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(History)

1947

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T H E

JUDICIAL ADMINISTRATION OF THE EAST INDIA COMPANY IN BENGAL

I765-I782

Synopsis

Chap. I. Political background to I765 - the East India Company as a political power in Bengal.

Chap. II. Grant of the Diwani - Clive's policy of double government- no interference with country courts of justice - evils arising from double government - Supervisors and Controlling Councils established(I769-70) as remedy, but no fundamental change from Clive's system.

Chap. III. Indigenous heritage of the Company- nature and forms of judicature found in operation in I765.

Chap. IV. The administration of civil justice(I765-I772)- cases examined- no system - justice depending on individuals with means to enforce decisions

Chap. V. Criminal administration(I765-I772)- state of insecurity- helplessness of Supervisors- basic defects proceeding from the governmental system.

Chap. VI. Justice in Calcutta and subordinate factories(I765-I772)- English law and King's Courts, but Judges untrained and subservient to the Executive- jurisdiction limited to the Settlement - no possibility of interaction of indigenous and British systems of justice.

Chap. VII. Policy and plans of civil justice(I772-80)- assumption of direct responsbility of the Diwani- judicial reforms (I772)- revival and reconstruction of adalats or country courts - provincial councils (I773-74).

Chap. VIII. Supreme Court of English Judicature (I774) - Judges trained and experienced- independent of the Executive - jurisdiction extending to all persons in the Company's service and European subjects.

Chap. IX. State of civil justice(I772-80)- working of the provincial councils- interaction of indigenous and British judicial systems- cases examined- assessment of comparative values of the two conflicting systems.

Chap. X. Reforms in civil justice(I780-82)- first synthesis of Indo. Britisj judicial systems produced by combined efforts of Hastings and Impey.

Chap. XI. Administration of criminal justice and police(I772-I775)- continuance of the Nizamat as branch of the Nawab's government- transfer of the Sadar Nizamat to Calcutta- Hastings' superintendence(I772-I775)- English attempt to rationalise Mahomedan criminal law- little success.

Chap. XII. Criminal administration (I775-8I)- Nizamat transferred to Murshidabad under Mahomed Reza Khan as Naib Subah- his plan of criminal administration- working of his plan (I776-8I)- causes of failure.

Chap. XIII. Reforms in criminal admn.(I78I-82)- bifurcation of police and judicial functions of the Nizamat- centralization- reduction and redistribution of criminal courts- Hastings' achievement and limitation.

Chap. XIV. Criminal admn. in Calcutta(I772-82)- police- criminal justice

Chap. XV. Some conclusions.

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THE

JUDICIAL ADMINISTRATION OF THE EAST INDIA COMPANY IN BENGAL

1765-1782

Thesis presented to the University of London

for Ph. D. in History

BY

BANKEY BIHARI MISRA

1947

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NOTE

This work has been completed in the face of certain handicaps over which the author had no control. The Proceedings and Consultations of the India Office, for instance, were removed elsewhere during the War, and are still away and inaccessible to the use of researchers.

Fortunately, however, the Home Miscellaneous Series of the Records Department have supplied the want to a great extent. They contain relevant extracts of revenue and judicial consultations which have furnished useful information especially on such unexplored grounds as Mahomed Reza Khan's plan for criminal administration (1776-1781), the criminal reforms of 1782 and the police organisation set up in Calcutta during the years 1778-1780. Besides, these extracts have been most helpful in forming judgment on the working of the provincial councils (1774-1780) and the controversies of the Supreme Court and the Council at Fort William. Similarly, the Company's Bengal Letters and Despatches have proved equally useful in the construction of this thesis.

As for the British Museum manuscripts, they became accessible only in December last. The time left at the disposal of the writer was thus too short to complete a thorough study of them. Nonetheless, Impey papers

and Hastings' Additional MSS have been studied with care, particularly having regard to those which relate closely to the subject matter of this work.

The old spellings of oriental names have been retained wherever they occur in quotations.

B. B. Misra.

London,

1 May, 1947.

CHAPTER I

THE POLITICAL BACKGROUND TO 1765

For the sake of a clear understanding of the judicial administration of the East India Company in Bengal it is desirable and necessary to prefede it with a brief account of political developments in the province down to 1765, giving rise to its territorial interests, which necessitated the establishment of a judicial system in the country.

From the time of its conquest by Akbar, the Mughal Emperor, in 1576 to the death of Aurangzeb in 1707 Bengal formed an integral part of the Mughal Empire. Bihar and Orissa were both included in it,[1] except during 1603-1606, when the former constituted the charge of a separate governor. It was once again united to Bengal under Azimushan (1697-1712) the grandson of Aurangzeb, during whose governorship the seat of the capital was transferred to Patna, which was named after him as Azimabad.

The death of Aurangzeb was followed by a period of decay and degeneration. The Central authority of the Mughals could no longer exercise full control over the ambitious governors of distant provinces. The Imperial

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1 See the map of Bengal, Bihar and Orissa at the end of this thesis. Benares, which formed the western boundary of Bihar, is not included within the scope of our study.

Court became the scene of intrigue and conspiracies, which made the very life of the Emperor insecure. The foreign invasion of Nadir Shah in 1738 made confusion worse confounded. It proved the utter incapacity of the Empire to protect the life and property of the people. This state of anarchy paved the way for the establishment of independent governorships in the country.

As a matter of fact, the independence of Bengal may be said to have begun with the appointment of Murshid Quli Khan as Diwan of Bengal, Bihar and Orissa in 1701. Just a year after this appointment he transferred his headquarters to Murshidabad. In 1704, he became the Naib Nazim (Deputy Governor) of Bengal and Orissa. In this new capacity he virtually exercised the powers of the Nazim himself, although Azimushan, who formally held this office, continued nominally till 1712, when he was killed in a battle for the imperial throne. On the accession of Farrukhsiyar, the son of Azimushan, to the throne of Delhi, Murshid Quli Khan became the Nazim of the three provinces. Vested now with the civil and military powers of government, he stood out as an independent governor of Bengal, owing only a nominal allegiance to the Mughal Emperor.

Murshid Quli Khan died in 1725. He was succeeded by his son-in-law Shuja Khan, who ruled till his death in 1739.

His son Sarfaraz then became Nawab. But he was shortly overthrown in 1741 by Aliwardi Khan[1], who continued to rule till 1756.

The early Nawabs of Bengal duly maintained the general state of the country and administration. The peace and prosperity of the province flourished both under Murshid Quli Khan and his successor Shuja Khan. Holwell bears testimony to the growing condition of commerce and manufacture, particularly during the administration of the latter.[2] Under the rule of Aliwardi Khan, however, the peace of the country became an exception rather than a general rule. The province was invaded by the Marathas, who continually plundered it for a period of five years from 1742. The marauding activities of the invaders contributed to the dislocation of the entire economic life of the peasant, and seriously affected the finances of the Nawab's government. They did not rest satisfied till they wrested Cuttack together with an agreement for the payment of a sum of twelve thousand rupees.

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1 Aliwardi Khan and his brother Hazi Ahmed had originally come from their country Si Ristry. They took service under Nawab Shuja Khan, who recognised their merits by raising them to higher posts in his government. Hazi finally rose to the position of his Chief Minister, while Aliwardi Khan to that of the Commander of his horse. (See Holwell: Historical Events, Part I, pp.61-62). The author of Seir Mutakherin observes that Aliwardi was to his people as a father to his family. (See Seir Mutakherin, Vol.III, P.120.)

2 Historical Events, Part I, P.56.

Alivardi Khan died in April 1756, when he was succeeded by his grandson Sirajuddaula, whose relations with the English marked a turning point in the history of Bengal.

THE EAST INDIA COMPANY

The achievement of territorial sovereignty by the East India Company was "no sudden triumph, but an indomitable endurance during a century and a half of frustration and defeat"[1]. On 31 December, 1600, the East India Company was established by a Charter of Queen Elizabeth under the name of "the Governor and the Company of Merchants of London trading into the East Indies."[2] In the beginning, it was purely a commercial corporation, enjoying exclusive rights of trade with powers to punish the violation of its monopoly[3].

In the early part of its Indian career the Company had to encounter enormous difficulties caused in its way by the persistent opposition of the Portuguese, who had established their influence in the country from over a century before. Sir Thomas Roe's mission at the Court of the Mughal Emperor Jehangir went a long way to counteract the forces of opposition and make the path easier for the pursuit of its commercial interests[4].

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1 Hunter: A History of British India. Vol.I, P.2.
2 See Collection of Charters and Statutes relating to the East India Company, P.1.
3 See Ibid, P.11.
4 Bruce: Annals of the Hon'ble East India Company, Vol.I, P.204.

RISE OF BRITISH POWER IN BENGAL

The Company introduced itself in Bengal, as elsewhere in India, through the construction and settlement of its factories, each of which formed an autonomous unit of administration, enjoying the exercise of its own law and mode of worship within its bounds. In the year 1633, the Company established two factories, one at Hariharpur and the other at Balasore in Orissa. Its trade extended to Bengal by the year 1651, when a factory was set up at Hugli. Another factory was opened at Kasimbazar in 1658. By 1676, two subordinate factories were built up, one at Patna and the other at Dacca. Bengal was, however, still subordinate to the Presidency of Fort St. George in Madras. A distinct agency of the Bay of Bengal was constituted for the first time in 1681, with William Hedges as its first governor.

In 1686, one Subha Singh, a powerful Zamindar near Burdwan, revolted and called to his aid the Afghans of Orissa, who ravaged the whole tract of land from Rajmahal to Midnapur. In such a state of uncertainty, Ibrahim Khan, the Governor of Bengal, extended a general permission to foreigners to provide for their own means of defence. Accordingly, the British laid the foundation of Fort William, which subsequently grew into a stronghold of their power in Bengal. But much more important than this was their

acquisition in 1698 of the three villages of Sutanuti, Govindpur and Calcutta, which gave them for the first time a legal position in the Mughal Empire. They were purchased on the terms of the Mughal revenue law, by which the Company obtained the rights of collecting land revenue from the ryots, of dealing with the waste lands, and imposing petty taxes, duties and fines. In 1717, the Company secured the grant of thirty-eight more villages from the Mughal Emperor Farrukhsiyar. They were adjoining to the three already acquired in 1698. They could not, however, be taken possession of on account of the opposition of the then Nawab Murshid Quli Khan. The grant thus lay in abeyance till 1756, when the action of Sirajuddaula precipitated a conflict, which ultimately decided the issue in favour of the Company.

ANGLO-NAWAB CONFLICT (1756-1765)

The period 1756-1765 forms a turning point in the history of Bengal. It is characterised by a gradual transfer of loyalty from the native government to the Company. In fact, the process of this transfer first started in the wake of British victory at Plassey in 1757, and attained a great degree of completion by their success at Buxar in 1764. The Mughal grant of the Diwani only gave a legal form to what had already been achieved by the success of their arms at these two battles. Like most periods of

transition, this period is also characterised by a state of chaos and conflict, unrest and unhappiness.

On his accession to the Masnad[1] in April, 1756, Sirajuddaula adopted a line of action different from that of his predecessor. True, grounds[2] of suspicion and misunderstanding were not wanting even in the regime of Alivardi Khan. But a judicious exercise of prudence on

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1 Throne.

2 One of the main reasons for the growth of suspicion was the protection extended by the British to the native servers of the province against the wishes and interests of the Nawab's government (See Long: Selections from the Unpublished Records of Government, pp.3, 32, 64-65). Sir Charles Fawcett refers to a similar policy of protection adopted by Aungier, the Governor of Bombay, in 1669. "Among the measures adopted by Aungier to encourage foreign merchants to settle in Bombay," he writes, "was one giving them protection for five years from liability to be arrested or sued in Bombay for previous debts contracted elsewhere. It had been found that without this protection they were much molested by arrests and suits brought in the Court of Judicature. In November, 1677, this privilege was extended so as to exempt all inhabitants of Bombay from liability to be sued by foreigners on bonds or other obligations." - First Century of British Justice in India, p.66.

Covell observes that within the bounds of the Company's factories natives also built houses; and when "the Nawab on that account was about to send a Kajee or Judge to administer justice to the natives, the Company's servants bribed him to abstain from this proceeding. (See History and Constitution of Courts and Legislative Authorities in India, p.16.) It seems that besides economic and commercial interests the Company's policy of protection involved jurisdictional issues. Opposition to such a policy was expressed by the Nawab's men in Dacca in the months of April and May of 1755, when the government issued "public orders that no person there should serve the factory." - Long: Op.Cit.No.152. Some of those who offered to serve the English were actually seized. The Company's protection of those, whom the Nawab desired to be submitted either to his discipline

both sides prevented the situation from heading towards a crisis. Soon after his succession the young Nawab, who lacked both in the experience and wisdom of his predecessor, declared an open hostility to the English in Bengal. He first proceeded to Purnea against his cousin Shauket Jang, whose designs he suspected as pro-British. He reached Rajmahal on 20 May, 1756, when he got the news from Drake, the English Governor of Calcutta, informing him of the additions made by the English to the defence of Fort William. He turned back to Murshidabad, and on 4 June ordered the Company's factory at Kasimbazar to be seized. On 16 June, he reached the environs of Calcutta, which was captured on 20 June. It is said that on the night of 20 June, 146 English prisoners were locked up in a small room, subsequently known as Black Hole, out of whom 123 died of suffocation. Holwell was one of the remaining twenty-three prisoners whocame out alive. He has left a detailed narrative[1] of the incident and his experience. In a long letter of forty-eight paragraphs, addressed to the Court of Directors from Fulta[2] on 30 September, 1756, he explains

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or dues, was another important cause of suspicion between the two parties. (Vide Long: Op.Cit.No.68 and 158.)

1 Holwell: India Tracts, PP.387-416.

2 The place where the English residents of Calcutta had taken refuge on its capture by the Nawab.

these abrupt proceedings of the Nawab. He writes that a few days before his death Aliwardi Khan advised Sirajuddaula to adopt every measure "to reduce them (the English) first", because "the power of the English is great."[1] According to Prof.Bodwell, "the main reason for the Nawab's attack was the idea that the English had taken advantage of Aliwardi's illness to strengthen their military position, and that he had better check them before they became dangerous."[2]

The news of the fall of Calcutta reached Madras on 16 August. The Madras Council, after a prolonged[3] discussion, agreed to send a large expedition under Clive, who was vested with both military and political powers. The expedition reached Hugli a few days before Christmas, and recovered Calcutta on 2 January, 1757. The Nawab made a second attack upon Calcutta, but was soon repulsed. A treaty was subsequently concluded on 9 February, 1757, which confirmed the Company's possession over all the villages, which had been granted to the English by a farman of Farrukhsiyer in 1717. The Company was not to be molested in the exercise of all such privileges of trade and commerce as had been extended to it by Imperial farmans. All goods

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1 Bolwell: India Tracts, P.287.
2 Cambridge History of India, Vol.V, P.142.
3 Because the Anglo-French struggle in India was imminent, and because it was apprehended lest the removal of a large force to Bengal should prejudice the Company's position in Madras.

of the English Company, bearing necessary marks of identification, were allowed to pass "freely by land or water, in Bengal, Bihar and Orissa, without paying any duties or fees of any kind whatsoever." The Nawab further agreed to make adequate restitution to the Company's factories and settlements at Calcutta, Kasimbazar and Dacca, and promised to restore "all money and effects taken from the English Company, their factories, and dependents", with an "equivalent in money to be given for such goods as are damaged, plundered or lost."[1] The Company was also allowed to fortify Calcutta for the purposes of their defence "without any hindrance or obstruction."[2]

Thus, the treaty of February, 1757, demanded the concession of only such privileges as had already been granted by the Mughal farman of 1717. As a matter of fact, fresh demands were not feasible in the face of an Anglo-French hostility in Europe, the news of which had already reached Clive, who was conscious of the serious consequence that might follow a combination of the French with the Nawab. "If they (the French) had joined Sirajuddaula before the conclusions of the peace," said Clive, "we must have been undone."[3] The French settlement at Chandernagar

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1 Aitchison: Treaties, Engagements and Sanads, Vol.II, P.197.
2 Ibid, P.197.
3 The Genuine Minutes of the Select Committee of the House of Commons (1772) PP.11-12.

was, therefore, attacked and captured[1] on 23 March, 1757. But this conquest could not serve as a lasting source of relief to the English whose position was not still free from uncertainty. The security of British interest in Bengal demanded the rule of a friendly and pliant Nawab, which could not be achieved without removing Sirajuddaula from his Masnad. Beset as the task was with enormous risks, it could not have been so easily undertaken but for the assistance of a number of leading persons like Raj Durlabh[2], Omichand[3], Jagatseth[4] and others who wanted to replace the Nawab by a person of their own choice. Mir Jafer[5] was also included in the opposition. He offered himself in support of the English on condition of his being accepted as Nawab. They accordingly recognized his claims, and concluded a secret treaty[6] with him. He agreed to comply with the terms of the treaty already engaged by Sirajuddaula in February, 1757. Secondly, he promised to regard the enemies of the English as his own enemies, "whether they be Indians or Europeans." Thirdly, the French

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1 See Malleson: Lord Clive, p.84.
2 He had held the office of Diwan, but was subsequently replaced by one Madan Lal, a favourite of Sirajuddaula.
3 A Sikh Banker of enormous fortune.
4 He represented an old noble family of Bengal, who had made possible the succession of Alivardi Khan in 1741.
5 He held a military command in the Nawab's forces.
6 See Aitchison, Op.Cit., Vol.II, pp.201-202.

were to be excluded from Bengal, Bihar and Orissa, with a declaration of all their effects and factories being in the possession of the English. Fourthly, in consideration of the losses lately sustained by the Company in the course of the seizure and plunder of Calcutta, Mir Jaffar agreed to pay one crore of rupees in addition to the "charges occasioned by the maintenance of the forces." Fifthly, he stipulated to pay an additional sum of fifty lacs of rupees "for the effects plundered from the English inhabitants of Calcutta." Restitutions for the loss, sustained by the Hindus, Mahomedans and Armenians, were to be made under Articles Six and Seven. Articles Eight and Nine provided for the grant of territories. "With the ditch, which surrounds the borders of Calcutta, are tracts of lands belonging to several zemindars; besides this I will give the English Company six hundred yards without the ditch. All the lands lying to the south of Calcutta, as far as Gulpee (Kalpi) shall be under the Zemindari of the English Company." Mir Jafar also agreed that he would not erect any fortification below the Hugli near the river Ganges. The financial engagements were to be fulfilled soon after his establishment in the government of the three provinces.

In pursuance of these engagements Clive marched at the head of 2,200 Sepoys and 800 European troops, and reached Plassey in the night of 22 June, 1757. The

fateful battle began in the morning of the next day, and continued till the afternoon, when the news of betrayal cast a gloom over the Nawab's camp, and forced him to hasten back from the battle field: Plassey was thus won for the English. On 28 June, Mir Jafar was seated by Clive on the Masnad at Murshidabad. Sirajuddaula, who had fled away for life, was brought back, and put to death at the instance of Miran, the son of Mir Jafar, on 2 July, 1757.

Plassey thus completed the first revolution. Although not so glorious in its military achievement, it was extremely rich in its political effects. The Nawab now became a nominee of the Company. It opened out a wide field for the pursuit of the Company's commercial interests. The victor saw in it for the first time the seed of a future Empire.

The position of the Company, however, still continued to be uncertain. With Clive's presence in Bengal, everything looked bright. Mir Jafar, although weak and vacillating, was personally indebted to him, and was thus subject to his correction. At Clive's intercession he spared the lives of Rai Durlabh and Ramnarain, the Naib of Bihar, whose loyalty he had reasons to suspect. In 1759, when the Dutch fleet from Batavia attempted a landing in Bengal, Clive beat down their hopes of establishing their influence in the province. And this he did with the consent

of the Nawab, although the latter's earlier negotiations with the chief of the Dutch factory at Chinsura contained grounds to suspect the bona fides of his intentions. Prince Ali Gauhar[1] proceeded at the head of a large force against Mir Jafar to invade Bengal in the same year. But Clive came to his help, and secured the defeat of the Prince. In recognition of his services the Nawab granted him the Jagir of the 24 Parganas. In short, the affairs of the Company continued to be directed along right channels under the influence of his personality.

But conditions changed on his departure for Europe in February, 1760. The management of affairs fell into weak hands. Holwell succeeded him temporarily till the arrival of Henry Vansittart. Caillaud, who had been invited from Madras, was given the command of military forces. But they all lacked in the calibre and capacity of Clive. The English agents and their gomastas[2] took undue advantage of the new situation, and began openly to abuse the power and influence which they had lately acquired over the Nawab. On the other hand, the Nawab had his own difficulties to surmount. His treasury was weakened beyond repair by the payment of large sums of money to those who had supported his cause against Sirajuddaula. His army was in revolt for want of payment. The Company's authorities were

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1 He subsequently became known as Emperor Shah Alam II.
2 Agents or representatives.

grumbling at his failure to fulfil his financial engagements. A second revolution soon appeared in sight. On Vansittart's arrival Holwell proposed Mir Jafar's deposition, which the former soon accepted. Caillaum, who had previously been opposed to such a proposal, now changed his mind, and joined the group which favoured the second revolution.

On 27 September, 1760, a treaty was concluded with Mir Kasim, the son-in-law of Mir Jafar. It provided that Nawab Mir Jafar should continue in his dignities, but that Mir Kasim should be "invested with the administration of all the affairs of the provinces." He was to be supported by the English Army in the management of all affairs dependent on him. He promised in return to assign to the English Company the districts of Burdwan, Midnapur and Chittagong in order to meet all the charges of the said army and provisions for the field. But Mir Jafar was reluctant to accept these conditions. He ultimately yielded, however, to a threat of his palace being occupied in the event of a non-acceptance, and agreed to live at Calcutta on a monthly pension of fifteen thousand rupees.

Thus, the second revolution was also accomplished. But the basic trouble remained still unsolved. It related to the conduct of inland trade in salt, betel nut and tobacco. The English demanded complete exemption from the payment of any duty on their goods, excepting 2½ per cent, on salt.

They also claimed a right to determine trade disputes, arising between the English and Indian merchants. The concession of these demands evidently conflicted with the rights of sovereignty, which Mir Kasim was not prepared to sacrifice. Governor Vansittart tried to avert the crisis by means of a treaty with the Nawab, whereby the English were to pay a duty of 9 per cent as opposed to the Indian Merchants, whose rates were fixed at 40 per cent. The Council at Fort William, however, rejected[1] this basis of compromise. This conflictof interest ultimately resulted in war, which was declared on 7 July, 1763. In the course

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1 Speaking before the House of Commons on 30 March, 1772 on the subject of trade disputes, Clive said: "The first appearance of this claim was in Governor Vansittart's time. The Nabob Cassim Aly Cawn (Mir Kasim) strongly objected to it: representing to the Governor and Council, the fatal consequence of the black merchants and to the revenue of his country. Mr. Vansittart was sensible of the justice of the Nabob's complaints, and soon after entered into articles of agreement that the English should carry on an inland trade in salt, paying a duty of nine per cent, which, in fact, was no remedy to the evil, because the natives paid infinitely more. The Council disallowed this Act of Mr.Vansittart, and insisted upon their all inland trade, duty free. The Nabob, enraged, threw open the trade throughout his country, and abolished all duties, in order that his own subjects might trade upon an equal footing with the English. This on the other hand disobliged the Council, who insisted that the Nabob should not suffer his own subjects to trade duty-free, but that the English alone should enjoy that privilege." - Vide The Parliamentary History of England, Vol.XVII, PP.334-335. In his letter of 8th October, 1763, Vansittart described the English connections with the native government as a clog upon it, and a ruin to the revenues of the Nawab. - See Bengal Letters Received 8th October, 1763, Vol.6, PP.86-91

of the war the Company sustained heavy losses in men and materials, but ultimately gained a victory at the battle of Buxar, which was fought on 23 October, 1764. The defeat of the combined forces of Mir Kasim, Shujauddaula, the Nawab of Oudh, and Emperor Shah Alam, who all fought together at Buxar, "finally rivetted the shackles of the Company's rule in Bengal", and "placed Oudh also at the mercy of the Company"[1]

Earlier in July, 1763, a treaty had been concluded with Mir Jafar, the terms of which were to be implemented on the final defeat of Mir Kasim. According to this treaty the English agreed to make Mir Jafar Nawab for a second time. In return, he confirmed all his previous engagements[2], including the cession of Burdwan, Midnapur and Chittagong, which had been made over to the Company by Mir Kasim in 1760. The English were allowed to carry on their trade on their own dastaks without paying any duties in all parts of the country, excepting the article of salt, on which a duty of 2½ per cent. was to be levied. Mir Jafar agreed to maintain only twelve thousand horse and twelve thousand foot. If more troops were required, he was to secure the permission of the Governor and Council for the purpose. A British Resident was to be stationed at Murshidabad to transact the political business of the Nawab with the Company. He further promised to recall the order, which Mir Kasim had

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1 Ramsay Muir: The Making of British India, P.39.
2 See Aitchison: Op.Cit. Vol.II, pp.233-235.

issued, granting permission to all merchants to trade duty-free for a period of two years. Freedom of currency to the Company and restitution for the losses sustained during the course of the war with Mir Kasim were also agreed upon. This treaty was ratified and confirmed in September, 1764, with the addition of a few financial stipulations.

