the Constitution of India

The Constitution of India, contains many specific provisions regulating the independent working of the High Courts. Some important provisions are as follows:

(a) Constitution of High Courts.—The Constitution of India recognised all the existing High Courts. It provided a High Court for each Province. Parliament was empowered to establish a common High Court for two or more provinces or Union territories. The President of India appoints the Judges of the High Court after consulting the Chief Justice of India, the Governor of the Province and the Chief Justice of the High Court for which appointment is to be made. The President of India also appoints the Chief Justice of the High Courts. There has been departure from the old tradition of appointing the senior-most puisne Judge as the Chief Justice. The Chief Justice can also be a Judge from another State. In fact the Government of India has a policy of having the Chief Justice from another State. The alleged justification for this are national integration and the combating of "narrow parochial tendencies bred by caste, kinship and other local links and affiliations".[25]

The Judge of a High Court retires at the age of 62 years. He can retire earlier also by submitting a written resignation. The President of India can remove a Judge

25. *S.P. Gupta* v. *Union of India*, 1981 Supp SC 87.

by an order passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President, on the ground of proved misbehaviour or incapacity.[26] Regarding provisions about appointment, salaries, transfer[27], jurisdiction and powers they have been made in Chapter V of the Constitution (Articles 217 to 228). Jurisdiction of High Courts can be extended to Union Territories and a common High Court for two or more states may be established.

Each High Court is a Court of Record and it can punish persons for contempt of court. In the contempt of court proceedings the High Court is empowered to decide the matter summarily according to its own procedure and is not bound by the provisions of the Criminal Procedure Code.[28] The conduct of a High Court Judge in the discharge of his duties cannot be discussed in any Central or Provincial Legislature except on a motion to remove a Judge as stated above.

(b) Jurisdiction.—The jurisdiction of the High Courts, the law administered by them and the power to make rules of the Court are allowed by the Constitution of India to continue the same as were immediately before the commencement of the Constitution. This jurisdiction and power of the High Courts is subject to the provisions of the Constitution of India and provisions of any law of the appropriate legislature.[29] The *status quo* is maintained by the Constitution in order to maintain the historical continuity. The law administered at the commencement of the Constitution includes "case law". It is, therefore, specifically provided that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.[30] A decision of the Privy Council or the Federal Court, therefore, is binding upon the High Courts until the Supreme Court holds to the contrary. The Constitution removes the bar to the original jurisdiction of the High Courts in revenue matters.[31] This restriction was imposed in 1935 by the Government of India Act.

(c) Powers.—Every High Court is given the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Without prejudice to the generality of the foregoing provision the High court may— (*a*) call for returns from such Courts; (*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and (*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.[32] The High Courts may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein. The High Court has, therefore, both powers of administrative as well as judicial superintendence over the subordinate Courts within its jurisdiction.[33]

---

26. *See* case of Ramaswamy Justice of S.C. wherein this provision was defeated by the ruling party itself.
27. *Union of India* v. *Sankalchand H. Sheth*, (1977) 4 SCC 193.
28. *Sukhdeo Singh* v. *Teja Singh*, AIR 1954 SC 186.
29. Art. 225, Constitution of India, 1950.
30. Art. 141; *see also* S. 212 of the Government of India Act, 1935.
31. Art. 225, proviso.
32. Art. 227.
33. *Hari Vishnu Kamath* v. *Ahmad Ishaque*, AIR 1955 SC 233; *Waryam Singh* v. *Amarnath*, 1954 SCR 565; *Nibaran Chandra Bag* v. *Mahendra Nath Ghughu*, AIR 1963 SC 1895.

Article 226 of the Constitution empowers the High Courts to issue to any person or authority within their respective jurisdictions, directions, orders or writs including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* or any of them for the enforcement of any of the fundamental rights conferred by Part III of the Constitution and for any other purpose. The Constitution (Fifteenth Amendment) Act, 1963 has provided an additional basis of jurisdiction, in relation to territories within which the cause of action wholly or in part arises, notwithstanding that the set of such Government or authority or the residence of such person is not within the territory of the High Court. It shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32 of the Constitution.

Article 228 gives the High Court power to withdraw to itself any cases pending in a Court subordinate to it on being satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, and to dispose of the case itself or on determining the question of law to return it to the Court from which the case had been withdrawn, to be disposed of in conformity with the judgment of the High Court.

Article 229 provides for the appointment of officers and servants of the High Courts. The Chief Justice of the High Court is given wide powers in such appointments but in the exercise of such power the executive and legislature had retained sufficient control.