Mir Jafar died on the 5 February, 1765. Najmuddaula had been declared in his life time as his son and successor. But "no sooner was the death of the father become known in Calcutta than the accession of the son became a subject of treaty,"[1] which was executed in February, 1765[2]. On the part of the Company, the Governor and Council agreed as follows:-

"We, the Governor and Council, do engage to secure to the Nabob Nudjum-ul-Dowla, the Soubahdarry of the Provinces of Bengal, Behar and Orissa; and to support him therein with the Company's forces against all his enemies. We will also at all times keep up such force as may be necessary effectually to assist and support him in the defence of the provinces, and as our troops will be more to be depended on than any the Nabob can need have, and less expensive to him, we need therefore entertain none[3] but such as are requisite for the support of the civil officers of his government and the business of the collections through

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1 Verelst: View of the English Government in Bengal, P.80.
2 See Aitchison: Op.Cit., Vol.II, P.240.
3 In a letter of the 14th March, 1765, addressed to the Court

the different districts."

"We do further promise that in consideration the Nabob shall continue to assist in defraying the extraordinary expenses of the war now carrying on against Shuja-ul-Dowla, with five lacs of rupees per month, which was agreed to by his father; whatever sums may be hereafter received of the kind, on account of our assistance afforded him in the war, shall be repaid to the Nabob."[1]

The Articles of Agreement engaged by the Nawab are fourteen in number, many of which relate either to the confirmation or reiteration of the several rights and privileges, which had already been granted to the Company under the earlier engagements of his predecessors. They included the political exclusion of the French and the Dutch, the freedom of currency and rights of free trade, and a British Resident to be stationed at Murshidabad. New changes were effected by the following articles of the treaty:

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of Directors by Spencer, President of the Bengal Council, the object of depriving the Nawab of his military power is set forth as follows:

"10. To prevent Revolutions, or changes in future, we thought it safest for your Affairs to let the defence of your Provinces lay on us, and us only, or in Fact that there should be no military force but ours. This will put it out the power of any one ever in future to disturb your affairs by commotions or otherwise and also give you a sufficient Fund for such Military Force." Vide Bengal Letters Received, 14th March, 1765, Vol.6, P.420.

1 Aitchison: Op.Cit. Vol.II. P.287.

ARTICLE II

"Considering the weighty charge of government, and how essential it is for myself, for the welfare of the country, and for the Company's business, that I should have a person who has had experience therein to advise and assist me, I do agree to have confixed with me, with the advice of the Governor and Council, in the station of Naib Soubah, who shall accordingly have immediately under me the Chief Management of all affairs: And as Mahomed Reza Khan, the Naib of Dacca, has in every respect my approbation and that of the Governor and Council, I do further agree that this trust shall be conferred on him, and I will not displace him without the acquiescence of those Gentlemen; and in case any alteration in this appointment should hereafter appear advisable, that Mahomed Reza Khan, provided he has acquitted himself with fidelity in his administration, shall in such case be reinstated in the Naibship of Dacca with the same authority as heretofore."[1]

ARTICLE III

"The business of the Collection of the revenues shall, under the Naib Soubah, be divided into two or more branches as may appear proper; and I have the fullest dependence and confidence on the attachment of the English and their regard to my interest and dignity, and am desirous of giving them every testimony thereof. I do further consent

1 Ibid: Op. Cit. Vol.II, P.238.

that the appointment and dismission of the Nuttaseddees of those branches and the allotment of their several districts, shall be with the approbation of the Governor and Council; and, considering how much men of my rank and station are obliged to trust to the eyes and recommendations of the servants about them, and how liable to be deceived, it is my further will that the Governor and Council shall be at liberty to object and point out to me when improper people are entrusted, or where my officers and subjects are oppressed, and I will pay a proper regard to such representations, that my affairs may be conducted with honour, my people everywhere be happy and their grievances be redressed."[1]

ARTICLE IV

"I do confirm to the Company as a fixed resource, for defraying the ordinary expenses of their troops, the chuckles of Burdwan, Midnapore and Chittagong, in as full a manner as heretofore ceded by my father. The sum of five lacs of Sicca Rupees per month for their maintenance was further agreed to be paid by my father; I agree to pay the same out of my treasury, while the exigency of keeping up so large an army continues. When the Company's occasions will admit of a diminution they are put to on account of these troops, the Governor and Council will then relieve me from such a proportion of this assignment, as the increased

1 Aitchison: Op.Cit.Vol.II, P.238.

expenses incurred by keeping up the whole force necessary for the defence of the Provinces will admit of: And as I esteem the Company's troops entirely equal thereto and as my own, I will only maintain such as are immediately necessary for the dignity of my person and government, and the business of my collections throughout the Provinces."[1]

POSITION IN 1765

The position of the Company's power in Bengal underwent a great change in about eight years from 1757. From a letter of 8 January, 1757, addressed by Clive to the President and Select Committee at Fort St. George in Madras, it appears that Clive was extremely doubtful about the possibility of any success in war against Sirajuddaula. "We cannot form a judgment," he observed, "what success we may promise ourselves against them. Deficient as we are in our compliment of men, artillery and stores the event must needs be doubtful."[2] In the conclusion of his treaty with the Nawab on 9 February, 1757, he was fully conscious of this weakness. He, therefore, characterised this treaty as "highly honourable and advantageous to the Company" in the light of its "insignificant strength."[3] He declared "that by insisting upon terms still more advantageous we expose the Company to the risque (risk) of losing those already granted them having neither time[4] nor the means of

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1 Ibid: Op.Cit.Vol.II, P.39.
2 Home Miscellaneous Series, Vol.308, P.116.
3 Ibid: Vol.309, P.154.
4 The lack of time was perhaps due to the urgency of an

making theNabob comply should he retract."[1]

But Plassey opened out a new chapter in the Company's history of Bengal. It furnished new hopes and confidence to the English, who felt so diffident before. "I am fully persuaded," wrote Clive, "that after the battle of Plaeis I could have appropriated the whole country to the Company and preserved it afterwards with as much ease as Meer Jaffier, the present Soubah now does, through the terror of the English arms and their influence."[2] This confidence was revealed in a much greater degree by a long letter[3] of 7 January, 1759, which Clive addressed to William Pitt, the then Prime Minister. In the course of this letter he clearly suggested that the establishment of a territorial sovereignty in India was only a question of time. He, therefore, emphasised the great need of subjecting the Company's new acquisitions to the control of Parliament, which alone, as he thought, could maintain with success so wise a dominion as Bengal, Bihar and Orissa.

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immediate attack on Chandernagar before a combination of the French with the Nawab should render the position difficult for the English.

1 Home Miscellaneous Series, Vol.309, P.154. See also Ibid, Vol.309, P.36.

2 From Clive to Laurence Sullivan, 30 December, 1758, Forrest: The Life of Lord Clive, Vol. II, P.120.

3 It is printed in (i) Forrest: The Life of Lord Clive, Vol. II, PP.412-414 (Appendix); (ii) Malcolm: The Life of Robert, Lord Clive, Vol. II, PP.119-125; and (iii) Craig: The Life of Robert First Lord Clive, PP.142-146. Walsh, Clive's Secretary, carried it personally to Pitt, who did not regard the proposal as a practical proposition. He looked upon it as "chimerical". "The difficulty of effecting the affair," he said to Walsh, "was not great under such a genius as Colonel Clive, but the sustaining it

It is significant to observe that the Company's new strength and confidence were due, not to any increase of its military forces either from Madras or England, but to the knowledge of the utter inespacity and corrupt state of the native government, and the mercenary character of the soldiery. In the absence of any serious trial of strength before Plassey the English had no occasion to be acquainted with the material resources and internal condition of the Nawab's forces. In the course of the revolution, which resulted in the overthrow of Sirajuddaula, the English acquired a knowledge of the state of internal dissension in the Nawab's rank. "The opportunities afforded me by the late Revolution," wrote Clive, "have given me a just knowledge of the subject I am writing upon; experience, not conjecture, or the report of others, has made me well-acquainted with the genius of the people and nature of the country, and I can assert with some degree of confidence, that this rich and flourishing kingdom may be totally subdued by so small a force as two thousand Europeans.... The Moors, as well as Gentoos, are indolent, luxurious, ignorant, and cowardly beyond all conception; ... the soldiers, if they deserve the name, have not the least attachment to their Prince, he only can expect service from

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was the point," particularly as Clive was soon to leave for Europe. See Malcolm: The Life of Robert Lord Clive, Vol. II, PP.126-127.

them who pays them best, but it is a matter of great indifference to them whom they serve."[1]

In the foregoing pages we have seen how successive revolutions in the internal government of Bengal contributed to the rapid growth of the political influence of the Company till the Battle of Buxer established its de facto sovereignty in the three provinces. Finally, the treaty of the English with Najimuddaula placed in their control, besides defence, the internal administration of the three provinces, which they could govern through their own nominee, Mahomed Reza Khan. In short, by the year 1765, the Company came to be the virtual master of Bengal, Bihar and Orissa, exercising all the powers of sovereignty, but without accepting any responsibility whatsoever.

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1 Clive to Lawrence Sullivan, 30 December, 1758, Forest: The Life of Lord Clive, Vol. II, P.120.

CHAPTER II

DOUBLE GOVERNMENT AND JUDICIAL POLICY 1765-1772

PERIOD 1765-1769

Clive was appointed governor of Bengal for a second time in 1764. The Directors were guided in this appointment by two Main Circumstances: (1) Constant reports of corruption and insubordination of their own servants in Bengal, and (2) the news of war with Mir Kasim. They regarded both the circumstances as equally dangerous to the security of their interest, and adjudged Clive as the most competent person to safeguard that interest and restore normal conditions. Therefore, they sent him at the head of a Select Committee with full powers to deal with the affairs of the province.[1]

The Diwani - He reached Calcutta on 3 May, 1765, and in August of the same year obtained a grant of the Diwani[2] of Bengal, Bihar and Orissa from Shah Alam, the Mughal Emperor of Delhi, who conferred it upon the East India Company in

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1 Verelst, Sumner, Sykes and Carnac were four other members of the Select Committee. Clive's personal desire was to be vested with the sole powers of a dictator. See: Clive to the Court of Directors, 27 April, 1764 (Gleig: The Life of Robert Lord Clive, PP.194-202.

2 Its idea was not new. Ali Gauher, who subsequently became Emperor Shah Alam, had first proposed it in 1758. But Clive then rejected it, because it was likely to excite the jealousy of Nawab Mir Jafar, which, of course, he wanted to avoid. Besides, he was doubtful whether the Company would support him with sufficient force which would be required to maintain the Diwani. In a letter of 7 Jan., 1759, he sounded the opinion of William Pitt,

the form of a free gift and sitamgha.[1] In return, the English Company promised to stand as security for the payment of an annual sum of twenty-six lacs of rupees to the Emperor from the revenues of the three provinces. The special feature of this grant was that it allowed the Company to appropriate to its own fund all that remained out of the revenues after remitting the sum of twenty-six lacs to the Emperor and providing for the expenses of the Nizamat.[2]. Shah Alam also confirmed to the Company the districts of Burdwan, Midnapur and Chittagong, which had been granted by Mir Kasim in 1760.[3].

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the then Prime Minister, who characterised it as chimerical (See Malcolm: The Life of Robert Lord Clive, Pp.126-127). Ali Gauhar repeated his offer in 1761, but it was rejected again on similar grounds. He initiated the proposal for a third time in November, 1764, when Spencer temporarily succeeded Vansittart as Governor of Fort William. This time the English could not afford to delay the acceptance of his overtures, because the French were ready to accept his terms and use him in their own interests. See I.O.Bengal Letters Received, Vol.6, Para.12, P.422). Spencer, therefore accepted his offer.

But Spencer's engagements differed essentially from those of Clive. The former had undertaken to put Shah Alam (formerly Ali Gauhar) in possession of Delhi and Oudh to the exclusion of Shujauddaula, for which the English were to get the zamindari of Benares and Ghazipur belonging to Raja Balwant Singh of Benares, who had supported the English in their war against Mir Kasim.

1. Speaking of the nature of grants by Altamgha, Emperor Jahangir says: "As it was my intention to satisfy, as far as possible, all the old dependents of my father, I issued orders to the Bakhshi (Paymaster General), that every one of them who wished to obtain a jagir in his own country, must apply for a grant to that effect, and that in accordance with the institutes of Changiz, he should be rewarded with an altamgha grant, and enjoy the same without apprehension of change or removal. My ancestors

On Behalf of the Company Clive executed the following agreement on 19 August, 1765:

"The Nabab Nadjum-ul-Dowla agrees to pay His Majesty out of the revenues of Bengal, Behar, and Orissa the Sum of Twenty-Six lacs of rupees a year... by regular monthly payments, amounting to Rupees 2,16,666-10-8 per month; the first payment to commence from the 1st September of the present year; and the English Company in consideration of His Majesty's having been graciously pleased to grant them the Dewanny of Bengal, &c., do engage themselves to be security for the regular payment of the same.... But in case the territories of the aforesaid Nabob should be invaded by any foreign enemy, a deduction is then to be made out of the stipulated revenues, proportionable to the damage that may be sustained."[1]

[illegible], whenever they wished to bestow a jagir in proprietory right, used to stamp the grant with an altamgha seal, which means one to which red ink is applied. I ordered that the place of the seal should be covered with gold leaves, and then stamped with the altamgha seal. Hence I named it altamgha - that is the gold seal." Wakiat-i-Jahangiri (Elliot and Dowson, Vol. VI, P.287-288).

2 Aitchison: Treaties, Engagements and Sanads, Vol.II.P.241.
3 See Ibid. Vol II, P.243.

1 [illegible] Aitchison: OP.Cit. Vol. II, P.244.

On 30 September, 1765, the Nawab of Bengal concluded an agreement with the Company, whereby he accepted an annual sum of 53,86,131-9 rupees in the form of an allowance for the support of himself as well as the Nizamat.[1] Out of the total sum he was to appropriate only 17,78,854-1 rupees towards the expense of his household, the remaining 36,07,277-8 had to be spent over the maintenance of the Nizamat, including such horse, sepoys and peons as were necessary for the support of his dignity. The Nawab also agreed that his Naib Nazim, Mahomed Reza Khan, would be allowed to disburse the latter sum of 36,07,277-8 for the purpose specified.[2]

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1. Ibid. Vol II, P.245. Mr. D.K.Banerjee has shown that this agreement was executed somewhere between 24 August and 7 September, 1765. (See Early Land Revenue System in Bengal and Bihar, Vol. I, PP.5-6 f.n.) Forrest quotes a letter of Clive to the Select Committee at Fort William (11 July, 1765), which shows that the settlement in question had already been reached in July, but that its execution depended on the grant of the Diwani. (See Forrest: The Life of Lord Clive, Vol. II, P.278.) Malleson, however, points out that the July settlement related only to the Company's control of the revenues of the three provinces. The Nazim was to retain his powers to maintain law and order. "A few months later," writes Malleson, "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 the law." (See G.B.Malleson: Lord Clive, PP.171-172.)
2. Aitchison: O.P.Cit. Vol.II, PP.244-245. This agreement clearly shows that the Nawab accepted the sum stipulated by the English Company, not by the grant of the Diwani, which had specified no such sum. There is nothing to suggest that the Nawab "recognised the grant of the Diwani", as Ascoli has mentioned in his Early Revenue History of Bengal, P.21.

The English relations with Shujauddaula were determined by clever articles of agreement executed on 16 August, 1765. He was restored to his former dominion of Oudh, excepting Kora and such parts of the district of Allahabad as were then in possession of Emperor Shah Alam, who was allowed to retain them as a royal demesne for the Support of his Dignity. In return, Shujauddaula agreed to pay a sum of fifty lacs of rupees to the Company, and allowed English Merchants to trade duty-free throughout his dominion. Raja Balwant Singh, who had supported the English in their war against Mir Kasim in 1764, was secured in the possession of his zemindaries of Benares and Ghazipur subject, of course, to the payment of the usual tribute to his overlord, the Nawab of Oudh.[1]

Thus, while the grant of the Diwani supplied to the Company a legitimate authority over the revenues and civil administration of the three provinces, their engagements with Najimuddaula placed in their hands the entire defence of the country. The Company now came to be vested with a legal sanction to the political and military powers which had already been acquired by the force of British arms. The acquisition of the Diwani, says Forrest, was an attempt "to combine responsibility with power."[2].

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1. See Verelst: Views of the English Government in Bengal, Appendix, P.171-173.
2. The Life of Lord Clive, Vol. II, P.285.

In practice, however, Clive brought only the revenues of the provinces under his control. Law and justice continued to be administered by the officers of the Nawab's government. In other words, he set up a system of double government in which the Company exercised powers, while the Nawab's government shared the responsibilities of administration. A resident was appointed at Murshidabad to supervise and control the finances. He was to act in consultation with Mahomed Reza Khan, who was entrusted with both civil and criminal functions of government. As Naib Diwan he represented the Company's civil jurisdiction, and as Naib Nazim he acted as the Chief Magistrate of criminal justice and police. Similarly, the Chief of Patna controlled the revenues of Bihar, and Shitabroy[1]. was placed at the head of both the civil and criminal justice of that province.

This lack of conformity between the theory and practice of Clive's treaty engagements naturally occasions a need for enquiry into the motives which impelled him to obtain the Diwani of the three provinces. To form a clear idea of the Company's judicial policy during this period it is essential to understand these motives.

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1. Before his appointment as Naib in 1766 Shitabroy had held the office of provincial Diwan on the part of the Mughal Emperor. He was held in confidence by all parties alike. In August, 1765, Clive took him to Allahabad, where he acted as the chief negotiator between the Company on the one hand and Shujauddaula and Shah Alam on the other. On his way back to Patna Clive conferred the post of Naib on Dhirajnarain, the brother of Ramnarain, the late Naib of Bihar, who had been put to death by Mir Kasim. The public conduct of Dhirajnarain, however, was soon suspected

In the course of his second governorship of Bengal, Clive was guided by a consideration of the Company's interest as well as thetof the British nation. As for the inhabitants of the province, he regarded them as hostile to British interests.1. The principal object of his policy was to be useful to his employers, not to the people of the provinces. On the eve of his departure for Bengal in 1764, he pointed out that as an individual he had no temptation to undertake the arduous task of governorship. "Nothing but the desire I have," he added, "to be useful to my country, and to manifest my gratitude to the Company, could make me embark in this service, attended as it is with so many inconveniences to myself and to my family.2.

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1. ..... and he was replaced by Shitabroy. See Seir Mutakherin, Vol. III, P.II, 15-18, 20-22.

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1 Granville : British India Analysed, Vol.II,P.308.
2 Clive to the Court of Directors (27 April, 1764), Gleig: The Life of Robert First Lord Clive, PP.194-195. Similar notes maybe traced invariably in the following letters:-
Clive to Select Committee at Fort Wm., 11 Oct., 1756, (I.O.Home Misc.Vol.809, PP.110-111).
Clive to William Pitt, 7 Jan, 1759, (Forrest: The Life of Lord Clive, Vol.II,412-414.)
Clive to Rous (1765),(I.O. Home misc.,Vol.809,PP.57-58.)
Clive to his wife, 20 March, 1766, (I.O.Home Misc.,Vol. 810, PP.27-28.)
Clive to Verelst, 27 Dec,1766, (I.O.Home Misc.Vol.729.P.9)
Clive to Verelst, 7 Nov.1767, (Gleig: The Life of Robert First Lord Clive, P.312.)
See also Clive's speech in the House of Commons, 30 March, 1772 in the Parliamentary History of England, Vol. XVII, PP.327-360. "Dangers and difficulties," he said, "were on every side. But I resolved to pursue it. In

(see footnote next page)

A similar consideration had inspired him in 1759 to approach William Pitt for his support to the acquisition of the territorial revenues of the three provinces by a grant for the Diwani from the Mughal King.[1] "Now I have you to judge," he wrote, "whether an income yearly of upwards of

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.) short, I was determined to do my duty to the public, although I should incur the odium of the whole settlement. The welfare of the Company required a vigorous exertion and I took the resolution of cleansing the Augean stable." - Parliamentary Hist. of England, Vol. XVII, P.331.

These utterances were no mere boastings. "We are satisfied," observed the Court of Directors, "You have had the real interest of the company constantly in your view in all your researches into the general corruption and rapacity of our servants with the spirit and disinterestedness which do you honour and merit our approbation. - (Auber: Rise and Progress of the Power in India, Vol. I. P.141.) The Select Committee of the House of Commons, in the course of its enquiry into his public conduct, became convinced of the sincerity of his services to the Company and the British nation, and recommended to the Court of Directors to present him a sword set with diamond of the value of £500. See: The Genuine Minutes of the Select Committee of the House of Commons (1772), PP.62-63. Burke also regarded Clive as having "acted constitutionally as the agent of the Chartered Company." - Philip Magnus: Edmond Burke, P.70.

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1. I differ from Dr. C.C.Davies who suggests that Clive wanted "territorial cession" in his letter to William Pitt (7 Jan., 1759). (See Warren Hastings and Buch, P.8). In 1765, the idea of a territorial sovereignty, he adds, was given up by him and he wanted a grant of the Diwani only. A close perusal of the said letter does not yield such a conclusion. The acquisition of the Diwani constituted Clive's ambition both in 1759 and 1765. The only difference was that the parliamentary interposition, which he sought in 1759, was given up in 1765. The need for the said inter-position had arisen from the want of the Company's support in 1759, which became available in 1765.

two millions sterling, with the possession of three provinces abounding in the most valuable productions of nature and art, be an object deserving the public attention; and whether it be worth the nation's while to take the proper measures to secure such an acquisition," which might " prove a source of immense wealth to the Kingdom."[1] The acceptance of the Diwani, he 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.

Thus, Clive interpreted the grant of the Diwani as a source of wealth to his nation, not a source of relief to the distressed population of the country. "We were under the necessity of drawing the earliest advantages from our acquisition of the Duannee," he wrote to the Directors, "Our army was to be paid, our investment to be made, and the China market to be supplied. To trust these collections therefore, upon which our credit and security depended, to the management of the Company's servants, totally unacquainted with the business, would have been a dangerous, and by this time would have been termed a criminal, experiment."[2]

In his letter of 7 January, 1766, to William Pitt, Clive was desirous of acquiring the Diwani of the three provinces

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1 From Clive to William Pitt, 7 January, 1765, Forrest: The Life of Lord Clive, Vol. II, PP.413-414.
2 From Clive to the Court of Directors, 29 September, 1765, I.O.Mss.Bur.E.12,P.791

in the name of British parliament, because of the lack of full support from the Company. His object was to see that they were not left to exploitation by individuals for personal gains. His hopes, no doubt, were duped, and his proposals characterised as chimerical, but his fears were justified. In the course of his absence from Bengal for over five years (1760-65) the English "connections with the (Nawab's) government became a clog upon it and a ruin to the revenues."[1] The English Chiefs and Agents began to make use of force against the officers of the Government without any permission of the President and Council. "The Authority of our Agents," wrote Vansittart, "so overgrown by the influence they derive from the English Name that the Nabob's Fougeeers (Military and Police Officers) and Collectors dare not exercise the Duties of the offices where any English Agent or Comastah or any merchant or inhabitant of the country dealing with them is in the least concerned."[2] Their conduct was in no sense less prejudicial

1. Vansittart to the Court of Directors (8 October, 1763), I.O.Bengal Letters Received, Vol.6, P.66.
2. Vansittart to the Secret Committee of the Court of Directors, (24 December, 1763). I.O.Bengal Letters Received, Vol.6, P.147. Also see Verelst: View, etc., PP.46-47; Seir Mutaqherin, Vol. III, P.181.

to the interest of the Company. They took large shares in the monopolies of salt, betel and tobacco, which seriously effected its investment. An English writer coming to Bengal at the age of sixteen began to roll in riches and fortune after completing hardly two years of his service.[1] The gentleman, thus suddenly enriched, thought of nothing else but returning to enjoy his wealth in England.[2]

Hardly two days after his arrival Clive expressed, in a letter to Carnac,[3] his feelings of desperation at the most miserable state of the Company's affairs in Bengal. "Alas," he wrote, "how is the English name sunk! I could not avoid paying the tribute of a few tears to the departed and the lost fame of the British nation (irrecoverably, so I fear.) However, I do declare by that Great being, who is the searcher of all hearts, and to whom we must be accountable, that I am come out with a mind superior to all corruption, and that I am determined to destroy those great and growing evils, or perish in the attempt."[4]

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1 The Parliamentary History of England, Vol.XVII, P.366.
2 Clive to the Court of Directors (27 April, 1764), Gleig: The Life of Robert First Lord Clive, P.199.
3 A Member of the Select Committee at Fort William.
4 See Malcolm: The Life of Robert, Lord Clive, vol. II, P. 322. See Also Clive's letter to his wife (24 Aug., 1765), I.O.Home Misc., Vol.810, PP.13-14, wherein he mentions a state of anarchy, corrusion, bribery and corruption which obtained in Bengal at this time. See also Clive's letter to the Court of Directors (30 September, 1765), I.O. Bengal Letters Received, Vol.7, PP.4-5, wherein he explains the causes of his anxiety. While individuals amassed huge fortunes, he wrote, "not a rupee of advantage accrues to the Government and very little to the Company." They set all "orders at defiance" the moment "their obedience was found incompatible with private Interest." There was nothing, he added, "that bore the appearance of Government.

The Diwani was, therefore, designed to secure the stability of the Company's interest by putting an end to the rapacity and corruption of its servants, who used to draw heavily upon the Nawab as long as the provinces belonged of right to him. They could no longer do it on their being transferred to the legal control of the Company.[1]. The acceptance of the Diwani also implied the recognition of Shah Alam, which was necessary to set aside the pretensions of the French. The sanction of the Mughal Emperor "served as a cloak of legitimacy,"[2]. to the Company's acquisition. The Nawab of Bengal was also satisfied with the conditions of his agreements, whereby a fund was secured to him without troubles, which was sufficient to maintain the grandeur of his office.[3].

In the light of these evidences, it is not unjustified to observe that considerations of the Company's security and interest guided the entire policy and action of Clive and his Select Committee. The question of securing the protection and prosperity of the people by means of judicial reforms did not engage their attention. The need for reconciling the interest of the Company and the people of

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1 The Parliamentary History of England, Vol.XVII, P.338.
2 Dr. C.C.Daviest Warren Hastings and Oudh, P.8.
3 See I.O.Bengal letters Received, Vol.7, PP.147-151. This letter of the Select Committee (30 Sept., 1765) explains the various advantages that accrued to the Company from the grant of the Diwani.

the provinces was experienced and appreciated first by Warren Hastings, not by Clive. With the latter, the only philosophy of government was to make the Company the mainspring of every political action within the gore of the native sovereignty.[1] Prof.Dodwell, therefore, rightly concludes that "the grant of the Diwani was designed to secure the full control of Bengal affairs so far as the Company's interest went without incurring the inconvenience of formal and avowed dominion".[2]

Nor was a policy of avowed responsibility possible in the circumstances in which Clive's government suffered from a number of serious handicaps. Most of the Company's servants were lacking in both honesty and experience of administration. They had little knowledge of the great variety of the customs and usages of the country. Clive had to borrow the services of the Company's servants from Madras in order to serve on the Council at Fort William.[3]

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1 Clive described the natives of the country as "natural enemies" of the Company. See: Clive to the Court of Directors (30 Sept., 1765), 4th Rep. of the Com.of Secrecy of the House of Commons (1773), P.182. See also Seir Mutaqherin, Vol.III, PP.161-62, wherein the writer refers to the aversion and disdain openly displayed by the English in relation to the natives.

2 Cambridge History of India, Vol V.; P.177.

3 The gentlemen invited from the Company's establishment at Madras were Russell, Aldersy, Kelsall and Floyers. Their invitation was vehemently opposed by the Civil Servants of the Bengal establishment, who rose into mutiny which Clive suppressed with great difficulty in 1766.

"The incapacity, either from understanding or principle, of some who rank to the Council," wrote Clive, "and the unfitness, from youth, inexperience or tainted integrity of others who have abilities, made us, in vain, search in the Presidency for proper persons to assist us in our labors. The horrid massacre by Cossim Ally Cawn (Mir Kasim), so many of the most able young men upon this establishment, who would now have entered into nigh stations, which they would have filled with honor, tortured our memory, but left us without hopes of retrieving the loss."[1] The assumption of direct responsibility of administration might have brought more discredit to the Company than otherwise.

The fear of the French constituted a second important consideration in leaving the administration of the country in the hands of the Nawab's officers. "A sudden revolution of Government," observed Clive, "would probably have given umbrage to foreign nations, and complaints preferred to the British Court, might have been attended with embarrassing consequences both to the Company and to the Nation."[2]

Clive knew the internal weakness of native powers and was convinced that they could not easily combine together for the overthrow of the British power in Bengal. But he regarded any combination with the French as a potential

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1. Clive to the Court of Directors, 1 Feb., 1766, I.O.Bengal Letters Received, Vol. 7, Para. 3. See also Clive to the Court of Directors, 29 Sept., 1765, I.O.MSS.Eur.A. 12, Pp.77-78.
2. Clive to the Court of Directors, 29 Sept., 1765, I.O.MSS. Eur. A.12, P.76.

source of danger to the security of the Company's interest. He was, therefore, anxious from the beginning to drive out the French root and branch.[1]

The treaty of Paris in 1763 had only allayed the pretensions of the French in India.[2] But the revival of the Marathas from their defeat at Panipat in 1761 soon became a matter of grave concern to the Company. Their combination with the French or the native powers of northern India began to be seriously dreaded. In June, 1765, Clive convened a political conference at Chapra, the headquarters of the district of Saran in Bihar.[3] It was attended by Shujauddaula, the Nawab of Oudh; Raja Balwant Singh of Benares, representatives of the Mughal Emperor, the Jat Chiefs of Agra and the Rohilla agents. Besides composing a number of financial and internal differences, Clive revived his friendship with them, and concluded several military and political agreements for the defence of the provinces against the inroads of the Marathas.[4]

In such a state of political uncertainty, it would have been the height of folly to excite the jealousy of the

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1 Clive to Pigot at Madras, March 1767, (Forrest: The Life of Lord Clive, Vol I, P.401.)

2 "The French undoubtedly leave no arts unpractised to open a way for regaining their former influence in India. Our frequent orders for using the utmost vigilance to disconcert their intrigues with the country powers and to render ineffectual their designs for involving us with them must be constantly attended to." - I.O.Despatches to Bengal, 11 Nov., 1768, Vol.8. PP.111-113.

3 Clive must have reached Chapra on or before 6 June, 1765,

nawab and his nemby taking out the government and administration of Bengal into his own hands. "In the infancy of the acquisition (of the Diwani)," wrote Clive to the Directors, "we were under the necessity of confiding in the old officers of the Government, from whom we were to derive our 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.[1]

There was yet a third consideration which disfavoured the avowal of direct responsibility of government. Primarily, the Company was a commercial corporation, paying more regard to the security of its investment rather than the needs of administration. Besides, a policy of interposition was likely to excite the suspicion and hostility of both native and foreign powers, involving the Company in a policy of war to which it was naturally averse. The Select Committee at Fort William was fully conscious of the Company's

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.) when he addressed his first letter to Verelst from there. Shitabroy accompanied him from Patna. Shujauddaula arrived at Chapra in the morning of 8th June. The Conference seemed to have lasted for about three weeks. Clive's last letter from this place was dated 29 June. See Transcript Copies of Clive's letters in the possession of Capt. Bryan Cooper, I.O.Home Miscellaneous Series, Vol, 739, PP.75-79. Also see Seir Mutacherin Vol. III. P.19.

4 See G.B.Malleson: Lord Clive, PP.175-176.

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1 Clive to the Court of Directors, 29 Sept. 1765, I.O.Mss.Eur. E.12.PP.76-77.

commercial attitude, and gave definite instructions to Clive for his guidance, when he was proceeding to conclude a treaty with the Nawab of Oudh in August, 1765. "Experience having shown," the Committee observed, "that an influence maintained by force of arms is destructive to that commercial spirit which we ought to promote, ruinous to the Company, and oppressive to the country. We earnestly recommend to your Lordship, that you will exert your utmost endeavours to conciliate the affections of the country powers, to remove any jealousy they may entertain of your unbounded ambition, and to convince them that we aim not at conquest and dominion, but security in carrying on a free trade equally beneficial to them and to us."[1]

These were some of the major considerations which determined the administrative and judicial policy of the Company. Hence, the Directors laid down a definite rule

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1. I.O.Bengal Letters Received, Vol.7, PP.140-141. Printed in Verelst: Views of the English Government in Bengal, Appendix PP.6-7.
   Verelst wanted to effect a departure from the commercial mode of conduct and proposed that the Company should increase its military strength and resources to play the role of "umpires of Hindustan. (See: Verelst to the Court of Directors, 28 March, 1768. Bengal Letters Received, Vol. 8, Para.25). But the Directors declined to accept his proposal. "No success in war," they observed, "can possibly compensate the losses that would arise from the tranquillity of the provinces being disturbed." - (Despatches to Bengal, 11 Nov., 1768; Vol.4, Para.23, PP.242-243.)

of conduct for the guidance of their government in Bengal. "We conceive," they wrote, "the office of Diwan should be exercised only in Superintending the collection and disposal of the revenues."[1]. In matters of civil administration and justice, which formed important responsibilities of this office, they advised the pursuit of a non-interventionist policy "The administration of justice," they declared, "the appointment of offices, zemindaries, in short, whatever comes under the denomination of Civil Administration, we understand, is to remain in the hands of the Nabob or his Ministers."[2].

In a much later correspondence of March, 1768, the Directors maintained a similar attitude towards the Nawab's government. "The Majesty and dignity of the Government," they observed, "still resides in the Nabob and his ministers, and they only are known to the inhabitants as the Sovereign power to whom they are accountable." Therefore, they advised their government in Bengal not to do anything which might give "the subjects the idea of a divided government."[3].

This state of judicial policy was continued till the government of Verelst adopted a plan of supervision in 1769.

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1 J.Long: Selections from the unpublished Records of Government, P.469.
2 Ibid. P.469.
3 I.O.Despatches to Bengal, 16 March, 1768, Vol.4, Para. 27, PP.36-37.

PERIOD 1769 - 1772.

1. Supervisors.

Needs for a change of policy. - The evils of Clive's double government soon became manifest. The Nawab's officers, who were responsible for the administration of justice, lacked means to enforce their decisions, and the English, who held powers and means of defence, worked on the policy of indifference and non-interference. Judicial powers were consequently exercised by every man who possessed means to compel others to accept his decisions.[1]. The officers of the native government and zemindars committed a variety of atrocious crimes without any intervention on the part of the Company's government.[2]. Such a system was bound to produce a state of insecurity in the administration of both revenue and justice.

In May, 1769, the state of insecurity and instability in the affairs of the Company was deplored by Richard Becher, the resident at Murshidabad. He admitted that the trouble had proceeded for the most part from a defect in the policy of the Company, who wanted to raise as large sums from the country as could be collected. The amils and farmers of revenue fleeced the tenants to meet the demands

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1. See From President and Council to the Court of Directors, 3 Nov., 1772 (6th Rep.Committee of Secrecy (1772) P.301.
2. See I.O.Bengal Letters received, 29 Feb.1768, Vol 8.Para.II.

of the Company, whose servants did not interfere with their acts of oppression, so long as its financial demands were duly satisfied. The resident, therefore, recommended the appointment of English Supervisors with powers to control the collections and superintend justice in the Diwani provinces.[1]

On 30th August, 1768, the Select Committee at Fort William endorsed the views of the resident, and observed that the course of justice was obstructed for want of proper check over the officers of the Nawab's government who often committed acts of rapacity without any fear of punishment.[2] But the Committee realised that most of the evils proceeded from their ignorance of the actual produce of the provinces or their customs and usages which varied widely from place to place. To acquire this knowledge a plan of supervision was accepted on 16th August, 1769.

The Plan of Supervision. The plan of Supervision for the Diwani provinces was designed in the light of the experience acquired in the administration of the ceded districts of Burdwan, Midnapur and Chittagong. The management of these districts under the superintendence of European gentlemen

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1. From Richard Becher to Verselst, 24 May, 1769 (See Monckton Jones: Warren Hastings in Bengal, PP.35-38). Richard Becher succeeded Sykes as the resident at Murshidabad in January, 1769.
2. The Select Committee assigned eight important reasons to explain the state of instability in the Company's affairs of Bengal. See Verelst: Views, etc. Appendix, PP.224-225.

had brought a certain measure of success to the Company. Their produce and population had increased, and so did the revenues of the Company. With the hope of getting similar results, the Select Committee decided to appoint European Supervisors throughout the provinces. The proposal was acceptable now also to the Directors who had resisted so far the introduction of any such change in the administration of the Diwani provinces.

The Select Committee, therefore, resolved "that in every province or district, a gentleman in the Service be appointed, with or without assistance, in proportion to the extent of the district; whose office or department is to be subordinate to the resident of the Darbar, and managed as is expressly set forth and defined" in a letter or instructions, which the President had prepared, "with such additions as (might) occasionally be deemed necessary by the resident of the Darbar."[1]

Instrument of Instructions - The objects of the Commission of Supervisors were set forth in a form of instructions to be issued by the resident at Murshidabad. The introductory part of this form reads as follows:-

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1 Verelst: Views, etc., Appendix. P.225. The instrument or instructions is printed in ibid. Appendix. PP.227-230.

"To Mr ----------

Sir,

As the Board have judged it expedient to appoint Supervisors on behalf of the Company in each particular province, with a view to ascertain in a minute, clear and comprehensive manner, a variety of circumstances which intimately concern the welfare of the country; the province of ---------- is hereby placed under your inspection, and the following objects are pointed out and distinguished under respective heads as a direction for your conduct, and an explanation of the service expected from you in your department."[1].

The objects mentioned above were to procure information on

1. A summary history of the district under his charge;
2. the state, produce and capacity of the lands;
3. the amount of the revenues, cesses or arbitrary taxes, and of all demands whatsoever which were made on the ryots, either by government, zemindar or collector, with the manner of collecting them and the grounds for rise or every new impost;
4. the regulation of commerce; and
5. the administration of justice.

Out of these five terms of reference we are concerned

[1] See Verelst: Views, etc. Appendix, P.227.

chiefly with the firth. The third term, however, is also significant for our purpose, because the establishment of police and officers of justice formed an important charge upon land revenue assigned to them for subsistence.

In the course of judicial instructions, each Supervisor was acquainted with the existing state of justice, which the Select Committee at Fort William regarded as a "corrupt bargain with the highest bidder". The instrument of instructions added that "trifling offenders, and even many condemned on fictitious accusations are frequently loaded with heavy demands, and capital criminals are often absolved by the venal judge."[1].

The Company's government in Bengal, however, possessed no knowledge as to whether such inequitous practices arose from the original customs of the country or from the corrupt manners of individual judges. The Supervisors were instructed accordingly to enquire into their causes, and to enforce what was justified on the law of the land. In civil causes, they were asked to take recourse to arbitration. In the choice of arbitrators, the parties concerned were to exercise their discretion. The business of Supervisors was to see that they acted on principles of justice and rectitude. In criminal causes, however, the sentence of each capital offence was required to be transmitted to the resident at

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1. Verelst: Views, etc., Appendix, P.225.

Murshidabad, who in his turn referred it to the final determination of the Naib Suban and the Nizamet Adalat.

The instrument of instructions laid great emphasis on the maintenance of proper registers of all causes tried by the judges. "You are further to observe," it added, "that the want of regular registers of all causes and determinations, has encouraged the natural propensity of the judge to bribery and fraud, by making him easy with respect to any future prosecution on a rehearing of the cases, which have been thus partially determined. Whereas, whilst a reference to records is always open, he must live in perpetual fear of detection."[1]. One of the registers was to be lodged in the principal Court of the province, and an authenticated copy transmitted to Murshidabad. The Supervisors were, therefore, asked to summon the qazis and Brahmins, who administered justice respectively amongst the Mahomedans and Hindus in every village, town and quarter, to appear and produce their sanads, or authority for so acting, in order to have them duly registered.[2]. The object was to prevent persons from exercising judicial powers without proper authority.

Instructions for the determination of religious causes related particularly to the forfeiture of castes, "The peculiar punishment of forfeiting castes, to which the Hindus are liable, is often inflicted from private pique,

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1. Verelst: Views etc., Appendix, P.230.
2. Ibid., Appendix, PP.237-238.

and personal resentment amongst themselves; and requires to be restrained to those occasions only where there may be a regular process, and clear proofs of the offence before the Brahmins, who are their natural judges."[1]. The Supervisors in such cases were to exercise only a restrictive power. They were to see that a man, who had naturally lost his caste, was not allowed to be restored to it without the sanction of government."[2].

Under the third of their terms of reference, which related to the various demands of revenues and arbitrary taxes, the Supervisors had directions to collect information on the number, distribution and pay of darogas, Kotwals, and pykes, whose maintenance arose from "lands set apart for their use," but who were "known frequently to exact articles or provision and other things from the ryots, and possess too great a latitude over the property and persons of the poor."[3]. They were required to collect a list of these pykes from the zemindars, and report whether they "answered the purpose of their institutions;"[4]. And, as for the zemindars themselves, the Supervisors had instructions to fix the amount of what they received from their ryots, and report instances wherein they exceeded the bounds of moderation. They were also to assure the ryots that they would serve as a veritable source of refuge against all acts

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1 Ibid. Appendix, P.238.
2. This power was exercised in recognition of the political supremacy of the Mahomedan government, which was followed by the English.
3 Verelst: View, etc., Appendix, P.235.
4 Ibid., Appendix, P.235.

of oppression. The ryots were further to be convinced that the calamities they had already suffered had been due to an intermediate cause, which was neither known to or permitted by the Company.[1]

The concluding portion of the instrument of instructions revealed the scope of supervisors, and manifested a deep sense of anxiety on the part of the sponsors of the plan to relieve the distressed from venality and extortion. "Your commission," it declared, "entrusts you with the superintendence and energe of a province whose rise and fall must considerably affect the public welfare of the whole. The exploring and eradicating numberless oppressions which are as grievous to the poor as they are injurious to the government, the displaying of those national principles of honour, faith, rectitude, and humanity, which should ever characterise the name of an Englishman; the impressing of the lowest individual with these ideas, and raising the heart of the ryot from oppression and despondency to security and joy, are the valuable benefits which must result to our nation from a prudent and wise behaviour on your part."[2].

Supervisors in Bengal - On 16 August, 1769, the Select Committee at Fort William sent a copy of these instructions to the resident at Murshidabad for his opinion. On 14 September, 1769, the Council at Fort William adopted the

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1. Ibid., Appendix, P.228.
2. Ibid., Appendix, P.233.

plan, and observed that the reforms embodied in it would be the work of time, and could only be achieved by degrees[1]. With a view to expedite the execution of the scheme, however, the Council made the following appointments to the supervisorships of the different districts of Bengal:

Districts:	Supervisors:
Birahum, including Bishnupur and Panchkot.	Charles Stuart[2].
Dacca, including Sylhet	Thomas Kelsall.[3]
Dinajpur	George Vansittart[4].
Hugli	William Lushington[5].

1 Vide Bengal Letters Received (23 Nov.,1769), Vol.3, P.110.
2 Replaced by Alexander Higginson in Aug., 1770, who continued as Supervisor till 14th May, 1772, when he made over charge to J. Sumner, who became the Collector in the same month. John Sumner had previously been Supervisor of Sylhet under Kelsall.
3 He was a member of the Select Committee at Fort William. As such, he enjoyed an equal status with Resident Becher who was also a Member of the Committee like him. He was, therefore, independent of the Resident in all other respects except the submission of accounts and reports which he did through Becher for the sake of maintaining uniformity. Kelsall made over charge to J. Harrison on 28 Feb., 1771. Harris continued in office till 28 March, 1772, when W.Lambert took over charge from him and became Collector in May, 1772.
4 Brother of H.Vansittart (Ex-Governor of Bengal,) succeeded by H. Cottrell in October, 1770 who continued in the post till October, 1771. William Harriott was appointed in his place who joined the post on 27 Nov., 1771. A.Staples, Assistant, acted as Supervisor for about a month till Harriott joined his office. Harriott became Collector of Dinajpur in May, 1772.
5 He continued as Supervisor of Hugli till he became its Collector in May 1772.

Jessore	Robert Wilmot[6].
Nadia	Jacob Rider[7].
Purnea	Gerard Gustavus Ducarell[8].
Rajmahal, including Bhagalpur	William Harwood[9].
Rajshahi	Charles William Boughton Rous[10].
Rangpur	John Grose[11].
Tippera	Walter Wilkins[12].

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6 He died in November, 1770 when J. Shakespear was appointed acting Supervisor. Shakespear had been Assistant to Wilmot. He soon made over the charge to William Rooke who continued in the office till he became the Collector of Jessores under Warren Hastings.

7 Continued as Supervisor without a break and became Collector of Nadia under Warren Hastings in May, 1772.

8 He also continued as Supervisor without a break till he became Collector of Purnea in May, 1772.

9 Continued as Supervisor till he became Collector of Bhagalpur and Rajmahal in May, 1772.

10 Continued as Supervisor till he became Collector of Rajshahi in May, 1772.

11 Continued as Supervisor till May, 1771 when he died. Charles Purling was appointed Supervisor in his place and became Collector of Rangpur in 1772.

12 Continued as Supervisor till early in April, 1772. He made over charge of the district to W.Barton who was appointed formally as Supervisor under the letter of the Supreme Board, dated 28 April, 1772. He became Collector of this district in May, 1772 under Warren Hastings.

A Temporary Setback - The plan of Supervision, however, met with a temporary setback in the beginning. Most of the amils and zemindars, who were engaged in the collections, opposed its introduction on the ground that the arrival of Supervisors in their districts was bound to cause a division of authority, and prejudice their influence to the detriment of the Collections. The resident at Murshidabad accepted the force of their arguments, and recommended only a partial execution of the plan in October, 1769.[1] On 26 October, 1769, the President and Council at Fort William decided accordingly to put off the establishment of Supervisors till February, 1770 for all other districts except Purnea, Rajmahal, Rajshahi and Nadia to which Supervisors were immediately sent.[2]

But the powers of even those, who were sent to their districts in October, 1769, were soon reduced by the Select Committee at Fort William in December of the same year. They were not to exercise any immediate active power over the native agents of revenue or the officers of justice. They were left with only a controlling authority over them. In all points of difference, between Supervisors and officers of the Nawab's government, the former had only a negative voice until they reported reasons for such negative to the

1. See from Richard Becher to the Select Committee at Fort William, 10 October, 1769. (Fergingert Fifth Report of the House of Commons (1812), PP.CXC1-CXCV.)
2. See from President and Council to the Court of Directors, 23 Nov., 1769, (Bengal Letters Received, Vol.9, P.110.)

resident at Murshidabad, and received from him the final determination of the Nawab's Ministers.[1].

The resident at Murshidabad went still further to reduce the powers of Supervisors. In the course of his instructions, he asked them to support the officers of the country courts, whose conduct their office had been designed originally to control and supervise. "It is necessary to acquaint you," he observed, "that it is not the intention of the President and Council to alter the present form of government, but that the gentlemen employed by them as Supervisors are to support the authority of government officers, in whose name or that of the Rajah, all orders are to be issued, and proper respect to be paid to them. At the same time the Supervisors are to recommend such regulations as appear necessary for the welfare of the country, and the benefit of our employers, advising me whenever the officers of government refuse to acquiesce in what you propose, that I may, if I find it expedient, apply to the Ministers to issue their orders for enforcing the measure."[2].