Article 230 provides that the Parliament may by law extend the jurisdiction of a High Court or exclude the jurisdiction of a High Court from any Union territory. Parliament is empowered by Article 231 to establish by law a common High Court for two or more States or for two or more States and a Union territory.

(d) Appeals.—An appeal from any judgment, decree or final order of a High Court in a civil, criminal or other proceeding, lies to the Supreme Court.[34] The High Court may certify that the case involves a substantial question of law as to the interpretation of the Constitution. Where a High Court refuses to give such a certificate, the Supreme Court, if it is satisfied that the case involves a substantial question of law, may grant special leave to appeal. Where such a certificate is given by the High Court or the Supreme Court grants leave, any party may appeal to the Supreme Court against such a decision. In civil cases an appeal will lie to the Supreme Court if the High Court certifies that the case involves a substantial question of law of general importance and that in the opinion of the High Court the said question needs to be decided by the Supreme Court.[35] In criminal matters[36] an appeal to the Supreme Court lies if the High Court—(*a*) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (*b*) has withdrawn for trial before itself any case from any subordinate Court and has convicted the accused person and sentenced him to death; or (*c*) certifies that the case is a fit one for appeal to the Supreme Court.

(e) Changes made by Forty-Second Amendment Act, 1976 and thereafter.—Drastic changes in the jurisdiction and powers of the High Courts were made by

34. Art. 132.
35. Art. 133(1) as amended by the Constitution (Thirtieth Amendment) Act, 1972.
36. Art. 134. For details *see* chapter on "The Supreme Court of India" in this book.

the Constitution Forty-second Amendment Act, 1976 with effect from Feb. 1, 1977. Most of these changes were reversed by the Constitution Forty-third Amendment Act, 1977 and the Constitution Forty-fourth Amendment Act, 1978.

The relevant articles after the Forty-fourth Amendment read:

[37][226. *Power of High Courts to issue certain writs.*—(1) Notwithstanding anything in Article 32,[38][* * *] every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [39][writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them,] for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[40][(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(*a*) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(*b*) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[41][(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.]

[Section 58 of the Constitution (Forty-second Amendment) Act, 1976 providing for "*Special provisions as to pending petitions under Article 226*" (w.e.f. 1-2-1977) was repealed by the Constitution (Forty-fourth Amendment) Act, 1871, S. 45.]

---

37. *Subs.* by the Constitution (Forty-second Amendment) Act, 1976, S. 38 (w.e.f. 1-2-1977).
38. *Omitted* by the Constitution (Forty-third Amendment) Act, 1977, S.7 (*assented* to on 13-4-1978) the words "but subject to the provisions of Art. 131-A and Art. 226".
39. *Subs.* by the Constitution (Forty-fourth Amendment) Act, 1978, S. 30.
40. *Subs.* by the Constitution (Forty-fourth Amendment) Act, 1978, S. 30 for cls. (3) to (6).
41. Cl. (7) *renumbered by ibid.*

[42][226-A. *Constitutional validity of Central laws not to be considered in proceedings under Article 226.*] [43][*Omitted.*]

227. *Power of superintendence over all courts by the High Court.*—[44][[45][(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]]

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(*a*) call for returns from such courts;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

[46][(5) [47][* * *]]

[48]228. *Transfer of certain cases to High Court.*—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, [49][it shall withdraw the case and [50][* * .*] may—]

(*a*) either dispose of the case itself, or

(*b*) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

---

42. *Ins.* by the Constitution (Forty-second Amendment) Act, 1976, S. 39 (w.e.f. 1-2-1977).
43. *Omitted* by the Constitution (Forty-third Amendment) Act, 1977, S.8(1) (w.e.f. 13-4-1978). Section 8(2) provides: "(2) Any proceedings pending before a High Court under Art. 226 of the Constitution immediately before the commencement of this Act may be dealt with by the High Court as if the said Art. 226-A had been omitted with effect on and from the 1st day of February, 1977.
44. *Subs.* by the Constitution (Forty-second Amendment) Act, 1976, S. 40 (w.e.f. 1-2-1977).
45. *Subs.* by the Constitution (Forty-fourth Amendment) Act, 1978, S. 31.
46. *Ins.* by the Constitution (Forty-second Amendment) Act, 1976, S. 40 (w.e.f. 1-2-1977).
47. *Omitted* by the Constitution (Forty-fourth Amendment) Act, 1978, S. 31.
48. Arts. 228 and 229 shall not apply to the State of Jammu and Kashmir.
49. *Subs.* by the Constitution (Forty-second Amendment) Act, 1976, S. 41 (w.e.f. 1-2-1977).
50. *Omitted* by the Constitution (Forty-third Amendment) Act, 1977, S. 9 (w.e.f. 13-4-1978) the words "subject to the provisions of Art. 131-A".