But the process of reaction did not stop here. In June, 1770, the resident at Murshidabad reported that some of the amils and zemindars had refused to accept the

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1. See the Letter Copy-Books of the Resident at the Durbar at Murshidabad, Vol. I, PP.118-119.
2. From the resident to the Supervisor of Rajmahal and Bhagalpur, 20 Jan., 1770. See similar instructions to the Supervisor of Rangpur, 20 Jan., 1770; to the Supervisor of Birbhum, 17 March, 1770 (The Letter Copy-Books of the resident at the Durbar at Murshidabad, Vol. I, PP.117-119, and 137.)

responsibility of the collections for the alleged want of adequate authority. In the course of his report, he therefore recommended the withdrawal of controlling powers from the Supervisors of all those districts in which the amils and zemindars had threatened to resign their trust. The Select Committee at Fort William first declined to adopt the proposed recommendation of the President. But when he insisted that the continuance of their controlling powers might impede the progress of the Collections seriously, the Committee finally yielded. The amils and zemindars of all such districts as had complaints against the interference of their Supervisors, were allowed to retain their usual authority in the collection of the revenue, and were exempted from such interference by Supervisors.[1]. On 28 June, 1770, the Committee further agreed that the controlling powers should henceforth be vested only in the Supervisors of Burdwan, Dacca, Dinajpur and Purnea. The authority of others were confined to the superintendence of justice and improvement of themselves.[2].

Restoration of Controlling Authority - But as justice was inseperably linked up with revenue, the removal of control from the latter affected the administration of the former as

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1. See Calender of Records of the Select Committee at Fort William, P.P.152-153.
2. See Proceedings of the Controlling Council of Revenue at Murshidabad, 1 October, 1770, Vol. I, P.15. See also Bengal Letters Received, 31 October, 1770, Vol.9, Para. 17, P.419.

well. Hence, the Council at Fort William seriously resented this policy of retraction, and sent a note of their disapproval to the Court of Directors. "The Select Committee," the Council observed, "have not scrupled to frustrate our intentions in the appointment of Supervisors. ... the authority we had given them in order to effect the most salutary ends, you will find annulled by the Committee."[1].

In September, 1770, the Council at Fort William therefore restored the Supervisors to the controlling authority, which they had lost in June. "Without a proper degree of authority," the Council observed, "all researches will be fruitless, and it is in vain to send servants into districts to detect abuses if their endeavours are likely to be counteracted by the power of men whose interest it is to keep them ignorant. For these reasons we not only confirm the controlling powers we gave the Supervisors, but should these be deficient to answer the end for which they were appointed, you are to acquaint us what further addition you think necessary to their present authority that we may judge and then give you our sentiments."[2].

Nonetheless, the conflict of the Council and the Committee continued, and neutralized the salutary effects of restoration.

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1. President and Council to the Court of Directors, 8 Sept., 1770, Bengal Letters Received, Vol.9, pp.326-327.
2. President and Council at Fort William to the Chief and Controlling Council of Revenue at Murshidabad, 11 Sept., 1770 (Murshidabad Proceedings, 27 Sept.,1770,Vol.I,p.3) The Controlling Council at Murshidabad issued letters of confirmations to the Supervisors on 1 October, 1770. See Murshidabad Proceedings, Vol.I, p.8

Supervisors of Bihar - On 9 June, 1770, the Select Committee at Fort William recommended the names of four gentlemen to the Supervisorships of Bihar. The Council accepted these names on 2 August, 1770, but, considering the extent of the province, added a fifth Supervisor to the list. The distribution of different districts under each Supervisor thus stood as follows:

Districts:	Headquarters:	Supervisors:
Saran and Champaran	Chapra	Edward Golding[1].
Shahabad	Arrah	Charles Lloyd[2].
Tirhut	Darbhanga	James Inglish Keighly.[3].
Rohtas	Sasaram	Harry Palmer.[4].
Monghyr	Monghyr	Nathaniel Bateman.[5].

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1 Continued as Supervisor till he became Collector of Saran and Champaran in April, 1773. He made over charge of his districts to John Pelerce on 5th October, 1773.

2 Continued as Supervisor till September, 1772, when he was recalled to Patna on the charge of alleged mismanagement of revenue. Simeon Lreze, a Member of the Patna Council then took charge of the district, made settlement of revenue with the renters, and returned to Patna by 12 October, 1772. Thereafter, the renters of Shahabad were asked to correspond directly with the Council at Patna.

3 Continued as Supervisor till he became Collector of Tirhut in April, 1773. He was succeeded in that office by William Young in September of the same year.

4 Continued as Supervisor till he became Collector of Rohtas in April, 1773. William Pye took over charge of the district from him in September, 1773.

5 Continued as Supervisor till he became Collector of Monghyr under Warren Hastings. He was succeeded by George Bright in September, 1773.

The district of Patna was under the immediate charge of the Chief[1] of Azimabad as that of Murshidabad under the Resident[2] at the Darbar.

The plan of supervision was approved subsequently by the Court of Directors.[3] In their letter of 10 April, 1771, they distinctly pointed out that it was perfectly consistent with their views, "not only for the Company's interest, but for the good of the Country from which we receive so much advantage."[4].

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1. Chiefs of Patna -

Thomas Rumbold	Nov., 1766-Feb., 1770 (Appointed on the dismissal of S. Middleton.)
James Alexander	Feb., 1770-April, 1771.
Joseph Jekyll	April, 1771 - Oct., 1771.
Richard Barwell	Oct., 1771 - Jan., 1772.
John Graham	Jan., 1772-April, 1772.
George Vansittart	April, 1772- 8 Feb., 1773.
George Hurst	Feb., 1773-June, 1773.
Thomas Lane	June 1772.

2. Residents or Chiefs at Murshidabad -

Francis Sykes	1766-1768 Resident
Richard Becher	Jan., 1769-24 Dec., 1770 (Resigned) Resident and then Chief.
James Lawrell	25 Dec. 1770 - 30 Jan., 1771. Chief.
Samuel Middleton	31 Jan., 1771 - July, 1771 "
James Alexander	18 July, 1771 - 8 Feb. 1772 "
J. Graham	9 Feb., 1772 - 14 Feb., 1772 "
Samuel Middleton	15 Feb., 1772 - 17 Aug., 1772 "
- do -	1 Sept., 1772 - 2 March, 1774 Resident.

It may be noted that Samuel Middleton, although Chief during his first term, was on deputation in Dacca from March to June 1771. During his absence on deputation from Murshidabad Richard Barwell presided over the Consultations of the Controlling Council there. James Alexander was appointed Chief on 23 May, 1771. But he joined office in July of that year.

3. The author of Seir Mutaqherin also refers to this plan. But, in addition, he mentions six collections into which, as he says, Bengal and Bihar were divided. They were Calcutta Burdwan, Rajshahi including Murshidabad, Dacca, including Jehangirnagar, Dinajpur and Azimabad. See Seir Mutazherin,

II. Controlling Councils of Revenue

In July, 1770, the President and Council at Fort William ordered the establishment of two Controlling Councils of Revenue, which were set up at Murshidabad and Patna in September, 1770.

These Controlling Councils were instituted in accordance with the orders of the Court of Directors transmitted to Bengal in their General Letter of 30 June, 1768.[1] The primary object of their institution was to save as much money as possible by discharching all "the idle dependents appointed to nominal but useless offices by the country government," and to find out the real state of the produce and rents of different districts, so that the tenants might be freed from oppressive impositions and extortions. The saving so caused, the Directors believed, would constitute a profit to the Company and relief to the ryots.

Vol. III, PP.33-34. The Murshidabad Proceedings also refer to these Grand Divisions, excepting those of Calcutta and Patna which were not under the direct charge of the Murshidabad Council. These proceedings, therefore, mention only four divisions with the names of the districts placed under each. They were placed under the charge of each of the four Members of the Council, whose business it was to make local investigations, into the state of administration under the Supervisors. The history of the six Grand Divisions of Warren Hastings may be traced back to this arrangement. See Proceedings of the Murshidabad Controlling Council, 11 February, 1771, Vol. III, P.163.

4. I.O.Despatches to Bengal, 10 April, 1771, Vol.5, Para. 64, P.596.

1 See I.O.Despatched to Bengal (per Lapwing), Vol.4, PP.544-654, Paras.13-22.

In the course of their letter, the Directors pointed out that their intention was not to introduce any radical reforms which was likely to take off any of the profits or emoluments of zemindars or officers of justice. Nor did they desire any change in the constitution of the Nawab's government. Hence, they advised the President and Council at Fort William to act on principles of moderation. "In this reform," they wrote, "you are to proceed with a moderate, steady and persevering spirit of enquiry, looking rather to the prevention of frauds for the future, than the punishment of those offences which have already passed, and which, if not justified, are at least much palliated by the immemorial custom of the Moorish Government."

As for the constitutional position of Mahomed Reza Khan, the Naib Subah, the Directors advised that he should give his opinion on all administrative transactions, and that they should be conducted under his seal and signature. But the Controlling Councils were required to consider and determine the whole, and no appointments were to be made, nor the Naib's seal to be put to any order without their approbation.

The Directors entrusted the execution of their plan to a body of three Commissioners,[1] who were empowered to take all such measures as were necessary to stabilise the affairs of the Company in Bengal, and secure the ease and

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1 They were Luke Scrafton, Henry Vansittart and Francis Forde.

happiness of the people.[1] The Commissioners were not to touch the Company's government in Bengal or elsewhere in India. But they had authority to superintend and control the whole in a manner as if the Court of Directors were themselves present on the spot. Their object was also to regulate the political system of the three presidencies upon one uniform plan.[2]

But the execution of the scheme was delayed for two reasons. The Commissioners, whose duty it was to carry out the orders of the Directors, never reached the shores of India. They safely came as far as the Cape of Good Hope, which they left towards the close of December, 1769. But the Aurora Frigate, on which they had embarked, possibly met with some fatal accident, for it was never heard of again.[3] And, when the President and Council at Fort William, having lost all hopes of their arrival, determined to carry out the scheme in June, 1770, the Select Committee objected to it on jurisdictional grounds. The Committee asserted that the orders of the Directors were "not to the Council, but to the Commissioners, (and) neither the Council, or the Committee are authorized to enforce them."[4] True, in spite of this

1 See I.O.Despatches to Bengal, 30 June, 1769, Vol.4.Para. 35, P.564.
2 See Ibid. Vol. 4, Paras.32, 34 and 37, PP.561,563 and 565.
3 See I.O.Bengal Letters Received, 8 Sept.1770, Vol.9.PP.312-315.
4 Ibid. Vol.9, PP.316-317.

opposition the Council succeeded in adopting a resolution for establishing the desired Controlling Councils at Murshidabad and Patna. But the conflict between the two continued, and adversely affected the administration of the country under the Supervisors.[1]

On 6 July, 1770, the Council reiterated their decision of June, and made the following appointments, which were to come into force from 1 September, of the same year.

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1. The Court of Directors took a serious view of the Committee's conduct, and adopted disciplinary measures to counteract the effect of division. In their General letter of 25 April, 1771, they disapproved the Committee's opposition to the measures which had been positively ordered by them for a speedy execution. "It is therefore our pleasure and we do hereby direct," they wrote, "that Mr. Becher be dismissed from our Council at Bengal, Mr. Claud Russell and Charles Floyer (gentlemen whom Clive had invited from Madras to serve on the Council) be immediately removed from our service in Bengal and that they do return to Madras with all convenient dispatch." See I.O.Despatches to Bengal, 28 April, 1771, Vol.6, PP.1-2). For conflicts between the Council and Select Committee at Fort William, see I.O.Bengal letters Received, 8 Sept., 1770, Vol.9. PP.9-28; also Ibid, 31 October, 1770, Vol.9, Para.17, PP.418-420.) The conduct of Governor John Cartier was also viewed with displeasure. The Directors condemned him for having joined the Select Committee in a resolution designed to retard the execution of their orders. He was, therefore, asked to resign the government to Warren Hastings on the latter's arrival in Bengal. See I.O. Dispatches to Bengal, Vol.6, Para.10. P.17.)

Controlling Council at Murshidabad.

Richard Becher	Chief
John Reed	2nd
James Lawrell	3rd
John Graham	4th

Controlling Council at Patna.

JamesAlexander	Chief
George Vansittart	2nd
Robert Palk	3rd

The first meeting of the Murshidabad Council took place on 27 September, 1770, although Richard Becher had been informed of its establishment as early as 13 July, 1770.[1] This delay was caused probably by the Chief of the Council at Murshidabad, who persistently questioned the authority of the Council to interfere in the affairs of the Diwani.[2]

The President and Council at Fort William, however, were bent upon enforcing their decision. They drew out a number of rules and regulations on exactly the same lines as the Directors had suggested in their letter of 30 June, 1769, and transmitted them to Murshidabad for the guidance of the Controlling Council there on 11 September, 1770.[3] The office of Resident was abolished and taken over by the

1. See Proceedings after Controlling Council of Revenue at Murshidabad, 27 Sept., 1770, Vol.1, P.3.
2. See W.K.Firminger. Introduction to the Proceedings of the Controlling Council of Revenue at Murshidabad, Vol.1, P.iv.
3. Similar instructions were despatched to Patna in October, 1770.

Chief and Controlling Council, who were to decide all issues by a majority of votes, the Chief having a casting vote on a division of voices.

In a subsequent correspondence of 11 October, 1770, the President and Council clarified their policy on the administration of justice with special reference to criminal causes. They pointed out that justice should be administered as usual under the Superintendence of Mahomed Reza Khan at Murshidabad and Shitabroy at Patna, but that the Controlling Council should exercise powers of interposition in all matters of importance.[1]

Accordingly, the Council at Murshidabad adopted the following resolution to guide the course of judicial administration:

"That all criminal cases be tried in the Adawlut established for that purpose, but that the proceedings of that court be always prior to the Sentences being put in execution, submitted to the approbation of the Board.

"That causes relative to property in land and to the revenue be referred to the Khalsah Cutcherry, and causes for debt to the Judicial Adawlut; and that two courts in conformity thereto be established by us to revise the proceedings of the country courts and finally determine thereon.

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1 See: Proceedings on the Controlling Council of Revenue at Murshidabad, 22 October, 1770, Vol. I. The necessity for this clarification arose from a doubt expressed by Mahomed Reza Khan in the Murshidabad Proceedings of 1 October, 1770. See Ibid. Vol. I, pp.14-15.

In these courts all the members of the Board agree to sit for the present.

"Resolved further that the Nabob (Mahomed Reza Khan) be informed of these regulations, and that he be requested to acquaint us whenever there is a necessity for issuing perwannahs (orders) for the apprehension of deceits or persons accused of murder, to deliver us copies of all perwannahs issued in future and to furnish us with an account of such as are now in force."[1]

In practice, however, interposition was an exception rather than a general rule. The officers of justice continued to impose fines in the composition of criminal offences. The country courts of Diwani Adalat continued to realise what was known as chauth or one-fourth of the total value of the decree recovered. In their general letter of 10 April, 1771, the Directors stressed the necessity of abolishing the system of arbitrary fines, of resorting to arbitration in

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1. Proceedings of the Controlling Council of Revenue at Murshidabad, 22 October, 1770, No.I. In criminal causes, the usual attitude of the Supreme Council at Fort William was one of non-intervention. The Patna Council instructed the Supervisors of Bihar accordingly. See Press List of Ancient Documents, etc., Series II, Vol.I, P.33, No.76. But the Patna Council was directed to pay strict attention to check the arbitrary proceedings of the Mahomedan Courts of Justice. See Press List of Ancient Documents, etc., Series II, Vol. I. P.102.

civil causes, of maintaining records of proceedings, and scrutinising the authority under which qazis and Brahmins administered justice.[1] They also expressed their anxiety to ensure protection to all ranks and degrees of the people. But they did not order any alteration in the constitution of the Nawab's government. Nor did they suggest any change in the administrative arrangements of the provinces. Even the few reformers that they recommended werenot to be carried out without the wishes of the Nawab's government.

The anxiety of the Directors to secure justice arose from two main circumstances. Their lack of responsibility for the maintenance of law and order was largely responsible for the state of insecurity in the life and property of the people. Their state of insecurity, in its turn, effected their revenues as well. No commerce or agriculture could flourish in a society torn asunder by the rapine and plunder of lawless associations. Nor could the payment of revenue be regularised without providing for an efficient machinery of protection. The Company was, therefore, realising the impossibility of securing the stability of its interest in the midst of the chaotic conditions of the country.

The second source of anxiety was the terrible famine of 1770. It dislocated the entire economic life of the peasants, and produced universal distress in all the parts of the

1. See I.O.Despatches to Bengal, 10 April, 1771, Vol.5, Paras.22-24, PP.543-545.

provinces.[1] It destroyed about one-third of their total population, and turned many of the Survivors into professional robbers[2]. These circumstances were sufficient to warrant a change of policy in every sphere of the Company's administration in Bengal.

But none of the changes effected during the period 1769-1772 provided against the basic defects of Clive's double government. The plan of supervision, which was the first measure of reform after the grant of the Diwani, gave discretionary authority to the resident at Murshidabad, who directed his Supervisors to support and respect the officers of the country courts whose corruption they had been expected originally to explore and eradicate. In September, 1770, the Chief and Controlling Council supplanted the resident, but left the judicial arrangements in the hands of the Naib Subah as before. In December, 1770, most of the amils and Faujdars, who were responsible for the maintenance of local peace and tranquillity, were recalled, but the gap so caused remained yet to be filled[3]. The Directors recommended the abolition of fines and chauth, but made no provision for the salaries of judicial officers.

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1 I.O.Bengal Letters Received, 25 Jan., 1770, Vol.9, P.169.
2 See Ibid., 9 May, 1770, Vol.9, P.240. The effects of the scourge were felt more severely in Bihar than Bengal.
3 The proposal for recall was first tabled by the Murshidabad Council on 29 October, 1770. (See Murshidabad Proceedings, Vol.I, P.139.) Mahomed Reza Khan favoured this proposal to avoid the risk of divided authority, which division was bound to occur on the confirmation of the Supervisors in their controlling powers. Becher, the Chief of the Controlling Council, gave similar reasons to justify

Thus, in spite of the earnest desire of the Court of Directors to keep the doors of justice open to all, their instructions could not succeed in materially improving the state of justice so long as the fundamental defect of double government was allowed to continue. It is, indeed, true that the Company's servants in Bengal lacked a force of character and unity, which often defeated the ends of justice. It is also true that the intentions of the Court of Directors were counteracted and their orders disobeyed by many of their responsible servants in Bengal.[1] But the trouble lay more with the system of Government than with individuals. In a letter of 11 November, 1773, addressed to the Court of Directors, Warren Hastings distinctly pointed out "that whatever may have been the conduct of individuals, or even of the collective members of your former administration, the blame is not so much attributable to them as to the want of a principle of government adequate to its substance and a

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their proposed recall. (See Ibid. Vol.I, P.2[illegible].) The Supreme Council at Fort William approved of this proposal, and ordered its execution in their letter of 3 Dec., 1770. They asked the Murshidabad Council to discontinue their appointment except at Hugli and "those other places where the European nations have established factories, as we would have the appearance of the Country government preserv'd wherever it may have any connections with other European powers." See Murshidabad Proceedings, 10 Dec., 1770, Vol.II, PP.35-36). The Faujdars and amils of Rangpur, Purnea, Dinajpur, Rajmahal, Jessore and Dacca were removed by the orders of the Murshidabad Council, but under the seal and signature of the Naib Subah; the Naib of Dacca continued as before. (See Murshidabad Proceedings, 13 Dec., 1770, Vol.II. P.38.)

1 I.O.Despatches to Bengal, Vol.6, P.217.

coercive power to enforce it."[1] The decision[2] of the Company to stand forth as the Diwan constituted the first real advance in the field of administrative and judicial reconstruction, which was started first by the government of Warren Hastings.

1 See Gleig: Memoirs of Warren Hastings, Vol.I, P.368; also quoted in Lyall: Warren Hastings, P.53.
2 It was expressed in the General Letter of the Court of Directors, dated 28 August, 1771, which we shall have occasion to examine elsewhere.

CHAPTER III

THE INDIGENOUS HERITAGE OF THE COMPANY

We have discussed in the Second Chapter some of the important considerations which impelled Lord Clive in 1765 to continue the indigenous forms of judicature in the Diwani provinces without any alteration. They operated till 1772 when the government of Warren Hastings introduced the first plan of reform for the administration of justice. They constituted the heritage of the East India Company, and it is difficult to form a correct appreciation of the English judicial administration without knowing the nature and form of that heritage. Before proceeding to examine the State of justice during this period of Clive's double government, it is necessary and desirable briefly to set forth the Mughal System of law and justice which, in its turn, had been derived from Islamic institutions, and obtained in the country before the Company secured the Diwani of the three provinces.

ISLAMIC JURISPRUDENCE - The name given to jurisprudence in Islam is Fiqh which literally means intelligence or knowledge. Its basic foundation is the Quran which is believed to be the final message of God received through the Prophet Mahomed. In Islam, law and religion are one and the same thing, both being derived from the same source.[1] The Sunna or the

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1 See James Bryce: Studies in History and Jurisprudence, Vol. II, P.219.

traditions, containing the speeches and actions of the Prophet and his companions, constitutes the Second Source of this jurisprudence. Qiyas or analogy and Ijma or consensus of opinion form the remaining the two sources or Muslim law. But they are all regarded as explanatory and not independent of the Quran, although they drew heavily on the Western systems of law after the Conquest of Western by Islamit forces. The various schools of Muslim law arose out of the varying degrees of importance which they came to attach to one or the other of these elements of the Figh. Of these the Shafiite, the Hanifite, the Malikite and the Hanbalite are universally recognised by Muslim jurists.

In theory, a non-Muslim has evidently no right to citizenship. The Practice, however, differed widely from the precept. The Government of the early Arab conquerors, writes Von Kremer, "granted to non-Muslims complete autonomy, and allowed them full freedom in the settlement of their private affairs. The religious head of the non-Muslim community performed, whenever practicable, the judicial duties among its members and dependents."[1] In India the necessity of a policy of conciliation was felt more than anywhere else. The task of total conversion of the vast multitude of the non-Muslim population being impossible of achievement, the forces of Islam had to adapt themselves to the new conditions

1 The Orient under the caliphs, PP.217-218.

of their existence. "Hence the Hindoos," writes Grady, "enjoyed under the Mussulman government, a complete indulgence with regard to the rites and ceremonies of their religion, as well as with respect to the various privileges and immunities, ... In matters of property ... and in all other temporal concerns (but more especially in the criminal jurisdiction), the Mussulman law gave the rule of decision, excepting where both parties were Hindoos, in which case the point was referred to the judgment of the Pundits, or Hindoo lawyers."[2] Under the Muslim Government in India, justice was, therefore, distributed by two distinct types of tribunals: the one under the Qazis administering the law of the Quran, and the other under the officers of Government exercising discretionary authority in matters not covered by the canon law.

THE QAZI - Under the early Khilafat the Qazi was appointed[3], either by the Khalifs or his governors invested with necessary powers. Conditions[4] attached to the post of a Judge were (i) Male Sex[5] and Majority, (2) Full Mental

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2. Hedaya, (Tr.Hamilton and Grady), P.XIV.
3. Either in writing or by verbal nomination. The person appointed similarly expressed his willing/to accept the post either in writing or orally. ness
4. See Von Kremer: The Orient Under the Caliphs, P.284.
5. According to Hanifa, a woman might be a judge under certain conditions. Abu Jarir Taberi held that she might do it unconditionally.

capacity, (2) Free Citizenship, (4) Faith in Islam, (5) Integrity of Character, (6), Freedom from any defect of sight or hearing, and (7) Knowledge of law, both theoretical and practical.[1] The duties[2] annexed to the office of the qazi were (1) to decide the cases by compromise or judicial process, (2) to execute the judgment against the defaulting party, (3) to appoint guardians, (4) to administer waqf property, (5) to execute testamentary depositions according to the direction of the testator (6) to provide for the remarriage of widows, (7) to execute punishment prescribed by the religious laws,[3] (8) to supervise the streets and building within his jurisdiction, (9) to supervise the law officers and the subjudges appointed by him, and (10) to be impartial in his decisions without considerations of high and low, 'plebians and patricians.'

THE MUGHAL JUDICIAL SYSTEM

CENTRAL - The mughal judicial system was organised practically on the lines indicated above. Certain powers and functions

1. According to some jurists an ignorant person might also be appointed to this office - See Hedaya (Ed.Hamilton and Grady) PP.334-335.
2. Vide Von Kremer: Orient under the Caliphs PP.285-286.
3. Of the offences other than those comprehended by religious laws the qazi could not take cognizance on complaint being made by the sufferer. The p of the King's peace did not obtain.

of the Mughal Officers of Justice, no doubt, varied according to the special needs of their circumstances, but the main principles of organisation drew largely on the Islamic system itself. The Emperor like the Khalifs, was the supreme judicial authority in the Kingdom. He "was the highest court of appeal and sometimes acted as a court of the first instance, too."[1] Besides the Emperor, the central judiciary was administered by the Chief Qazi and the Diwan-i-Ala. The former was in charge of the Canon Law, both civil and criminal, while the letter took cognizance of cases of secular nature.

The author of Seir Mutcgherin mentions the existence of a Daroga-i-Adalat for civil causes, whose duty it was to afford such "instant relief to such poor, defenceless, weak people, as could not at all times, and for every subject resort tothe Ministers, and to the Emperors."[2] The author gives an interesting account of the manner in which the Daroga administered justice. If the case "proved to be a slight one," he writes, "it was made up with the consent or both parties; else if it proved of moment, then after having carefully ascertained it by witnesses on oath, and by lawful means, the whole was made up into a secret-hal or judicial narrative, and together with the witnesses, and with the plaintiff and defendant, it was presented by the

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1 Fraser: Mughal Administration, 2d.Ed., P.107.
2 Seir Mutaqherin, Vol.III, P.168.

by the Derage and his officers to the Emperor and the Minister, who used to sit twice a week on purpose to hear such matters; ... and the Emperor and the Minister having examined the case, according to their wisdom, gave their decree as they saw fit and equitable."[1] If they felt that the matter had not been subjected to a thorough investigation, it was referred back for a second examination before receiving their final judgment.

The Chief Sadr[2] was responsible for the administration of religious endowments and charity. He was the civil judge of causes arising from disputes relating to such endowments of land or other forms of charitable grants and property.

PROVINCIAL - The administration of justice in the provinces was a "miniature of the central machinery[3]. The Nazim was the vice-gerent of the sovereign in the province. He was also known as Sipahsalar, Subahdar and, subsequently, Nawab.[4] As the head of the provincial administration he was responsible for the maintenance of law and order, the administration of criminal justice and police. He had the power "to punish by reprimands, threats, imprisonment, stripes or amputation of limb," in the exercise of which he

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1 Ibid, Vol.III, P.169.
2 Dr. P. Saran thinks that the office of the Chief Sadr as that of the Chief Qasi were rolled in one and the same person. See: Provencial Covernment of the Mughals, PP.343-34
3 Sarkar: Mughal Administration, P.55.
4 It was an honorific title, the plural of Naib, meaning a Deputy.

was to use "the utmost deliberation before severing the bond of the principle of life."[1] At times, a Naib Salahdar or Deputy Governor was appointed in case "the Subahdar was not actually stationed in the province."[2]

The Diwan was the head financial Minister of the province, appointed by royal order under the seal of the Wazir, the Chief Finance Minister of the State. He was primarily responsible for the collection of the Revenue and its transmittence to the Imperial Treasury. In the discharge of this duty, he exercised extensive judicial powers over all civil and financial causes[3]. The original intention in the creation of this office under Akbar was in conformity with the principle of the financial administration of the early Arab rule which sharply distinguished the functions of the Amir (Governor) from those of the Amil (Head of the Treasury).

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1 Jarrett: Ain-i-Akbari, Vol.II, P.37. A civilian magistrate as the Nazim was, penalty of death was not enjoined by the Quranic law to be inflicted by him. This was a power of the Qazi who exercised it in case of murder unless the party of the victim agreed to accept what was usually called "the price of blood". See Sarkar: Mughal Administration, PP.139-140. The duties of the Nazim relating to judicial and police administration was well as the general improvement of the agrarian condition of the province are given in Jarrett's Ain-i-Akbari, Vol.II,P.37.

2 Mirat-i-Ahmadi, Supplement, P.214.

3 I.O.MSS.3597, fol.161a, referred to by Dr.P.Saran; Provincial Govt. of the Mughals, P.344. See also C.D. Field: Introduction to the Regulations of the Bengal Code. (2d.Ed.) P.2.

"These two officials had to keep a strict watch on one another. As head of the military and executive the Amir (like the Nazim) was the first, but they were equal in rank and the administrator of the treasury even had greater influence."[1] (like the Diwani during the later Mughal period). Like the Daroga-i-Adalat of Civil Causes, the Provincial Diwan had his own Daroga of Civil Court, who played the same part in the provincial administration of justice as his counterpart at the centre.

Every province had also the following set of officers, who were associated with the administration of justice, law and order.

1. The Qazi (Judge of Canon law, Civil and Criminal)
2. The Muhtasib (Censor of Public Morals and Superintendent of Weights and Measures)
3. The Sadr (In charge of religious and charitable endowments)
4. The Kotwal (The Prefect and Superintendent of the City Police and Municipal Officer)
5. The Bakshi (The Paymaster General)

Besides, there was a number of Vakiya-Navis (News-Reporters) and Khufiya-navis (Spies) who helped the administration by a regular supply of written information on various subjects of interest and concern. The Harkaras also served as secret news-agents who usually furnished oral news of affairs.

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1 Encyclopaedia of Islam, Vol. II, P.13.

Sarkar and Pargana - The provinces were divided into Sarkars which, in their turn, were subdivided into Parganas. Four Chief Officials administered the affairs of a Sarkar.[1] They were (1) the Faujdar, (2) the Qazi, (3) the Kotwal, and (4) the Amil. Of these, the Faujdar held "the first place".[2] As the head of the district administration he was responsible for the execution of law and order. Besides, he enjoyed a certain amount of political power in dealing with foreigners in the Sarkar.[3] His main responsibility was to secure the peace and tranquillity of his district, and help the revenue and judicial authorities in the peaceful discharge of their duties. As his name implied, he was essentially a Military commander placed at the head of a powerful contingent of military police, with the help of which he maintained law and order within his jurisdiction. The Ain gives instructions for his guidance in the event of a rebellion on the part of a refractory zamindar.[4]

The Faujdar, however, had no judicial powers. Thus, in the exercise of his executive functions he might settle petty causes of quarrels, insults and abuses in the course

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1 Besides these, each Sarkar had a Sadr, a Bakshi, a Kobtesib, the Qanungo, the Amin and the news-reporter.
2 Jarrett: Ain-i-Akbari, Vol.II, P.40.
3 See I.O.Home Miscellaneous Series, Vol.153, Letter of the Faujdar of Hugli to Clive, No.226.
4 See Jarrett: Ain-i-Akbari, Vol.II, PP.40-41. Sarkar gives a list of his police and military duties on the basis of a sanad of his appointment. See Mughal Admn.PP.63-66. Also Seir Mutaqherin, Vol.III, PP.175-177.

of his local investigations. But he had no power to take cognizance of serious causes of crimes, which were determined in the regular courts of justice. Speaking of the original intention of this institution, Warren Hastings, in a minute of December 7, 1775, pointed out that the Faujdars were "officers appointed to guard the peace of the country and to seise all offenders against it. They have no power to judge or to punish, but are to consign such persons as they have apprehended to the Fouzdary Courts, where they are to undergo their trial."[1]

The Qazi was in charge of the Canon law, both civil and criminal. He was assisted in his work by the Mufti[2] or Maulair, who expounded the law applicable to cases. The Qazi accordingly delivered the judgment. He also performed a number of other duties, which have already been set forth under the early Islamic system of justice.

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1 Forrest: Selections, etc. Vol.II, PP.459-460. With the recall of Faujdars and Amils from a number of districts in 1770 the Courts of Adalat continued to function without any alterations whatsoever. If the Faujdars had been legally invested with powers to administer criminal justice, their removal would have entailed radical changes in the constitution of courts, which were left intact without them. Hastings was, therefore, correct in his conclusions.

2 Von Kremer holds that while judgeship was confined to a free citizen, even a slave was permitted to give legal opinion (Fatwa) since the position of the Mufti was not recognised by the State." See Orient under the Caliphs, P.284

The author of the Mirat-i-Ahmadi mentions two more officers of justice for the Sarkar of Surat:[1] One of them was the Superintendent of Civil Court, and the other a Daroga who presumably exercised criminal jurisdiction. These were secular courts as distinct from the Court of the Qazi who administered the Quranic law.

The Kotwal was the Superintendent of the town police and Municipal officer rolled into one. He was responsible for the peace of the town as the Faujdar was for that of the country.[2] The nature of his office will be examined in certain details under the Mughal Police System.

The Amil, or Amalguzar, as he was also called, was essentially the Revenue Collector for the Sarkar. His duty was also to adopt measures to increase the produce of land which constituted the main source of government revenue.[3] He was, therefore, required to encourage the cultivation of waste lands by the supply of materials in cash and kind. As the question of the peaceful pursuit of agrarian activity was vitally linked up with that of law and order, the Amil enjoyed certain powers of punishment to protect the peasants against the oppressions of thieves and robbers, or the

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2 Thevenot, Part III, P.20.
3 See Jarratt: Ain-i-Akbari, Vol.II, PP.43-47
1 See Mirat-i-Ahmadi, Supplement, P.188.

exactions of the zemindars and farmers. He does not appear, however, to have any legal authority to administer civil justice in the exercise of his revenue jurisdiction. Even later in the eighteenth century Mahomed Reza Khan described the Amils as government servants whose business it was "to superintend the collections jointly with the zemindars to see that what is collected is brought into the cutcherry."[1].

The main officers of the Pargana were (1) the shikdar, (2) the qazi and (3) the pargana amil. The Shikdar had the responsibility of maintaining the peace and tranquillity of the pargana. He was supplied with a small contingent of military police which helped him in the execution of his police duties. He also helped the qazi and the amil in the discharge of their public responsibilities. He was accountable for thefts and robberies committed within his jurisdiction. He was to pay the penalty for his failure to recover the consequent loss of life or property. Every pargana had its own qazi. Sarkar holds that "every city and even large village had its local qazi appointed by the chief qazi."[2]. The Amil was in charge of the pargana collections.

CRIMES AND PUNISHMENTS - According to Islamic law crimes are classified under three heads:

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1. Proceedings of the Controlling Council of Revenue at Murshidabad (29.Oct.1770), Vol.I, P.139.
2. Mughal Administration, P.27.

1. Crimes against God.

2. Crimes against the State.

3. Crimes against private persons.

Punishments, according to Hedaya, are divided into three classes - (1) Hidd, (2) Qisas and (3) Tazir.

Hidd (Pl. Hadud - limits or obstructions) means punishments limited or defined by the Quranic law on account of the right of God as distinct from retaliation (Qisas) which is due as a right or man. Hidd is, therefore, not subject to any alteration by man. The following crimes and punishments are classified under this head:

	Crimes	Punishments.
1.	Apostacy	Death
2.	Adultery or fornication	To be stoned to death for a married person; to be scourged with 100 stripes for an unmarried person; a man to be scourged while standing, but a woman while sitting; to be scourged with 50 stripes for an unmarried person who is a slave.
3.	False accusation of married person with adultery.	80 stripes

4.	Drinking wine and other intoxicating liquors.	80 Stripes
5.	Theft	Cutting off the right hand.
6.	Highway robbery	Cutting off the hands and feet.
7.	Robbery with murder	Death either by the sword or crucifixion.

Qisas literally means retaliation. It was the personal right of the victim or the injured party to determine the form of punishment for the injury sustained. The qazi was bound to punish a murderer with death, if the relations of the victim so desired. But the crime could be equally composed by the payment of what was called the price of blood, or even by an unconditional parcon granted by the party injured. Manucci gives, as an eye witness, a very interesting case which illustrates the application of this principle in actual practice. He writes:

"There was a woman who came to him (Qazi Abdul Wahab)[1] requiring the condemnation of a young man then in custody for having slain her husband. The qazi in a mild tone counselled her to forgive, and if she would listen to him, he would advise her to marry the man, or else some other should she object to having the murderer. The woman consented to the proposal. The young man was released, and she married him. Seeing this easy way of proceeding, I took the liberty to say to

1 He was the Qazi of Agra in the time of the Mughal Emperor Aurangzib. The writer had become friendly to the qazi who often invited him to his house for entertainment.

to the qazi that the sentence he had pronounced was likely to be the cause of several murders for there being many women who were not content with their husband, they would procure their murder by the hand of their lover in order to marry again at once with the latter. He admitted the force of what I said, but he made believe to laugh at it, and said it was a charity to secure a benefit to the young man and save his life. But if the woman had persisted in her complaint, he would have condemned him to death ...."[1].

Speaking of this principle of Islamic punishment Pelsaert observes that the laws administered by the qazis "Contain such provisions as hand for hand, eye for eye, tooth for tooth."[2].

Tazir[3] was the discretionary punishment of the qazi, not specified by any fixed rules or process. It included admonition, exposition to public insult, imprisonment or exile and scourging, not exceeding 39 stripes.

There was yet another form of punishment called Tash-hir,[4]

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1 Manucci: Storia do Mogor, Vol. II. PP.419-420.
2 Pelsaert: Jahangir's India (Moreland's Tr.) P.57.
3 Aurangzeb had a penal code prepared during his reign. It is called Fatwa-i-Alamgiri. Its character was that of Tazir. Sir J.Sarkar has translated it in his Mughal Administration, PP.122-130.
4 See Sarkar: Mughal Administration, P.121. The practice obtained in early Hindu period also. "When a person steals," says Arthashatra, "articles of ¼ to ½ panas in value, he shall be fined 8 panas, or he may be paraded with cow-dung or ashes, or with an earthenware pan with blazing light tied round his waist." Shaving of the head is also referred to. See Shamasastry - Arthsastra, 3d. Ed. P.251.

which was often inflicted by both the qazis and the king's officers. The offender's head was clean-shaved. He was then besmeared with lime or dust, with the face usually blackened and then seated on the back of an ass with his face turned towards the tail. He was thus paraded round the streets amidst the noise of the people surrounding him.

The Mughals adopted the Islamic system of punishment with certain alterations in conformity of the principles of autocracy. For offences like robberies, murders and deceities they often inflicted death punishment. Whipping to death was usually practised. Moreover, cases occurred wherein persons lost their lives as a result of the imperial wrath.

In religious or communal causes the Hindus were governed by their own laws and customs. They were decided by the Brahmin lawyers or Pundits, who were the custodian of every form of religious knowledge. Like Islamic jurisprudence, Hindu law was founded on divine revelation. But unlike the former, it was based on inequality and caste privilege. Manu, the great Hindu law-giver, for instance, points out that "no greater crime is known on the earth than slaying a Brahmin; a King therefore must not even conceive in his mind of killing a Brahmin,"[1]. although he might have committed all (possible) crimes.[2]. He was only

1. Buhler: The laws of Manu, VIII, 381, See also Halhed: A code of Gentoo Laws: P.320.
2. Ibid: VIII, 380.

to be fined in case of carnal connection against the will of a Brahmani[1], the amount of which was to be reduced to half in the event of a willing cohabitation.[2]. "A low caste man, says Manu, "who tries to place himself on the same seat with a man of higher caste, shall be branded on the hip and be banished or (the King) shall cause his buttock be gashed. If out of arrogance he spits (on a superior), the King shall cause both his lips to be cut off; if he urines (onhim), the penis; if he breaks winds (against him) the anus."[3]. An offence of a similar nature was punishable under different forms according as it was committed by persons of higher or lower castes.[4]. Beating[5]. of wives, sons, slaves, pupils and younger brothers with a rope or a stick of bamboo on the back part was admissable under the laws of Manu. Violation of caste rules was usually punished by excommunication.

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1 A Brahmin woman.

2 Buhler: The Laws of Manu, VIII, 378.

3 Ibid. VIII,281, Halhed: OP.Cit.P.234.

4 Ibid. VIII, 366-370. Also see Shamasastry: Arthasastra, 3d. Ed. P.164,253; Halhed: OP.Cit.Chapters III, VII and XXI.

5 Buhler: The Laws of Manu, VIII, 299.

The Police System - The object of the early Islamic police system was to ensure on the part of the Faithful a conformity to the Quranic tenets. The officer appointed for the purpose under the Khilafat was called Muhtasib, or the Censor of Public Morals. "As a censor he had the power to enforce the law without first requiring complaint from an injured party."[1] With a view to ensure obedience to the laws of the Shari' he enforced the observance of fast in Ramjan, prevented open indulgence in wine and suppressed heresy and public prostitution. "In some respects his duties were parallel with those of the Kadi, but the Muhtasib's jurisdiction was limited to matters connected with commercial transactions, defective weights and measures, fraudulent sales, and non-payment of debts. Even in these matters he could hear only those cases in which the truth was not in doubt. As soon as evidence had to be sifted and oaths administered, the Muhtasib's jurisdiction ceased."[2] With the lapse of time extensive municipal duties also fell to his jurisdiction. He began to look after the sanitation, public works and water arrangements of the town.

Under the Mughals, most of the police and municipal functions of the Muhtasib were discharged by the Kotwal, with the exception, of course, of the religious duties, which

1. Encyclopaedia of Islam, Vol. III, P.703.
2. Ibid. Vol. III, P.703.

continued to be performed by the former. The nature of his office also corresponds greatly with that of the Sthanik[1], of the Hindu period. The Ainggives full instructions to the Kotwal for his guidance in the execution of his police and municipal duties[2]. The town was to be divided into different wards, to each of which he was to appoint a subordinate officer whose business it was to give daily reports of persons coming in and going out. A register of houses and roads was to be regularly kept. The peace of the town was maintained in collaboration with the citizens who engaged to bind themselves in the task of reciprocal assistance. With the help of a well-organised system of detectives he kept himself informed of the character of new arrivals in the city, who were to be stationed in a seperate serai meant for the purpose[3]. He compered the income and expenditure of the various classes of men and judged their character accordingly. Artificers were organised into guilds, and their heads served as useful sources of information of their activities. Thevenot gives an interesting account[4] of night patrolling which was started at nine o'clock and finished at three in themorning.

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1 He was essentially the Superintendent of the City police entrusted with the responsibility of municipal administration as well. See: Shamasastry: Kautilya's Arthasastra, PP.160-164.

2 See Jarrett: Ain-i-Akbari, Vol.II, PP.41-43.

3 "He (Kotwal) obtains information about all that goes on, so as to be able to send in his report. For this purpose there are throughout the Mughal Empire certain persons known as Alalcor (halal khor), a word which means 'men who live on what is well-earned'. These men are under obligation to go twice a day to clean out every house, and they tell the Kotwall all that goes on. -" Manucci, Vol.II, P.421.

4 Thevenot - Travels in India, Part III, PP.19-20.

"The Cotcual (Kotwal)," he adds, "is to answer for all the robberies committed in the town."[1] His municipal duties were (1) to look after the sanitation and lighting arrangement of the town; (2) to allot seperate quarters to butchers, hunters of animals, washers of the dead and sweepers; (3) to take an inventory of the property of the deceased without heir; (4) to locate the position of the cemetery outside the city. As a market officer he examined weights and measures and controlled the value of currency and prices, preventing the rich from purchasing more than what was necessary for consumption. He also looked after the conduct of public women who were not to be given any quarter within the town. He restrained the public use of wine; but he was not to interfere with the privacy of domestic life. The Ain suggests that within the limits of his jurisdiction he was also responsible for the execution of certain social measures of the State, such as the prevention of the selling of slaves, and the burning of women against their will on the death of their husbands.

The Kotwal does not seem to have any judicial authority. However, Dr. P.Saran contends that he was a magistrate taking cognizance of criminal cases of the whole sarkar. "There is no clear classification of cases," he adds, "which

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1 Ibid. Part III, P.80. Also Ain-i-Akbari, Vol.II.P.42.

came under the authority of the qazi and the Kotwal, but from the known cases it is quite easy to comprehend that the secular type of criminal suits went to the Kotwal and the religious cases, such as inheritance, marriage, divorce and civil disputes went to the qazi's court."[1].

Dr. Saran has quoted only one case in support of his contention, although he says that it is based on "the known cases." And, that one case also does not seem to yield conclusions favourable to his assertion. The case relates to Manrique, who, along with his party, was proceeding by river from Hugli to a place called Banja. On their way they were arrested on suspicion by the inhabitants of a village, who took them for Firanghi pirates of Chittagong. They were soon taken to the Shiqdar of the village, who, despite all their pleadings to prove the bona fides of their conduct, ordered fifty lashes to be inflicted on each. The case was then forwarded to the determination of the Nawab of Cuttack (Orissa). But the learned scholar says that "their case, however, was not within the competence of the local Shiqdar to try: he had, therefore, to forward them, with a formal report under guard to the Kotwal of Midnapore where they were eventually found innocent and released."[2].

interpretation, however, does not bear the testimony of Manrique's own account. The Shiqdar forwarded the case

1 Dr. P. Saran: Provincial Government of the Mughals, P.363.
2 Provincial Government of the Mughals, P.353.

to the Nawab of Cuttack, not to the Kotwal of Midnapore. Manrique clearly says that the formal letter of the Shiqdar, which was publicly read out before the Kotwal, "concluded by stating that as we were foreigners he (the Shiqdar) had sent us to the Nabab's Court."[1] A similar intention is reported to have been expressed by the Shiqdar earlier in the account.[2] Secondly, they were made over on bail to one Moboto Khan[3] who agreed to stand as their security,[4] and not eventually released on their being found innocent. All that the Kotwal did was that he made out a report in the light of the evidence produced by the accused, and submitted it to the Nawab. In the course of his report he tried to save the position of the Shiqdar by "concealing the serious indignities he had inflicted"[5] on Manrique and his party. Finally, it was the Nawab, not the Kotwal, who gave a judgment in the case and "condemned the Shiqdar to pay a fine of two hundred rupees" to cover "the cost of their journey."[6] Thus, the case of Manrique, far from establishing the judicial

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1 Manrique: Travels, Vol.I.419.
2 Ibid. Vol.I, P.412.
3 A wealthy merchant who traded in the Company of the Portuguese and was known to Manrique.
4 "Next day, early in the morning," writes Manrique, "Moboto Kan came back with two officials of the chautara (Police office). They accepted the security and after removing the iron collars from our necks made us over to him."- Manrique, Vol.I.P.424.
5 Ibid. Vol.I, P.425, It is clear that the punishment, that the Shiqdar had inflicted in the beginning, had no legal sanction.
6 Ibid. Vol.I, P.425.

character of the Kotwal's office, confirms our conclusion of his being a police officer.

In fact, the administration of criminal justice was split into two parts: The first part related to the police function of apprehension of criminals, local investigation, examination of evidence both oral and documentary, ascertainment of the probable facts of the case and preparation of a report in the light of the evidence available. The second part belonged to the jurisdiction of the judge, who assessed the value of the said report and delivered his judgment, after its due verification, independently of the recommendations of the police officer. The Kotwal was concerned with the first half of criminal administration of the town, the second half constituting the sphere of the Qazi or Judge of the Court of justice. In his capacity as a magistrate the Qazi could, however, personally make local investigations and verify the evidence produced for his satisfaction. It is perhaps in this light that Manucci declares the Kotwal to be subordinate to the Qazi.[1] Manucci's observation conforms entirely to the manual of the Kotwal's duties given by Sir J. Sarkar: "He should check the number of the persons in the prison and then ascertain (their) answers to the charges against them. Then he should report to his

1 "He (Kotwal) is subordinate to the Qazi and receives orders from him." - Manucci, Vol.II, P.421.

official superior the cases of those prisoners whom he considered innocent and secure their liberation. In the case of the guilty persons who can pay, he should take orders for exacting suitable fines from them and then releasing them. In the case of penniless prisoners, the Kotwal should report and take action as commanded. A statement of the cases of those deserving to be kept in prison should be sent to the officers of the Canon law, and the orders passed by the latter over their signatures should be carried out by the Kotwal. In the case of those deserving death, the Kotwal should, through proper officers, freely state their cases to the judge (in writing), on the day of trial, receive the qazi's signed sentence of death, and execute the sentence."[1]

Thus, the Kotwal was a police officer, not a magistrate, the office of the latter requiring powers to judge, which the former did not possess. He might, in practice, compose petty[2] matters of dispute, as the Muhtasib did under the Khilafat, with the consent of the parties concerned. But even in such cases his decision must have been of the nature of an informal arbitration rather than a judicial verdict.