[51][*228-A. Special provisions as to disposal of questions relating to constitutional validity of State laws.*] [52][*Omitted.*]

(f) Creation of New High Courts.—After the Constitution of India came into force the following new High Courts were established and the jurisdiction of certain High Courts was extended to include new territories.

(*i*) This can be presented in a tabular form as under:

Name of State	Name of High Court	High Court Seat at	Date of Establishment & the Act under which established
Andhra Pradesh	H. C. of Andhra Pradesh	Hyderabad	5-7-1954, The Andhra State Act, 1953
Madhya Bharat	Madhya Pradesh H.C.	Jabalpur	— States' Reorganisation Act, 1956 Benches at Gwalior and Indore
Gujarat	Gujarat H.C.	Ahmedabad	Bombay Reorganisation Act, 1960 1-5-1960
Maharashtra	Bombay H.C.	Bombay	1-5-1960, Bombay Reorganisation Act, 1960. Extended for Goa, Daman & Diu 67 Act No. 18 of 1987
Nagaland	Assam H.C.	Gauhati	State of Nagaland Act, 1962, N.E. Reorganisation Act, 1971
Union Territory of Delhi	Delhi H.C.	Delhi	31-10-1962
Himachal Pradesh	Himachal Pradesh H.C.		State of H.P Act, 1970
Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh	H.C. of (Assam & Nagaland) Gauhati	Gauhati	N.E. Areas Reorganisation Act, 1971, Act 34 of 1986, Act 69 of 1986
Sikkim	Sikkim H.C.	Gangtok	1975

(*ii*) *Permanent Bench of High Court of Patna at Ranchi.*—By Act 57 of 1976 the circuit bench of the Patna High Court functioning at Ranchi since March 6, 1972 was made permanent by Act of Parliament. This Bench is to hear cases arising

51. *Ins.* by the Constitution (Forty-second Amendment) Act, 1976, S. 42 (w.e.f. 1-2-1977).
52. *Omitted* by the Constitution (Forty-third Amendment) Act, 1977, S. 10(1) (assented to on 13-4-1978). Section 10(2) provides:
"(2) Any case pending before a High Court immediately before the commencement of this Act may be dealt with by the High Court as if the said Art. 228-A has been omitted with effect on and from the 1st day of February, 1977."

out of the districts of Hazaribagh, Giridih, Dhanbad, Ranchi, Palamau and Singhbhum.

(*iii*) *Revival of Bench of Rajasthan High Court at Jaipur.*—The Bench at Jaipur which was abolished was revived by the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976 in January 1977.

(*iv*) *Extension of Jurisdiction of High Courts.*—The Calcutta High Court (Extension of Jurisdiction) Act, 1953 extended the jurisdiction of the Calcutta High Court to the Andaman and Nicobar Islands. The States Reorganisation Act, 1956 extended the jurisdiction of the Kerala High Court to Lakshadweep Islands. The Dadra and Nagar Haveli Act, 1961 extended the jurisdiction of the Bombay High Court over the Dadra and Nagar Haveli. The jurisdiction of Madras High Court was extended to cover Pondicherry. By the N.E. Areas Reorganisation Act, 1971 the jurisdiction of the Gauhati High Court was extended to the Union Territories of Mizoram and Arunachal Pradesh.

(g) Improvement of Conditions of Service of High Court Judges.—By passing the High Court Judges (Conditions of Service) Act, 1976 (Act 35 of 1976), a long overdue measure was undertaken in improving their conditions of service. The statement of Objects and Reasons succinctly sums up the situation:

> "Since the passing of the High Court Judges (Conditions of Service) Act, 1954, there has been no material modification of the conditions of service of the High Court Judges. There is now a widespread feeling that in the present-day context, the conditions of service are not attractive enough, especially with reference to the Members of the Bar. There has also been a persistent demand for improvement of the salary and other conditions of service of Judges. Having considered all aspects of the matter, it is proposed to allow the Judges of the High Courts certain ancillary benefits with effect from 1st October, 1974.
>
> 2. At present there is no provision for grant of family pension and death-cum-retirement gratuity in the case of Judges who are governed by Part I of the First Schedule to the Act. It is proposed to extend the facility of family pension on the same lines as is applicable to Class I officers of the Central Government. It is also proposed to give them the facility of death-cum-retirement gratuity admissible to Class I officers of the Central Government, subject to the modifications that the minimum qualifying service for the purpose of entitlement shall be two years and six months and that gratuity will be calculated at the rate of twenty days' salary for each completed year of service as a Judge.
>
> 3. It is further proposed to give to the Judges of the High Courts the facility of rent-free accommodation. Where a Judge does not avail of the official residence, he will be paid an allowance at the rate of twelve and a half per cent of his salary. A conveyance allowance at the rate of Rs. 300 per mensem to every Judge is also proposed to be given. In addition, the Chief Justice of a High Court is also proposed to be given a sumptuary allowance of Rs. 300 per mensem.[53]
>
> 4. While the maximum pension of Government servants on retirement has been increased on the recommendation of the Third Pay Commission, there has