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1. Mughal Administration, P.87.
2. Robert Orme, while describing the state of criminal justice in the first half of the eighteenth century at Murshidabad, points out that the Kotwal dealt with such crimes and misdemeanours as were of "too infamous or too insignificant a nature to be admitted before the more solemn tribunal of the Durbar" (Nawab's Court) - Historical Fragments of the Mogul Empre, P.452.

The Rural Police - The rural police structure of the Mughals was founded on two different forms of organisation worked together in a synthesis to serve the common end of peace. The first part of the system had its origin in the ancient Hindu institution of the village watchmen who were maintained by the village communities in which they lived[1]. Their duty was to guard the persons and property of the villagers against the depredation of thieves and robbers. In return for their services they were granted certain assignments of land for their support and maintenance. The arrangement was constituted under the authority of the government of the country.[2] The constitutional position of zamindars, goraits

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1 Beneile says that the village watchman, as a rule, "belonged himself to some thieving gang, and his engagement as watchman was in fact an arrangement by which the villagers secured a partial immunity from attack by buying over one of the enemy." - Report on the Village Watch of the Lower Provinces of Bengal (1868) P.5. Beneile's Report forms a valuable source of information on the subject of ancient village watch system in Bengal.

2 D.J.McNeile: Report on the Village Watch of the Lower Provinces of Bengal, P.5.

or barahils, who were the representatives[1] of the ancient hereditary watchmen, underwent certain alterations with the introduction of the Mughal System of land tenure based on principles of Assignment. Their subordination was consequently transferred from the village community to the Zemindar or the farmer of land revenue, their charges becoming a part of the Zemindari establishment of Government under the head Chakeran lands.[2] Certain functional changes also took place in the position of the village watchmen under the Mughals. Besides being required to perform the duty of night guards, they were also engaged in the collections of land revenue.

Thus, in place of the village community the zamindar or the farmer of land revenue came to assume the responsibility for peace and tranquillity within the extent of his zamindari. In case of theft and robberies he was to produce the thieves and robbers together with the effects stolen or plundered. In the event of his failure to produce the culprits, he was himself to make good the loss.[3]. This principle of local responsibility in the organisation of the Mughal police was also commensurate with the Institutes of Timour who held the police guards answerable for the value of the property lost.[4].

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1 W.W.Hunter: A statistical account of Bengal, Vol.XIV.P.205.
2 Rent free assignments made for the subsistence of servants (Chakeran) of all denominations.
3 Motwell: Historical Events, Part I, P.198; Fifth Report of the Sel.Com.of the House of Commons, (1812),Vol.I. PP.77-78; Galloway: Observations on the Law and Constitution and Present Govt.of India, P.434; Rep.Indian Hist.Rec.Com. Vol.XVIII,P.134; Forrest: Selections etc.Vol. I,P.454.
4 Major Davy & Joseph White: Institutes, Political and Military, of Timour, P.347. The East India Company also accepted

(cont.next page.)

Over and above his land servants, the Zemindar maintained a military contingent of his own. Edward Thomas speaks of the Zemindari Force,"[1] which secured the peace of the Zemindari areas of the Empire and occasionally helped the Emperors in his wars.

The second wing of the Mughal police system was that of the Faujdar who represented the might of the Empire in the Sarkar. He was furnished with a contingent of 500 to 1500 sepoys according to the area he was required to serve. Sepoys were distributed equitably over all the Parganas into which the Sarkar was divided. An inferior officer of police, called Thanadar, was appointed to every Thana[2], in the Pargana, and was placed at the head of a small contingent of military police. The author of Miret-i-Ahmedi gives a complete picture of the distribution of thanas in Ahmednagar[3]. Ordinarily the range of a thana there varied between two-to-five Kos[4]. The efficiency of the arrangement may be imagined from the fact that 32 thanas existed in a Pargana called Kaveli containing 181 villages.

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this responsibility in the mochalka (deed of agreement) executed on the occasion of the grant of the Zemindari of 24 Parganas. See Bolts: Considerations of India Affairs, P.11.

1 Chronicles of the Pathan Kings of Delhi, PP.431-432.

2 Derived from Prakrit (Thanam) or Sanskrit (Sthanam), meaning a place. It was a police station under the Mughals.

3 Miret-i-Ahmedi, Supplement, PP.145-148.

4 One Kos is equivalent to about 2 miles.

In Bengal and Bihar the area covered by each Faujdari jurisdiction about the year 1765 seems to have been comparatively much larger. The author of Seir Mutaqherin points out that a Faujdar was appointed to each of the districts of Islamabad (Chittgong) Sylhet, Rangpur, Rangamatty, Purnea, Rajmahal, Rajshahi, Burdwan, Midnapur, and Hugli. Besides, Dacca had a Naib Nazim of its own with the requisite number of imperial officers. Similarly, the Faujdari districts of Bihar were Azimabad (Patna), Shahabad and Rohtas, Monghyr, and Bihar, Saran and Champeran, and Tirhut and Rajpur. "In cases of Emergency," writes the author, "the Nazim or ultimately the Emperor himself sent troops under his generals or royal princes who came to the help of the Faujdar on information being sent for the same and law and order maintained."[1].

Both the organisations worked in harmony during the vigour of the Mughal Government. The first was subordinate and supplementary to the second. "The land servants or the ancient militia of the country," observed Warren Hastings, "were under his (Zemindar's) immediate charge, and being distributed throughout the Zemindari, enabled the Zemindar both to watch over its internal quiet, and to obtain information of whatever passed in any part of it, and so far the Faujdari jurisdiction is inherent in the Zemindar.

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1 Seir Mutaqherin, Vol. III, PP. 178-179.

In the exercise of it he was subject to a foujdar, who had the superintendence of a district comprehending many zemindaries, and had the thanas or inferior stations under the charge of officers and armed men dependent on him, besides a part of the land servants of each zemindary, the rest being employed to guard the villages and enforce the collections. It was the Zemindar's duty to give constant intelligence to the Nawab... and to assist the Fouzdar in the apprehension of robbers and in executing the measures, which were required of him for preserving the peace of the country; but this duty first and immediately belonged to the Fouzdar, who was the representative of the Nazim, and to him the people looked up for justice and protection even against their chiefs.[1] With the weakening of the imperial authority, however, the two systems began to work at cross purposes, the first growing progressively independent of the second. The balance was not disturbed very much under the early Nawabs of Bengal. But the Maratha invasion in the time of Aliwardi Khan cast the weight in favour of the zemindars on account of his reliance upon them for a regular supply of money and materials necessary for success in war against the invaders.

The Mughal judicial system was thus characterised by elements of variety, not of uniformity, which is a British contribution. If justice was available under such a system,

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1. Forrest: Selections, etc. Vol. II, P.454.

it was because of the force of the personality of rulers rather than the system. It was therefore bound to degenerate into jurisdictional confusion, as it did, under weak rulers. This was the legacy to which the Company succeeded in 1765.

Forms of Judicature in 1765.

Courts at Murshidabad - Four Courts of justice existed at Murshidabad before the Company obtained the Diwani in 1765.[1]

1. The Nazim, as Supreme Magistrate presided personally in the trials of capital offenders, holding on every Sunday a Court called Roz Adalat. The proofs other than capital were taken before the Faujdar who reported to the Nazim for his judgment and sentence.[2] The Nazim's Court served both as a court of original and appellate jurisdiction.

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1 From the Committee of Circuit at Kasimbazar to the President and Council at Fort William, 15 August, 1772, (Proceedings of the Com.Circuit at Kasimbazar, Vol.(1-3), pp.113-120. Also printed in the 7th Rep.Committee of Secrecy (1773) pp.346-348.

2 Dr. P. Saran writes that "the Faujdars had come to have judicial authority over all cases less than capital crimes towards the close of the 18th.Century, and cites the 7th Report from the Committee of Secrecy (1773) in support of his statement. (See: Provincial Government of the Mughals, p.353,f.n.1.). The 7th Report of the Com.Sec., however, does not refer to conditions obtaining towards the close of the 18th century. It describes the ancient constitution of Bengal before the Company acquired the Diwani in 1765. Besides, his reference to the 7th Report of the Com.Sec., only states "the proofs of crimes not capital were taken before the Faujdar. The judgment and sentence were delivered by the Nazim. This evidently relates to the position obtained at Murshidabad. As to the Provincial Faujdari Courts the Committee of Secrecy holds that the Zemindars presided over them, not the Faujdars.

2. The Diwan was supposed to be the Chief Judge of all causes relating to real estates or property in land, but seldom exercisedthis authority in person. The Daroga-i-Adalat Diwani (Deputy of the Diwan) exercised this jurisdiction in practice.
3. The Daroga-i-Adalat at Aalen was the Deputy of the Nazim in the criminal court who took cognizance of quarrels, frays and abusing names, besides deciding matters of property excepting claims of land and inheritance.
4. The Qazi was the Judge of all claims of inheritance and succession. He also performed the ceremony of wedding, circumcision and funerals. He was assisted in his work by the Mufti, who expounded the law applicable to cases, the qazi pronouncing the judgment accordingly. He was also helped by the Muhtesib whose immediate business it was to take cognizance of drunkenness, of the vending of spirituous liquors and intoxicating drugs, including the examination of false weights and measures. If the qazi or the Muhtesib disagreed with the Fatwa of the Mufti, the matter was referred to the Nazim who summoned a general assembly of the Darbar consisting of the Qazi, Mufti, Muhtesib, Darogas of the Adalat, Maulavies and all the learned in the law to meet and decide the case. Their decision used to be final.

The Committee of Circuit mentions two more officers at Murshidabad, who had, of course, no judicial authority. The one was the Kanungo, and the other the Kotwal. Although vested with no judicial powers, the former was often referred to in matters of land disputes, he being the Registrar of lands. The latter was described as the Peace Officer of the night, who was subordinate to the Faujdar.

From a perusal of these courts it appears that the institution of the Sadr did not exist at Murshidabad. It seems to have fallen into disuse, because no trace of it is available in the Proceedings of the Murshidabad Council either. But as to the jurisdiction of the qazi, the opinion of the Committee seemed to be only partial. We have seen how under the Mughals the qazi was in charge of the canon law, both civil and criminal. And we shall presently have occasion to see how he continued to perform these offices during this period as well. It is, therefore, difficult to accept the Committee's exclusive association of the qazi with civil justice. Other courts seemed to have been continued as before.

Speaking of the defects of these forms of judicature the Committee of Circuit pointed out that they were "never known to adhere to their prescribed bounds, but when restrained by the vigilance of a wiser ruler." Not only the civil courts encroached on each other's authority, but both civil

and criminal often take cognizance of the Same Subjects ... For many years past the Darogas of the Adawlut at Aalea, and of the Dewannee have been considered as Judges of the Same Causes whether of real or personal property."[1] By the year 1765 the Diwani Adalat was "in effect the only Tribunal, the Adawlut at Aalea or the Court of the Nazim existing only in name."[2] The Committee, however, observed that no such confusion existed in the Criminal Court, although it had lost much of its authority.

Thus, in actual practice, there were only two Courts of Justice at Murshidabad when the Company assumed the Diwani: (1) The Diwani Adalat and (2) the Faujdari Adalat. Both of them were committed to the charge of Mahomed Reza Khan. As Naib Diwan he represented the Company's civil jurisdiction and administered civil justice in consultation with the British Resident at the Darbar. And, as Naib Nazim he exercised the criminal jurisdiction of the Nawab himself. A similar arrangement obtained at Patna for Bihar, where Raja Shitabroy acted as Naib under the Chief of Patna and represented both civil and criminal jurisdictions in the same manner as Mahomed Reza Khan did at Murshidabad. Besides, Dacca had a Naib of its own in Jessarat Khan who took cognizance of criminal causes. There was a seperate Naib Diwan who administered civil justice in conjunction with the Chief of Dacca.

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1. Proceedings of the Committee of Circuit at Kasimbazar (15. Aug.1772), Vols.I-III) in one, PP.119-120.
2. Ibid. P.120

District and Local Courts - The Seventh Report of the Committee of Secrecy (1773) points out that before the grant of the Diwani there was in every district a criminal court known as the Faujdari Adalat. The Zemindar[1] or Raja of the District was the judge in this Court: His jurisdiction extended to all criminal cases; but ... in such as were of a capital nature, the sentence was not to be executed until a Report of the case was made to the Government at Murshidabad and their orders received upon it."[2] The proceedings of the Court, as the Committee observes, were summary. Crimes were usually punished by fines, particularly when the accused happened to be a man of wealth. They were appropriated by the Zemindar as his personal perquisites.

The Court of civil causes in the district was known as the Adalat. The Zemindar presided in this Court also. The Judge, as a perquisite of his office, was entitled to a fee called chauth which amounted to one-fourt of whatever was recovered in the Court.

Appeals from the decision of district courts lay at Murshidabad. But the Government exercised a discretionary power over the proceedings of the courts and granted pardon or inflicted punishment without the interposition of any judicature.

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1 See Appendix to Chap.III.
2 7th Rep.Com.Sec. (1773) p.324.

Causes of a religious nature were not subject to the determination of the secular judges. "In every such case," the Committee adds, "the Judge before whom the Question depended was obliged to call in the Assistance of the Qazi of the District, and even to submit to his Authority in the Decision of the Cause: the Gentoo (Hindu) subjects enjoyed a similar privilege with respect to all cases of a religious nature, in which Persons of that persuasion were parties: for that in every such case, it was necessary that the temporal Judge should be assisted by a Brahmin of the Caste, particularly where the cause was of such a Nature as might be attended with the consequence of Forfeiture of Caste."[1]

A Seperate Court existed in every district for the decision of revenue cases. The Zemindar exercised authority over this Court as well. But, for a few years before the acquisition of the Diwani he had ceased to have any jurisdiction over it. Since that time a Naib Diwan was appointed by the Principal Diwan at Murshidabad, who presided over the revenue court of the district. An appeal lay from his decision to the principal Diwan.

These forms of judicature were adopted by the Company in 1765. In his evidence before the Committee of Secrecy in 1773, Verelst[2] observed that "before the Acquisition of the Dewannee, it had been found by experience, that it was very

1 7th Rep.Com.Sec. (1773) P.324.
2 He had worked as Supervisor of the ceded district of Chittagong and Burdwan before his accession to the governorship of Bengal in 1767.

possible to maintain the Forms of the ancient country Judications and at the same time correct many abuses, which had crept into the Administration of Justice; for that the Company had followed this Plan and seen its efficacy in those Provinces which had been ceded to them in the year 1760, by Cossim Ally Cawn; and that therefore the Select Committee at Calcutta had resolved to pursue the same course with respect to all the other Provinces upon the Acquisition of the Dewannee."[1]

A complete picture of these provincial or district courts can be had from a letter[2] addressed by Verelst on 13 September, 1769 to the President and Council at Fort William. While giving an account or the revenue and judicial courts of Burdwan, he pointed out that similar courts obtained in all the provinces of Bengal. They were as follows:

REVENUE - 1. "Sudder Cutchery" dealt with causes of revenues, adjustment of accounts, confirmation or all purchases and sales of land, and settlement of disputs between the landlord and the tenants.

2. Amin Dufter was an inferior Court of revenue.

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1 9th Rep.Com.Sec. (1773) P.326.

2. See Verelst: View of the English Government in Bengal, Appendix, PP.219-220.

CRIMINAL JUSTICE - 1."Fouzdarry"was the Superior Court or Criminal Justice, giving judgment in capital offences.

2."Bezee Jums Dufter"was an inferior Court of Justice which took cognizance of adulteries, abortions and other crimes affecting the peace of private families.

CIVIL JUSTICE - 1."Burrah, Adawlut"disposed of cases for demands over 50 Rupees.

2."Chotah Adawlut"took cognizances of suits below 50 Rupees.

3."Bazee Zemeen Duffer"dealt with cases arising out of charity lands.

4."Kerige Duffer"had powers to compromise debts and make payment to the land-holders on the settlement of their accounts.

MILITARY AND POLICE -

1."Bukshi Duffer"issued all such orders as related to the conduct of persons employed in the military and police establishment of the district. It was essentially a military pay office.

Besides civil and criminal courts in the district, each pargana had its own qazi. Qazies and Brahmins were

distributed in villages also.[1] In a letter of 21 January, 1770, addressed to the Resident at the Darbar, [illegible] Khan, supervisor of Rajshahi, refers to the "head qazi at Murshidabad down to the Naib of a village."[2] Thus, there was no lack of judicial institutions even in places remote from the headquarters of the district.

Sykes, in course of his evidence before the Secret Committee of 1773, declared that on his appointment to the Residency of Murshidabad in 1765, he recommended to the Government the establishment "there and in each of the provinces, a Court for the decision of all causes, not exceeding the value of 500 Rupees," which "was accordingly carried into execution."[3] This, he observed, was done without affecting any alteration in those which had already been in existence. He further added that the new court at Murshidabad with an appellate jurisdiction consisted of twelve persons of character, while each of the provincial courts consisted of six judges, who had instructions to administer justice uprightly by rotation of three at a time. Becher, who succeeded Sykes as Resident at Murshidabad in January, 1768, confirmed the existence of such court at

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1 Proceedings of the Select Committee at Fort William, (16 August, 1768) See Verelst: View, etc. Appendix, pp.237-238.

2 Letter Copy Book of the Supervisor of Rajshahi at Nator, P.3., also see J.Long: Selections from the Unpublished Records of Government, pp.511-512.

3 7th Rep.Com.Sec. (1773) P.326.

at Murshidabad but he had nothing to say about the provincial courts of Syke's description. And the Committee of Secrecy felt sceptical about the establishment or existence of such a Court even at Murshidabad, because no notice had been taken of it in the despatches of 3 November, 1772 transmitted by the President and Council at Fort William. Nor do we find any reference to it in their earlier despatches from Bengal. On the other hand, in their letter of 30 September, 1769, the Select Committee at Fort William informed the Directors that there were only two Courts of Judicature at Decca, which were "held on the same footing as others in the different parts of the country."[1] These Courts had already been in existence before Sykes took charge of residency at Murshidabad. No additional courts seemed to have been established of the nature described by him in his evidence.

In fact, there was no dearth of the forms of judicature at the time the Company secured the Diwani of the three provinces. But the change of political balance had deprived them of their authority and offered opportunities to the Mahomedan judges or zemindars to use them as a source of private perquisites rather than an instrument of relief against oppression.[2]

1 Seventh Report from the Committee of Secrecy (1773) P.327.
2 See Ibid. P.325.

inveriably applied to such Rajas[1] as were allowed on the Mughal concuest to retain their freedom of internal administration on acceptingthe imperial supremacy by the payment of certain regular dues whose forms and amount were determined in accordance with the original status of individual princes. Moreland calls such Rajas by a common designation of 'Chiefs'[2]. Dr. P. Saran classifies them as "subordinate states."[3] Imperial measures of reforms were not applicable to the territories of these Rajas or Zemindars. The rest of the Mughal dominion was governed in financial[4] matters either directly by officers of Government or indirectly by the different types of "Assignees"[5] of government revenue. With the weakening of the Mughal Government in the 18th Century the system of Assignment gave way to de facto proprietorship which counted more than de jure ownership, because in a state of disorganisation or anarchy the value of rights or claims depended mainly on the power to enforce them.[6] Out of this system of Assignment emerged in the 18th century a class of person, who were

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1 See Elliot and Dowson: Vol.VI, PP.335, 341, 345, 355-56; V.A.Smith: Akbar the Great Mughal, P.360; Dr. R.P. Tripathi: Some Aspects of Muslim Administration, PP.246-247.
2 Moreland: Agrarian system of Moslim India, P.191.
3. Provincial Government of the Mughals, PP.111-112.
4 Justice was directly administered by the Kazi or the King's Officer.
5 See Moreland: From Akbar to Aurangzib, PP.236-236.
6 Moreland: Agrarian System of Moslem India, P.154.

APPENDIX A

JUDICIAL AUTHORITY OF THE ZEMINDAR

The Committee of Secrecy (1773) says that according to the ancient constitution of Bengal the Zemindar was the Judge of both civil and criminal causes. It also suggests that his judicial authority had a legal basis in the very nature of the land tenure held by him. The source of this observation is the letter of the Committee of Circuit at Kasimbazar (15 Aug.1772) addressed to the President and Council at Fort William. It points out that the Zemindars, Farmers and other officesof Revenue had assumed "that power for which no provision is made by the laws of the land, but which in whatever Manner it is exercised is preferable to a total Anarchy"[1]. Besides, the reports of the committee of Secrecy relates to a period not earlier than the 18th century. By the ancient constitution of Bengal, by which the Zemindar administered justice, the Committee clearly means the constitution of the Nawab of Murshidabad, not the early Mughal constitution.[2].

In the early Mughal constition the word Zemindar was

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1 Proceedings Com.Cir.at Kasimbazar, Vols.1-3 (in one),P130
2 See 7th Rep.Com.Sec. (1773), P.324.

also indiscriminately called Zemindars. Moreland has classed them as Tal ookdars who held their lands on the basis of possession irrespective of the question of their title. It was in this sense that the East India Company became Zemindar in 1698 by the purchase of the three villages of Sutanati, Govindpur and Calcutta.[1] Describing the state of the country on the disintegration of the Empire, he thus writes: "Assignments had declined in importance, while Farms of the revenue had been given for longer terms, and tended in practice to become hereditary. The position of a hereditary Farmer looks from the outside very like that of a Chief, and Chiefs and Farmers alike had been busily engaged in extending their spheres of influence, bringing into their Dependencies by fair means as well as foul the peasants of villages who wanted only to be left alone and were ready to pay the King's share to any one who would undertake the King's duty of protecting them against interference from outside. When English administrators looked for landowners, it was usually these Intermediaries who presented themselves; some of them, at least, realised from the outset that the English were offering a new, and possibly a stable form of tenure, and men who had been following the road leading to kingship naturally strove for ownership when they found that Kingship was beyond their reach."[2]

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1 Ibid. P.191-192.
2 Agrarian System of Moslem India, P.158.

CHAPTER IV

THE ADMINISTRATION OF CIVIL JUSTICE 1762-1772

Before the establishment of the plan of Supervision in 1769, the general course adopted in the determination of Civil Suits was to submit them to an arbitration chosen by the parties themselves[1]. The popularity of this mode of trial arose from certain defects in the constitution and practice of the regular court of Adalat. These defects were as follows:

1 The Quran, which constituted the only code of law for the guidance of Mahomedan judges, supplied no rule or decision in causes in which the parties involved were Hindus or other non-Muslims. In such circumstances, the customs and usages of the country served as their only guide. The result was that the determination of the Civil Suits of non-Muslims depended ultimately on the discretion of individual judges, who might exercise it in their own interest[2].

2 Even in regard to the Quranic law, it was difficult to ensure precision, because the profession of law was in the hands of men who derived their "knowledge by inheritance", or possessed it "by intuition, without any previous study or application."[3]

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1 Holwell: India Tracts, PP.203-204.
2 7th Report from the Committee of Secrecy (1773) P.324.
3 Clive's observations in 1767. See J.Long: Selections from the unpublished Records of Government, P.XXXi.

3 The Court of Adalat maintained no register of proceedings whatsoever. A case once disposed of could be taken up and tried again with a view to secure the reversal of the first decision without the risk of detection.

4 The fear of the heavy fee of shauth or one-fourth of the total amount of the sum recovered in the Court was yet another consideration against the trial of Civil Suits in a regular court of justice. It was impossible to trust the honesty of a judge whose subsistence arose from the decree of the court.

Most of the people, therefore, resorted to arbitration as the best mode of trial in Civil Suits.

The causes of Mahomedans, however, were decided for the most part by the Adalat[1]. When in accordance with the instructions of the Court of Directors the President and Council at Fort William insisted in 1771 on the general use of arbitration in all civil causes, Mahomed Reza Khan, the then Naib Diwan, objected to the proposal, and regarded it as contrary to the Quranic law in so far as it related to Mahomedans. He declared that cases of inheritance, property purchases, assignments and the like could not be referred to arbitration. Only such matters of dispute, he added, as related to debt, accounts, commercial concerns and petty quarrels of ordinary occurrences were proper subjects of

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1 See C.W.B.Rous, Supervisor of Rajshahi, to the Resident at the Darbar at Murshidabad, 10.Feb.,1770, (Letter Copy Book of the Supervisor of Rajshahi at Nator, P.5.) The writer observed that only mercantile transactions or such other

arbitration[1]. The entire basis of the Naib Diwan's objections was that rules of decision for which provision existed in the Quran should not be committed to persons other than the Qazi or the law officer of the Adalat, because such commission would be opposed to the requirements of the Sharf.

An authenticated copy of the award of arbitration or the agreement of compromise was submitted to the Adalat, which recognised it as a decree of the Court[2].

The Adalats, however, came into prominence with the appointment of Supervisors in 1769, and the Controlling Councils of Revenue in 1770. While the former supervised the proceedings of local courts, the latter acted as a Superior Court of justice in the determination of Civil Suits. The people could represent their grievances directly to them against the decisions of the Adalats.

Under normal conditions, the Supervisor controlled the proceedings of the Adalat either by a personal attendance at the Court, or by securing information through other means. Difficult cases were directly referred to the Controlling Council at Murshidabad who, in consultation with the Naib Diwan, formed their judgment, and transmitted it back to the Supervisor for local execution. The Controlling Councils at Patna and Murshidabad often took cognizance of serious causes in the first instance, and decided them in

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disputes, as depended on peculiar local customs, were generally referred to arbitration by the officers of the Adalat.

1 Seventh Report from the Committee of Secrecy (1773) P.329

2 See Letter Copy Book of the Supervisor of Rajshahi at Nator, P.5.

collaboration with the Naib Diwan.

But the new plan of Supervision and Control, as we have seen in the Second Chapter, was only a half-hearted measure, and established for the first time to work in a spirit of enquiry, looking rather to the prevention of frauds for the future than the punishment of offences already committed by those in power and influence. The Supervisors and members of the Controlling Councils were after all only those who, a few years before, had been traders and merchants of the Company. Most of them were naturally lacking in experience and knowledge of administration. We could not expect them to effect any appreciable measure of improvement in the existing state of justice. They had no precedents in the country for the guidance of their own conduct. Therefore, they usually proceeded in the trial of civil cases in the same manner as the officers of the native government.

To understand the administration of justice under the Supervisors and the Controlling Councils of Revenue we shall examine a few cases of Civil Suits, which reveal how they were tried and determined in the absence of any regular process or a definite code of law.

The Case of Sunkerdutt, Talookdar of Mankoonda (Hugli) 1771

Sunkerdutt lodged an Arzee[1] (Petition) to the Controlling Council of Revenue at Murshidabad, which reads as follows:

"In the Bengal year 1169 or English year 1762 the Nabob Mir Mahomed Cossim Cawn, accepted of a Nazirramah, and Peshcush from Sankerdutt, whom he appointed to the Talookdarry of Mankoondah and Baun Gauchy, which having been in possession of, in virtue of a sunnud from the Dewanny, he regularly Discharged up their Revenue. In the year 1173 or English year 1766 Permissarry Sircar a Relation of the former Talookdar, and Ram Ram Ghose Vakeel, complained to the Nabob Mahomed Reza Cawn, on Account of a Claim they had to the Talook, and obtained a Parwana to Mirza Cossim Ally Cawn, Fouzedar of Houghly, directing him to enquire into and settle it, who accordingly sending People in his own Behalf made a seizure of the Talook from the Month of Phagun, and the Right of Sunkar being proved on examination, and decreed to the Adawlut, he was put in possession of the Talook, Afterwards in the Mouth of Maug 1174 Permissary Sircar and the Vakeel renewed their complaints to Mr. Sykes, who agreeably to their Petition gave orders for the seizure of the Talook,[2]

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1 Entered in the Proceedings of the Controlling Council of Revenue at Murshidabad, (25 Feb.1771), Vol.IV, P.24-25.
2 Note this irregularity. Orders were given without serving notice on the other party to explain the position.

but on examining the Purwannah of the Nabob, and the Decree of the Adawlut, he found that it had been previously adjudged as the Right of Sunkerdutt, in Consequence of which he wrote a Perwannah to the Fouzedar of Houghly, directing him to give up the Talook, and whilst the said Dutt was not remiss in the Payment of the Revenue, by no means to molest him in the Possession of it. In the Month of Sawun 1175 Ram Ram Gose the Vakeel together with some of the Nabob's People, again forcibly took possession of the Talook, and the Vakeel of Sunkerdutt complained of this Proceeding to the Adawlut of Moorshedabad, but owing to a Recommendation from Mr. Becher, he was not listened to, wherefore he presented an Arzee to this Gentleman who gave orders for the Appointment of Arbitrators to settle the Dispute, which, however, was not done, and Permissery Sircar, having carried 50 to 60 Sepoys Hircarrahs and Peons into the Mofussul, has forcibly put himself in Possession of the Talook and notwithstanding the Vakeel of the Said Dutt, has repeatedly complained to the Officers of the Adawlut at Moorshedabad, yet they took not the matter into consideration. Now public Report having made me acquainted with the Justice of the Council at Moorshedabad I have represented the Particulars of my case, and hope for redress."

The Chief and Council called upon the Naib Diwan to give his opinion on the subject of the petition[1]. He

1 Proceedings of the Controlling Council of Revenue at Murshidabad (25 Feb.1771) Vol.IV, P.25.

confirmed the correctness of the entire plaint and further added that Narhari Singh and Kishen Ram Sircar had been Talukdars respectively of Mankoonda and Baungauchy before Sunker Dutt came into possession on their death. Narhari had no issue. His wife and Permissary, the grand-niece of Kishen Ram, therefore, disputed the claim of Sunkerdutt to the talukdaries to which, as he said, he had been formally appointed by a sanad from Nawab Mirkasim.

On the basis of the Naib Diwan's opinion the Council gave its judgment in favour of Sunkerdutt without requiring the other parties to represent their own case. The Supervisor of Hugli was directed to put him into the possession of the talukdaries from which he had been dislodged[1]. There was absolutely no reference to the examination of the title by which Sunkerdutt held the Talukdaries. Nor was he found in possession of the same at the time he made his representation. But he got a decree in his favour, because the Naib Diwan certified the validity of his claim.

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1 See Letter to William Lushington, Supervisor, (25 Feb.1771), Proceedings of the Murshidabad Council, (25 Feb.1771), Vol.IV, P.28.

The Case of Lamoder Singh and Cheyton Singh, Zemindars of Bishnupur, (1771)

Damodar Singh and Cheyton Singh, who were involved in a case of succession to the Zemindari of Bishnupur, were cousins, as shown in the following table of genealogy:

Surhumun
(held the Zemindari till Bengal year 1094 when he died)

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Ragoonaut Sing
(son by a daughter of Raja Oeteh 1034-1064)

↓

Beer Sing
(son by a daughter of Raja Soor Room succeeded on his father's death:1065-1090)

↓

Durjen Sing
(son by a daughter of Raja Tumak succeeded on his father's death: 1091-1110)

↓

↓	↓
Ragoonaut Sing II (Eldest son by daughter of Raja Dool Ram. 1111-1120 Slain by Gopaul Sing No male issue left)	**Gopaul Sing** (younger son also by daughter of Raja Dool Ram. 1121-1159)

↓

↓	↓
Kishen Sing (Elder son - insane)	**Gobind Sing** (Younger -insane)
↓	↓
Cheyton Sing (son by a daughter of Seesoodish Rajpub - Succeeded on the death of his grandfather. Held Zemindari 1160-1164)	**Damodar Sing** (by a daughter of Raja Tanmuck Room. Expelled Cheyton Singh by force of arms and seized Zemindari which he held 1166-1171)

B.S.
In 1172/Cheyton Singh represented his cause at the Sadar and with the help of Captain Bollikens acquired his

former possession which he held till 1177. During all this period he was regular in his payment of his revenue. Damodar Singh then made a representation to the Chief and Council at Murshidabad for favour of being restored to his Zemindari.

The Plaint[1] of Damodar Singh - Damodar Singh maintained that from the beginning of the zemindari of Bishnupur no one did ever hold the station of Raja who was not noble by birth from both the father and mother. His title tothe Zemindari was based on the nobility of his descent from both sides - a qualification which Cheyton Singh did not possess.

As for his loyalty to the Company, he pointed out that it could not be doubted. He added in derence of his conduct that he remitted a sum of Rs.15,000 through his vakil, who was put into confinement by Captain Mollikens. His second attempt to conciliate the rriendship of the Captain similarly failed through the machinations of Cheyton Singh. Struck with terror, he then expressed his willingness, he continued, to pay a heavy Nazarana (presents) to Mallikens. But without paying any heed to his entreaty, the latter reached the gates of hisfort. Forced to the extremes of the situation, Damodar opposed the Captain with all his might, brought his family out of the fort, and took the

1 A translation of his Arzee is enetered in the Proceedings of the Controlling Council of Revenue et Murshidabad (3 Jan.1771), Vol.III, PP.16-17)

road to the jungles. His son Bahadar Singh was subsequently arrested at Burdwan. Damodar added that he went even to Burdwan to win the feelings of Ashburner who had effected the arrest of his son. But meeting with failure there also, he again retired to the jungles. Reduced to the state of utter helplessness, he concluded, he approached the chief and council with a prayer to restore him to his zemindari.

The case, as usual, was referred to the Naib Diwan with a request to give his sentiments on the subject of dispute. In a report[1] made to the Council, he indicated the original status of the Bishnupur Zemindars who were not subject to the regulations of the Khalsa (Crown lands). Damodar Singh, he observed, did not deserve a dismissal for his failure to pay his obeisance to the Presence. If on his dismissal, the report added, he had represented his case to him (Naib Diwan) with an assurance of regular payment and good behaviour, he would have given him redress and permission to continue in his Zemindari. But on information being received of his displaying an attitutde of independence, his cousin Cheyton Singh was placed on the Zemindari. In view of the acknowledgment of his loyalty to Government the Naib Diwan, therefore, recommended the division of the whole Zemindari between the two who, as he thought, had equal rights to the same. In support of his recommendation he quoted a similar instance of the disaffected zemindar of Roshenabad

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1 Proceedings on the Controlling Council of Rev.at Murshidabad, (14.June, 1771) Vol.III,PP.49-50.

(In Tipperah) who was finally reinstated on acknowledging his subjection.

The Chief and Council accordingly enclosed a Parwana of the Naib Diwan in their letter (14 Jan.1771) to Higginson, Supervisor of Birbhum,[1] asking him to direct Cheyton Singh to Murshidabad for the final settlement of the dispute there. In the course of this letter they also pointed out that according to the Naib Diwan "there are certain circumstances in his (Damodar's) case which, he thinks, do merit our consideration and with which he himself was before unacquainted."[2]

The Plaint[3] of Cheyton Singh - The plaint of Cheyton Singh was based on the principle of primogeniture. While proceeding to Murshidabad in pursuance of the Nawab's parwana, he made a representation in which he clearly stated that "it has always been the custom for the son of the eldest son to succeed to the Zemindarry"[4] of Bishnapur. "My grandfather being old," he added, "named my father, his successor, but finding him to be insane and unfit for public business, he delivered over the charge of Rajaship to me, procuring the usual Sunnuds for my holding it, and the customary Nazzars were paid on the occasion.

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1. Bishnupur was included in the jurisdiction of the Supervisor of Birbhum.
2. Proceedings of the Controlling Council of Rev.at Murshidabad (14 Jan.1771) Vol.III,P.50.
3. Entered in Ibid. (28.Feb.1771) Vol.Iv. PP.41-42.
4. Ibid. (28 Feb.1771) Vol.Iv. P.41.

... Two or three years after this Time Damodar by father's youngest Brother's son, quarrelling with my Duan left the Province and made a complaint to the Nabob Siraj-ul-Dowlah, but receiving an unfavourable answer, he raised Forces, and came against me, ... and plundered a great part of the Province."[1] Cheyton Singh then continued to describe how Damodar ultimately succeeded in dislodging him from his seat after having occupied the fort and killed a number of his servants. He admitted that his adversary held the territory for a continued period of seven years, during which he paid very small revenue to the Company. Captain Nollikens was, therefore, asked to proceed at the head of a detachment to bring him to subjection. During the course of this expedition, he added, Damodar put to death two Kanungos and a number of the Amil's people who had been deputed to collect the Revenues, burning some of the villages also to ashes. But he was finally forced to retreat to the jungles. In the meantime, Cheyton Singh was summoned by Sykes (Resident at Murshidabad) who ordered him with a parwana and khillat,[2] to proceed to Bishnupur in order to take charge of his Zemindari, which he accordingly did. Since then he was in its possession, regularly paying his revenues to the Company. Damodar Singh, he continued, subsequently made a number of futile attempts to regain his position in the time

1. Ibid. (28.Feb.1771). Vol.IV, P.41.
2. A robe of honour.

of Richard Becher who refused to recognise his pretensions. Cheyton, therefore, concluded his prayer with a hope to get justice in his favour.

Deliberations of the Council - In their consultations of the 16 March, 1771, the Chief and Controlling Council considered the plaints of both the parties along with the opinion of the Naib Diwan mentioned before. In the course of their deliberations, Graham, a member of the Controlling Council, laid before them the following arguments[1], which finally determined their decision on the subject of dispute:

"As some part of the matter now under our consideration, has fallen more immediately under my knowledge, I take the Liberty to inform the Board that whilst I held the station of Resident at Burdwan Rajah Dumodur Singh sent overtures to me for making his peace and submission. The previous surrender of his son Bahader Sing as a hostage for his Fidelity and Allegiance (who has ever since remained in our hands) together with his Readiness to submit himself to Mr. Ashburner, who I believe had Authority to invite him (....) his good Intentions and the Rajah's Hopes were unhappily frustrated, by the Accident set forth in the Raja's Arzee, which I know to be literally true. These circumstances serving amply to demonstrate the sincerity of the overtures

1 I have quoted them in full because they have an important bearing upon the curious approach to the Council's decision.

the Rajah thenmade me I consider'd it my Duty to represent them to the Governor and going myself soon afterwards to Calcutta, I mention'd the subject to him again - Mr.Verelst told Me that I might give Dunmoder Sing from him assurances of his personal safety and advise him to come in and cast himself upon the Mercy of the Nabob[1] - that the Ministry would then consider his case and Pretensions and grant such Relief to his Distress, as he might from these appear to have claim to - in Consequence of this Message of the Governor, the Rajah came in and made his submission to the Nabob, Mr.H. Cawn then at Calcutta, and received from him the usual Testimonials of Assurance and Acquittance from former displeasure. By the Nabob's orders he followed to Houghly, and from thence to City[2], where he was told he should receive Serfraz - that is, be restored to Favour, but from that time, which was in November, 1763, he has 'till lately been unsuccessfully waiting to obtain a Decision of his case and is now reduced to such indigent circumstances, as actually to feel the Pangs of Poverty. It is not my Business to investigate whence this Delay arose, but I esteemed it incumbent upon me to submit to the Board this simple Narrative as it serves to show the sense and sentiments of Mr.Verelst with respect to Dunmoder Sing's case, which cannot but be

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1 Mahomed Reza Khan.
2 Murshidabad.

construed favorable, as his Dispossession was effected by that gentleman, and had he thought him unworthy to be restored, he never would have authorized Me to give him the Assurences he did.

"The Naib Duan's opinion ... sets forth, that he was before ignorant of the Particulars of the Rajah's case, that his country had never been thoroughly reduced, but tributary and that the Rajah of Tipperah in an instance of disobedience which he carried to a much greater length was pardoned and restored - All these circumstances seem to merit consideration.[1]

The Chief and Controlling Council accepted the arguments of Graham as valid and decided the case on the basis of his personal knowledge. They divided the zemindari of Bishnupur equally between the two claiments, and gave the following arguments to justify their decision:

"The Board having maturely considered all the circumstances of this man's case, are of opinion, that his Act of Disobedience is not such as merits to be punished with perpetual dispossession. That it appears the Tipperah Rajah in a case attended with circumstances, more aggravating, was pardoned his offence, and restored to his zemindarry, and that it was in like manner the intention of the Verelst to have obtained for Dummodar Sing pardon and Reinstatement in consequence of his having Returned to his Allegiance and made his submission."[2]

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1 Proceedings of the Controlling Council of Revenue at Murshidabad, (16 March, 1771) Vol.IV, pp.112-113.

2 Ibid. Vol.IV.P.114

The Naib Diwan prepared a sanad in accordance with this determination, and it was transmitted to Alexander Higginson, the Superviser of Birbhum, for local execution.[1].

Thus, the approach of the Council's decision bore no relation to the basic claims of the disputants. The simple incident of possession and the reported sentiments of Verelst determined the entire issue of the dispute. The Council paid no regard whatsoever to the question of validity or otherwise of their respective titles to the zemindari. Damodar Singh obtained half the share of the zemindari, not because of the nobility of his birth, but because he had acknowledged the loyalty of the Company, and received the favour of Verelst's sentiments, although none of these considerations had constituted the basis of his claim to the zemindari.

But more curious than that was the statement of Graham, which revealed that an understanding in Damodar's favour had already been reached long before he made representations to the Controlling Council of Revenue at Murshidabad. As a matter of fact, the Naib Diwan had a personal knowledge of that agreement, and Damodar Singh approached the Council with his approval.

Cheyter Singh, on the other hand, had produced a number of documentary evidences in support of his claim. But they

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1. Ibid. Vol.iv. P.115.

were ignored completely. In the course of their judgment, the Chief and Controlling Council did not even make a single reference to any one of them. Nor did the Council take into consideration the law of primogeniture or his nomination to the zemindari of Bishnupur by the ruling Prince, which all supported his full title to the estate.

The case of Damodar Singh and Cheyten Singh thus clearly showed that the recovery of any claim to property depended more on the mercy of those in authority and influence than the validity or the strength of the claim itself. T

The Case of Captain David Mackenzie (1771)

David Mackenzie was a military officer in charge of a contingent of the Company's Sepoys in the district of Rangpur in 1771, when Charles Purling was Supervisor there. Cauchy Caunt Marain and Kishenchund, the zemindars of pargana Coondy and Somchund Dass, the zemindar of pargana Boda, made complaints to the Supervisor against David Mackenzie who was alleged to have beaten and confined them to realise his debt.[1]

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1. The Complaints were first made orally in the morning of 15th August, 1771. See Proceedings of the Controlling Council at Murshidabad (2 Sept., 1771) Vol.VII, P.2. They were subsequently reduced to writing at the instance of the Controlling Council.

The Complaints of the Zemindars of Coondy reads as follows:

"In the year 1177 in the month of Assar we borrow'd from Captain Mackenzie a sum of money to enable us to discharge the Bal ance we owed for the Revenue of the Lands dependent on us, which we accordingly paid into the Treasury and granted Cap: Mackenzie a Bond for the amount bearing Interest at the rate of 5 P Cent P Mensem afterwards by means of Violence he added 9 Re. more to the former 5 Rs. Making in all the Rs 14/P Cent P Mensem - afterwards in the month of Bysaac having made up the account of the Principal and Interest he took a fresh Bond for the loan he brought us to his own house where he placed us under a strict guard and struck us with his own hand - Being without remedy we encroached upon the Revenues of the Company and he received the whole amount of the Interest with the Surplus of the Interest accumulated upon it - By this means the payment of the Government's Revenues is obstructed - We are poor Zemindars You are the Master and Dispenser of Justice Let him be paid according to the Company's rate of Interest and Let us receive whatever he had taken beyond it, and let him restore to us the Bond which he caused us to write out for him."[1].

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1. Proceedings of the Controlling Council of Rev. at Murshidabad (23 Sept.1771), Vol.VII, PP.16-17.

The nature of the Complaint of the Zemindar of Boda was almost identical. The sum of money borrowed was specified in this case at Rs.10,000, while the enhanced rate of interest was 10 per cent per month instead of 14, as in the previous case.

On the receipt of information about the arbitrary arrest and harassment of the Zemindars, the Supervisor immediately wrote to Mackenzie to release them, suggesting, at the same time, the impropriety of his exerting such an authority. The Supervisor, however, agreed to the recovery of his claims by an arbitration of his own choice. In the course of a reply, Mackenzie admitted the private use of government sepoys, but justified it on the customs of the country, according to which a money lender could arrest his debtor and put him into confinement without reference to the Court of Justice. He, therefore, expressed his readiness to deliver the zemindars over to him provided he agreed to stand as security for the payment of the entire debt.

On 23 August, 1771, Charles Purling sent a reminder to the Captain, and asked him to release the prisoners without delay. But far from complying with his orders, the latter put the Zemindar of pargana Boda also into confinement. On 24 August, therefore, the Supervisor referred the matter to the Chief and Controlling Council

at Murshidabad.[1].

The Council took an immediate action against Captain Mackenzie without giving him any opportunity to explain his conduct. He was relieved along with his detachment, and asked to proceed to Muradbag.[2]. The Captain felt naturally surprised at the Council's positive orders of removal from his command. "I cannot account for the reason of such most positive orders," he complained, "which from their tenor imply a censure of my conduct, except Mr. Purling has made unjust complaints against me, in that case I think it extremely hard to be censured without having an opportunity of vindicating myself, or even the cause communicated to me."[3].

On 24 September, 1771, Captain Mackenzie proceeded to Muradbag in accordance with the permission of James Alexander, the Chief of the Council at Murshidabad, who, in consideration of the Captain's illness, had allowed him to leave his station without waiting for the arrival of his Successor. He was to reach Muradbag on 10 October, but in view of the relapse of his fever he changed his mind, and decided to proceed straight to Calcutta in

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1 See Proceedings of the Controlling Council at Murshidabad, 2 Sept., 1771, Vol.VII, P.8.
2 A vicinity of Murshidabad.
3 Proceedings of the Controlling Council at Murshidabad, 30 Sept., 1771, Vol.VII, P.23.

anticipation of the Chief's approbation. The Council, however, took a serious view of his conduct, disbelieved the report of the relapse of his illness, and immediately order his arrest. He was brought to Muradbag on 15 October, and put into confinement there.[1]

In consultation with the President and Council at Fort William, the Chief and Council at Murshidabad decided to submit this case to a trial by Court Martial, which was composed of the officers of the Brigade stationed at Barhampur in the vicinity of Murshidabad. The crimes exhibited against him included disobedience and disrespect to the orders of the Supervisor of Rangpur and the Chief and Council at Murshidabad.

The details of the trial by Court Martial are not available in the proceedings of the Controlling Council at Murshidabad. Nor are they very significant for our purpose. What was really important was the conflict which developed between the Court Martial and the Council at Murshidabad, in which the President and Council at Fort William were directly involved for the interest they took in favour of the latter. The causes, which led to this

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1. Proceedings of the Controlling Council at Murshidabad, (10 October, 1771 and 21 October, 1771) Vol.VII, PP. 71-72 and 78.

conflict, clearly indicated that even the responsible authorities of the Company in Bengal were not free from irregularity in judicial proceedings and morality.

The basic point of contention was that the Court martial wanted a strict observance of every bit of legal process in the determination of the case under trial,[1] which the Controlling Council did not like. For instance, before the beginning of the trial the Court insisted on regular summons being served on all the witnesses, including Charles Purling, the Supervisor of Rangpur. James Alexander tried, at the outset, to have him exempted from personal attendance at the Court. But finding that his presence could not[3]

1 It began on 23 Nov., 1771 and finished on 13 Jan., 1772. See I.O.Bengal Letters Received, Vol.10, P.316, Para.12.

2 Press List of Ancient Documents etc. Series II, Vol.II, P.247.

3 The precis of the letter of Lt.Col. G.Muir, Officer Commanding at Burhampore (20 Nov.1771) in reply to that of J.Alexander for securing the exemption of C.Purling's presence at the Court-Martial is rather incomplete and hence yields a sense contrary to the spirit of the said reply. The precis, for instance, states: "... with consent of the Court Martial and the Parties concerned the presence of C.Purling, Supervisor of Rangpur at the Court-Martial may be dispensed with." - See Press List, Series II, Vol.II, P.247. But the reply in question of G.Muir to J.Alexander, entered in the proceedings of Murshidabad Council (23 Nov.,1771), Vol.VII, P.139, reads as follows: "I have received your two letters of yesterday one with the papers in support of the charges against Captain Mackenzie, and I have delivered them all to the Judge Advocate - the other regarding the inconveniency of Mr. Purlings attendance at the Court-Martial which is a matter that must rest entirely with the Court and the Parties - but as I think it most probable that his presence will not be dispensed with I leave you to Judge how far it may be proper to provide against the inconveniency of that gentleman's Absence from his station...."
And Col. Muir was right. Purling's

be dispensed with he was ultimately forced to allow the summons to be served on him.