53. *See* the recent statute passed by the Government: The High Court Judges Travelling Allowance (Amendment) Rules, 1986.

been no increase in the pension of Judges since the commencement of the Constitution. It is proposed to increase the pension of the Judges by about 40 per cent and fix the minimum as Rs. 28,000 per annum in the case of the Chief Justice and Rs. 22,400 per annum in the case of other Judges. The minimum will be reached on completion of 14 years of service. The maximum pension is also proposed to be increased by 40 per cent from Rs. 6,000 per annum to Rs. 8,400 per annum.[54]

5. It is further considered necessary to give post-retirement medical facilities to the same extent as are admissible to retired Central Government servants of Class I and to enable the retired Judges to avail of such medical facilities as the State Government may decide to extend to them."

(h) Increase in salaries of Supreme Court and High Court Judges.—Realising that the salaries fixed in 1950 in the Second Schedule were no longer realistic, Parliament by the Constitution (Fifty-fourth) Amendment Act, 1986 raised the salary of Chief Justice of India from Rs. 5000 to Rs. 10,000, of puisne Judges of the Supreme Court from Rs. 4000 to Rs. 9000 and of Chief Justices of High Courts from Rs. 4000 to Rs. 9000 and of puisne Judges of High Courts from Rs. 3500 to Rs. 8000. Also by amending Articles 125 and 221 such raise can be made by an ordinary law passed by Parliament and a constitutional amendment would not be necessary.

(i) Decreasing workloads of the High Courts.—In view of the piling up of cases and inordinate delay in the disposal of suits, writs and appeals by them, Part XIV-A containing Article 323-A and 323-B was introduced in the Constitution of India by the Forty-second Amendment Act, 1976. Pursuant thereof the Administrative Tribunals Act, 1985 was passed for establishment of Central Administrative Tribunals in most of the States to adjudicate and try disputes relating to service matters of Government servants. Such tribunals exclude the jurisdiction of High Courts under Articles 226 and 227 and the Supreme Court directed certain amendments to raise its status equal to the High Courts and to provide equally efficacious and alternative remedy.[55] Similar Tribunals for matters relating to Income Tax, Excise, Customs etc. and Educational Institutions are in the offing.

(j) Conclusion.—The roots of the present lie deep in the past. This is also true in the case of the High Courts in India. Tracing back its history, first of all only three High Courts in Calcutta, Madras and Bombay, were established under the Indian High Courts Act, 1861. Since then with the gradual expansion of the British rule in India, the number of High Courts also increased gradually. Under the Government of India Acts of 1915 and 1935, their powers and jurisdiction were also regulated with a view to achieve impartiality and independence of the judiciary. The High Courts earned a goodwill and gained the confidence of the people.

After Independence, the Constitution of India came into force on the 26th January, 1950. Its provisions, relating to High Courts, began a new and very remarkable chapter in the history of the Indian High Court. The High Court presently (1987) in existence are Allahabad, Andhra Pradesh, Bombay, Calcutta, Delhi, Gauhati, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya

54. The High Court & S.C. Judges (Conditions of Service) Amendment Act, 1986.
55. *S.P. Sampath Kumar* v. *Union of India*, (1987) 1 SCC 124.

Pradesh, Madras, Orissa, Patna, Punjab and Haryana (one common High Court), Rajasthan and Sikkim. They are now assigned a very important role under the Constitution. Apart from their civil, criminal, appellate jurisdiction, they are the interpreters and the guardians of the Constitution protecting the fundamental rights. The High Courts are also given other important functions under various Acts. In the changing social, economic and political conditions of India, the High Courts have played a very important role in the administration of justice as well as maintained the impartiality and independence of the judiciary in India. It is expected that the same high standard of the judiciary will be maintained by the Indian High Courts in future also and the Government of India will give them all necessary facilities and constant encouragement for the same.