The situation took a more unhappy turn when J.Alexander, the Chief of the Council, was asked to present himself in the witness box. The position became extremely embarrassing for the Chief, because the Court wanted to examine his powers[1], by virtue of which he had exercised a military jurisdiction in having ordered the removal of a Military Offiser from his command, and effected his arrest much earlier than the appointment of the Court-Martial for this trial[2]. He would never like his authority to be publicly discussed and questioned. But there could be no escape. In spite of all his reluctance, he had to allow himself to be crossed on plea to jurisdction. This led also to the displeasure of the President and Council at Fort William[3].

The second point of irregularity was disclosed by a proposal of the Chief and Council who wanted to dismiss Captain Mackenzie in the very midst of his trial. They sought permission of the President and Council at Fort William who gave the following instructions for their guidance:

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attendance could not be dispensed with by the Court-Martial in spite of all the arguments of Alexander on the score of inconveniences that might arise in the Collection of the Revenue and the general administration of the district.

Lt.Col.Muir was Deputy Judge Advocate of the Company responsible for the conduct of the case on behalf of the Controlling Council of Revenue at Murshidabad.

1 See I.O. Bengal Letters Received (31 March, 1771) Vol.10, Para.16, PP.319-320.
2 Ibid. Vol.10, Para.15, P.318.
3 Ibid. Vol.10, Para.18, PP.321-322.

"In answer to your question regarding Captain Mackenzie, we apprehend that should he be cashiered, the Company can have no longer any power or authority over him, but as it appears from your consultation of the 2d September that they have been materially and immediately injured you will procure such proofs as may sufficiently support the charge in the Mayor's Court on a prosecution being commenced against him, and we would have it made known to the Natives who have been injured by him, that they may repair to Calcutta to carry on a prosecution against him in their own names.

"Should it so happen that the Court-Martial do not dismiss him, you will then call on him as a servant to the Company to answer to such charges as may appear against him of misbehaviour at Bangpore."[1]

The trial concluded on 13 January, 1772, but Captain Mackenzie was not dismissed. The President and Council at Fort William severely censured the public conduct of the Court Martial, and regarded the regularity of its proceedings as an attempt to reduce the authority of the civil power. Instead of being governed in their opinion by the invariable custom of the Service, they complained,

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1 Proceedings of the Controlling Council of Revenue at Murshidabad (13 Jan.1772), Vol.IX, P.37.

"they have stuck at nice distinctions and little points of punctilio very immaterial to be attended on matters of the first importance."[1] Therefore, they dissolved the Court and disapproved the sentence with remarks of contempt and public censure.

Major Charles Morgan, who had acted as President of the Court Martial, took a serious objection to the irregularity of the government's attitude, and sent a written representation to the President and Council in justification of the Court's public conduct. In reply to his representation he was informed of his dismissal.[2] But Morgan did not allow this matter to lie down quietly. He left for England, where he represented the case to the Court of Directors, who, on enquiry and legal consultations, justified the proceedings of the Court, and ordered the reinstatement of Major Morgan. "We have taken into mature consideration, with the assistance of our Council," they added, "all the proceedings thereon and your advices relative thereto, and are of opinion that our President and Council should not have concerned themselves

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1 I.O.Bengal Letters Received, Public Department, 24 January, 1772, Vol.10, Para.1, PP.164-165.

2 See President and Council to the Court of Directors in the Public department, 31 March, 1772, I.O.Bengal Letters Received, Vol.10, Para.22, P.325. Paragraphs 14-21 contain their reflections on the public conduct of the Court Martial.

with the proceedings of the Court Martial."[1] They regarded the interference of their government at Fort William as improper and severe, and therefore restored Charles Morgan to his post with all his pay and emoluments from the time of his dismissal.

Meanwhile, on the release of Captain David Mackenzie, the Chief and Council at Murshidabad invited six written petitions of complaint from the inhabitants of Rangpur, and called upon him to answer the same. Their mode of trial was indeed interesting and furnished insight into the state of civil justice. On 8 February, 1772, the Captain was summoned to appear before the Chief and Council at Murshidabad, which he accordingly did. He had no previous knowledge about the actual contents of the charges laid down against him by the inhabitants of Rangpour. They were read out to him the moment he appeared in the Court, and then he was asked to answer them immediately. But he expressed his inability to do so, and applied for copies of the several charges of extortion and arbitrary confinement, which, of course, the Secretary of the Council was asked to supply.[2]

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1. I.O.Despatches to Bengal, 7 January, 1774, Vol.7, Para. 12, PP.11-12.
2. See Proceedings of the Controlling Council of Revenue at Murshidabad, 8 Feb.1772, Vol.IX, P.165. The Charges against the Captain had been invited in consultation with the President and Council at Fort William. See Letter of the Murshidabad Council to the President and Council, 30 Jan, 1772. Murshidabad Proceedings, 30 Jan.1772, Vol. IX. P.94.

The Chief and Council at Murshidabad conducted the trial for several days in February, 1772.[1] They examined a number of witnesses in support of each of the six petitions of complaint against the Captain. Every deponent was sworn by the Chief of the Council before his deposition was recorded. The most notable feature of the whole process was that the contents of the entire plaint were read out to each deponent. He was then asked to say whether they were right or wrong. His job was thus very much simplified. There was nothing like the modern method of cross-examination in which the witness is required to answer every single point of dispute, bearing relation to the plaint, either directly or indirectly, and that also without any such benefit of the plaint of his party being read out to him immediately before his examination.

Moreover, the Chief and Council themselves examined all the witnesses in the case. No vakil appeared on behalf of either side. The plaintiff or the defendant had full liberty to argue out his case in his own manner. There were no fixed or rigid rules governing evidence or the process of judicial determination. In these circumstances,

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1 See Proceedings of the Controlling Council at Murshidabad, 18 Feb., 20 Feb., 22 Feb., 26 Feb., and 26 Feb., 1772. Vol. IX.

the judges might put only such questions to be answered as could lead to a judgment of their own choice. Besides, they had full discretion in the choice of witnesses, and could examine only such as might be favourable to them.

The Chief and Council finally established the charges against Captain Mackenzie and a number of his agents, who were proved to have committed acts of oppression in the course of realising the dues of their Master. A report was accordingly submitted to the President and Council at Fort William, who referred the matter to the Mayor's Court.[1] The rates of interest were reduced uniformly to twelve per cent. per annum, and the Court ordered the adjustment of the disputed accounts accordingly.[2]

The Case of Captain Mackenzie thus established beyond doubt the arbitrary character of every bit of the judicial

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1 The report was submitted to the President and Council on 22 June, 1772. See Press List of Ancient Documents etc. Series II, Vol.II, P.384.

2 See Ibid. Series II, Vol.II, PP.441-442. The proceedings of the case were closed in December, 1772. From a perusal of the several depositions taken in the court of trial it seems that the usual rates of interest on debt varied between 2 to 5 per cent per month, and these rates were admissible according to the customary practices of the country.

proceedings adopted by the Chief and Council at Murshidabad. The trouble arose fundamentally from want of a system to guide the conduct of public servants, who had no professional training either. The only precedents available in the country were those of zemindars and officers of the Nawab's government who regarded and used public authority as a source of private emoluments. The conduct of the English administration in the beginning was influenced by such precedents.

True, Captain Mackenzie had forcibly confined his debtors, and had thus exercised a measure of judicial authority contrary to the design of his institution. But such a thing was bound to occur, as it did, in the absence of any definition of public offices. Besides, there was no coercive authority to secure the recovery of private claims. The Nawab's government, no doubt, was responsible for the execution of such trust, but it had no means to discharge it. The Company's government possessed means, but felt no responsibility to do it. The Superviser of Rangpur did not undertake to realise the dues of the Captain, when the latter offered to release the zemindars on condition of assurance to recover his claims. He only agreed to the adjustment of the disputed accounts by means of abbitration. But the debtors being persons of local

influence, it was difficult to execute such award except when the money lender happened to be in possession of means more powerful than those of his debtors. Justice thus ultimately depended on the might of individuals to enforce it.

In such a State of Anarchy, a man without means could not think of any security of his person or property. Early in 1772, for instance, a Farmer of Revenue in the district of Rajshahi made a petition to the Chief and Council at Murshidabad,[1] describing the oppression of a moneylender, by named Jalley. The person oppressed was one Mahmud Kured, who had borrowed a sum of twenty rupees from Jalley. The moneylender extorted a hundred and twenty-five rupees from his debtor by putting him into confinement and selling out his effects. Sometime afterwards, he procured his release, and proceeded to the Adalat at Rajshahi, where he obtained an order and two peons to bring Jalley to the Court. But Jalley bribed one Hamnarain, the Company's agent at Shampur,[2] procured a number of harkaras or civil guards from him, attacked the court peons, wounded and robbed them of all

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1 A translation of that petition is entered in the proceedings of the Controlling Council at Murshidabad, 6 Feb., 1772, Vol.IX. P.153.

2 Under the control of the Chief and Council of the Company's Factory at Kasimbazar.

their belongings. He then imprisoned the wife and sons of Mahmud Murad, and "spoiled them of their character."[1] With the help of the Company's agent at Shampur, Jalley perpetrated another act of atrocity on a poor woman, who could not purchase her liberty even though she had already paid a sum of twenty-nine rupees on a principal of one rupee only.

The farmer of Rajshahi approached the Chief and Council at Murshidabad, because the Supervisor of Rajshahi had failed to do anything against the Company's agent who was immediately under the Control of the English Factory at Kasimbazar. But they also were not very helpful. All that they did was to send a note of complaint to the Chief and Council of the said factory at Kasimbazar, asking them to secure the release of the oppressed, and check the repetition of any such proceedings on the part of their agent. It is doubtful whether they were actually released. We could only surmise that the letter of the superior authority at Murshidabad must have produced some salutary effect, as the farmer did not represent their case any more.

The parliamentary Committee of Secrecy thus rightly observed in 1773 "that in general though forms of judicature

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1 See Proceedings of the Controlling Council at Murshidabad, 6 Feb., 1772, Vol. IX, P.153.

were established and preserved, 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."[1]

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1 Seventh Report of the Committee of Secrecy (1773), P.325. See also Letter of Bucarelli, Supervisor of Purnea to the Chief and Controlling Council of Revenue at Murshidabad 3 Dec., 1770, (Murshidabad Proceedings, Vol. II, PP.66-67). Also printed in the 4th Rep.Com.Sec.(1773), P.114.

CHAPTER V

THE ADMINISTRATION OF CRIMINAL JUSTICE AND POLICE 1765-1772

Principle of Punishment and Process - The old machinery of criminal justice and police continued without any alteration whatsoever. The punishment of crime was determined by the Quranic law, which left open to Mahomedan judges a wide field of discretion in such causes as did not relate to apostacy. The murder of a person could be composed by what was known as the price of blood or the composition money, unless the injured party insisted on the murderer to be condemned to death. The Mahomedan criminal law did not recognize the principle of the King's peace, and allowed the nearest kins of the deceased even to let off the perpetrators of crimes altogether. Such a system of law was bound to degenerate into corruption, as it did, under weak rulers. The situation in which the servants of the Company or their agents exercised power without responsibility only accelerated the process of that degeneration by affording the judges increased opportunities to indulge in acts of bribery and extortion.

The author of Seir Mutcgherin quotes an interesting example of the manner in which a criminal offence was punished by one Muralidhar, an agent of Raja Shitabroy, from whose decision an appeal lay at the Court of Nizamat at Patna. The author was present at the Court, which was also attended by

Rumbold, the Chief of the Company's Factory at Patna. "Two men," he writes, "disputed against each other. When the sentence came to be pronounced, the one that had been proved faithless or guilty, was fined into a sum of money, by way of fine and amend; but the other man, who had the right on his side, was likewise made to pay some money, by way of thanksgiving."[1]

This mode of punishment was beyond the comprehension of Rumbold. He could not help expressing his surprise at the decision. He accepted the propriety of punishing by fine a man, who had been guilty of an impertinent behaviour. "It is punishing his infidelity," he said, "But what I cannot understand," he added, "is that a fine should be levied also on him who had the right on his side, and was guiltless."[2]

Murlidhar was present at the Court, where this appeal from his own decision was being discussed. He justified his judgment on the rule and customs of the country, and declared that there was no innovation in it. Rumbold felt astonished, but remained silent. Commenting on their attitude of his indifference, the author of Seir Mutaqherin observed that "if ever these foreigners come to conceive an inclination to alleviate the sufferings of the people of this land, and to attend to their supplications, probably

1 Seir Mutaqherin, Vol.III, P.27.
2 Seir Mutaqherin, Vol.III, P.28

the oppressed would find some release from the tyranny and hardship under which they now labour." [1]

When the plan of supervision was established in 1769, some of the Supervisors opposed the inequitous practice of composing even serious crimes by fines. The Supervisor of Rajshahi, for instance, complained that corporal punishments were never inflicted for any crime whatsoever. The Qazi punished all offences by fines, and himself determined the value of the composition money, although under the Quranic law the price of blood lay at the sole will and option of the injured party. He made enquiries, and received loud complaints from the people against the oppression of magistrates, which arose from this inequitous mode of punishment.[2] But he could not help them much, because it was not within his powers to do. His business was to enquire and report, and not to execute anything which might be regarded as an open avowal of the Nawab's Authority.

The Supervisor of Purnea made a similar complaint against the practice of arbitrary fines in judicial matters.

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1 Seir Mutaqherin, Vol.III, P.28. The case evidently related to a period before the introduction of the plan of supervision in 1769, when a policy of complete indifference was pursued in matters of criminal justice.

2 See C.W.B.Rous to the Resident at Murshidabad, 21 Jan., 1770, Letter Copy Book of the Supervisor of Rajshahi at Nator, PP.3-4.

These fines, he added, were farmed as a part of the rent roll of each pargana. The farmer, who appropriated the fine, was himself the judge of delinquents, and determined the degree of criminality within the extent of his farm. The Supervisor was astonished to see that the penalty, which was inflicted, was "not according to the nature of the crime, but of the circumstances of the accused." Causes of thefts and murders were compounded for four or five rupees, while fornication and witchcraft were punished with four or five thousands. Women were appointed to discover cases of fornication and adultery, which were punished heavily on the production of the slightest evidence.[1]

On 25 August, 1770, the Supervisor of Rajshahi reported a case of murder, which had been committed on the person of one Knoory, who had been pregnant for the last four months. Kumsooram and Agny employed a woman, by name Hooban, who administered a medicine to cause abortion, and used barbarous means to extract the foetus, which immediately resulted in Knoory's death. The case was tried on 22 August, 1770, by the officers of justice at the faujdari court of Bhiteria in the district of Rajshahi. It was

1 See Report of G.G.Ducarell, Supervisor of Purnea, 3 Dec., 1770, entered in the Proceedings of the Controlling Council of Revenue at Murshidabad, 13 Dec., 1770, Vol.II, PP.66-67

attended by both Mahomedan and Hindu officers, who examined witnesses in the presence of the Supervisor himself. The guilt of Mooban was established, and the officers of justice regarded her as the most proper object of a severe punishment. But they hesitated to pronounce a penalty of death on account of a scrupulous regard to the strictness of the Mahomedan law, which necessarily required the attestation of a certain number of eye-witnesses of that faith in order "to sanctify their passing such a sentence upon a criminal for murder."[1] The Supervisor could not reconcile himself to what he regarded as "incompatible with equity and the natural laws of society."[1] But he could not do more than recommending the removal of religious bias in criminal administration.

In March, 1771, the same Supervisor of Rajshahi reported another case of murder in which a man had cleaved off the head of his little daughter with a hatchet.[2] It was referred to the qazi who declined to inflict the punishment of death, even though the accused had admitted his guilt. He "regarded the destruction of a grown person a punishment more than adequate to the death of a child."[3] The Supervisor

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1 See C.W.B.Rous to the Resident at Murshidabad, 25 August, 1770, Letter Copy Books of the Resident at the Durbar at Murshidabad, Vol.II, P.II.

2 From C.W.B.Rouse to the Chief and Controlling Council of Revenue at Murshidabad, 10 March, 1771. See Murshidabad Proceedings, Vol.IV, P.76.

3 See Murshidabad Proceedings, 11 March, 1771, Vol.IV, P.76.

recommended in strong terms the infliction of a capital punishment. The Naib Subah went a bit beyond the letter of the law, but "not so far as immediately to effect the life of the culprit."[1]

Earlier in February, 1771, the Supervisor of Purnea had made similar complaints about the inequity and imperfections of the Mahomedan criminal law revealed in three cases of robbery, murder and theft. As for robbery, six criminals had been apprehended and put into custody. They admitted that their profession was robbery. He recommended a sentence of death for each of the six robbers to be executed on the spot, where the crime had been committed, so that it might strike terror in the heart of others. A sentence of death was also recommended in the murder of a child for the sake of some ornaments.

As for theft, there had arisen two cases. In one of them, a person had been convicted of having stolen a sum of four hundred rupees belonging to government. In the other case, the person convicted had stolen a horse, seven rupees, a sword and a few other effects. The Faujdari Adalat at Purnea punished each of them by having one hand and one foot cut off. The Supervisor strongly resented such principles and modes of punishment, and recommended

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1 Ibid. Vol.IV, P.77.

the criminals to be sent down to public works to work there for such a time as the nature of their crimes demanded.[1]

But in a reply of 25 February, 1771, the Chief and Council at Murshidabad expressed their inability to force any departure from the letters of the Mahomedan Criminal law. The ultimate decision in all criminal offences, they added, rested solely with the Naib Subah. Their business was merely to transmit local proceedings to him for his final determination, and then send them back to Supervisors with his sentence affixed to them, so that it might be executed by the officers of the local courts of Adalat.

In fact, the final determination of capital offences was made by the Nizamat Adalat at Murshidabad with Mahomed Reza Khan as the immediate head of that department. Raja Shitabroy and the Nizamat Adalat at Patna exercised a similar authority in the province of Bihar. The usual process pursued in the conduct of criminal proceedings was that the local officers of justice made enquiries, heard parties, and adjudged cases accordingly. The Supervisor acquainted himself with their proceedings either by personal attendance at the court or by enquiry and intimation. He transmitted proceedings of capital offences and decisions of the Adalat with his own comments to the Chief and

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1 See Proceedings of the Controlling Council at Murshidabad, 25 Feb., 1771, Vol. IV, P.20.

Controlling Council who, in their turn, submitted them to the Naib and the Nizamat Adalat for their final sentence to be sent back to the Supervisor who passed it on to the officers of the Adalat for execution. This was the normal mode of proceedings.

Interposition - But in some cases the Supervisors interposed and forced a decision agreeable to their own choice. In October, 1770, for instance, the Supervisor of Purnea transmitted certain proceedings of robbery, murder and theft, and desired that the nature of punishment should be compatible with the degree of criminality, and not with the Mahomedan law which took a lenient view of robbery and murder, and punished theft by the loss of limbs[1]. The Chief and Council at Murshidabad, however, could not secure any departure from the sentence already passed by the Nizamat Adalat conformably to the law of the Quran. But the Supervisor sent a representation to the Council, in which he expressed grave concern over the frequency of capital crimes committed in the different parts of his district, and declared his inability to cope with them without some sever examples being made of the criminals already apprehended. The matter was therefore referred to the Naib Subah again for reconsideration.

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1 See G.G.Ducarel to the Chief and Council at Murshidabad, 18 Oct., 1770, entered in the Murshidabad Proceedings, 25 Feb., 1771, Vol.IV, PP.19-20.

Accordingly, he altered the sentences already passed by him about a month before.[1]

A second case of interposition occurred in 1770 in the zemindari of Raja Kishenchand of Nadia. A Muharrir or Clerk, by name Kishenchand, was murdered by one Mir Kasim who acted as tahsildar or revenue collector under his Naib Sezawal Mirza Mahomed Ali. Jacob Rider was at this time the Supervisor of Nadia. The correspondence, that transpired between him and the Murshidabad Council on the subject of this murder, showed the great degree of interest and earnestness with which he took up the cause of an ordinary clerk against the Raja himself who wanted to shield the murderer by exerting his influence on the Naib Subah.

The circumstances which led to the death of Kishenchand Muharrir arose from a severe punishment of flogging inflicted on him by Mir Kasim for a simple fault of not depositing by the evening a sum of seven rupees, which was the total collection for the day. This incident took place on 28 August, 1770, and Kishenchand died a week after, leaving behind a young wife and his blind old father, who approached the Supervisor for redress on 6 September, 1770[2].

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1 From the Chief and Council to the Supervisor of Purnea, 25 March, 1771. See Mutshidabad Proceedings, Vol. IV, P.136.

2 See Jacob Rider to Resident at Murshidabad, 14 Sept., 1770, (The Letter Copy Books of the Resident at the Durbar at Murshidabad, Vol. II, PP.1-2).

Jacob Rider sent for the officers of the Adalat and Raja Kishenchand to examine the grounds of the complaint. The officers of the collection, including Mir Kasim and Mirza Mahomed Ali, were also summoned to appear before the Supervisor along with a number of witnesses who had seen the punishment being inflicted on the Muharrir. They all assembled at the residence of the Supervisor, where the officers of the Adalat examined the witnesses of both sides.

It transpired that the Muharrir had been tied up by the hands, his feet just touching the ground; and in that state he was given about two hundred stripes, some of which happened to fall on the private parts of his body, which rendered him senseless, and ultimately ended in his death. Mir Kasim personally admitted that Kishenchand had been tied up and flogged, although he contended that the number of stripes did not exceed four-to-five. As for his boss Mirza Mahomed Ali, he pleaded innocent on the ground that he had given his assistant no such authority to beat anybody so severely as to cause death. The Supervisor, however, had reasons to suspect his conduct, as the place where Kishenchand had been flogged was hardly forty yards from his house.[1]

Mir Kasim was therefore remanded to custody. Mirza Mahomed Ali, however, was allowed to go, because the Raja

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1 See Proceedings of the Controlling Council at Murshidabad, 4 Oct., 1770, Vol.I, P.24.

stood as security to produce him whenever the Supervisor or the officers of the Adalat would demand his presence.

Under the signature of the qazi a report of proceedings was prepared in Persian, so that the Raja might fully appreciate the seriousness of the offence committed by Mir Kasim, his tahsildar. The Raja also endorsed this report which was transmitted to the Chief and Council at Murshidabad for necessary orders.[1]

Nonetheless, Raja Kishenchand made a separate representation directly to Mahomed Reza Khan, wherein he cast aspersion on the public conduct of the Supervisor, and attributed the death of the Muharrir to natural illness[2]. Thus, when the Chief and Council forwarded the Supervisor's report of proceedings on 19 September, 1770 to the Naib Subah, he produced the adverse report of the Raja to counteract it.

The matter was, therefore, referred back to the Supervisor for explanation and further investigation. In a reply of 23 September, Jacob Rider supplied additional

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1 The report of proceedings was enclosed in the Supervisor's letter of 14 September, 1770. See The Letter Copy-Books of the Resident at the Durbar at Murshidabad, Vol.II, P.2.
2 See Ibid. Vol.II, P.16.
3 See Letter of the Resident to Jacob Rider, 20 Sept., 1770, Ibid. Vol.II, P.16.

proofs in support of his earlier report, and gave reasons to suspect the motives of the Raja himself.[1] But then the Chief and Council required him to send Mir Kasim with all the evidences on the subject to Murshidabad, where they could be examined to the full satisfaction of the Council. Jacob Rider soon complied with this order, and despatched them on 8 October, 1770[2].

We do not find any further trace in the Murshidabad proceedings as to what decision was adopted on the actual case of murder. But in October, 1770, Mirza Mahomed Ali, the superior officer of revenue, was himself dismissed, although the cause assigned to his dismissal was that he had misappropriated the public revenue of the Company[3]. Raja Kishenchand and his son were also removed temporarily from the exercise of any authority within the extent of their zemindari for the ostensible reason of failure to fulfil financial engagements with the Company[4]. The Chief and

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1 Proceedings of the Controlling Council of Revenue at Murshidabad, 4 Oct., 1770, Vol.I, P.24.

2 See Jacob Rider to the Chief and Council at Murshidabad, 8 Oct., 1770, (Murshidabad Proceedings of 22 Oct., 1770, Vol.I, P.81). In his earlier letter of 3 Oct., 1770, Rider had promised to send Mir Kasim soon to Murshidabad (See Murshidabad Proceedings, Vol.I, P.41.) The precis of this letter of 3 Oct., as given on page 59 of the Press List of Ancient Document, Series II, Vol.II, is obviously wrong, because it describes Rider to have already sent Mir Kasim.

3 See Proceedings of the Controlling Council of Revenue at Murshidabad, 22 Oct., 1770, Vol.I, P.90.

4 Ibid. 28 Nov., 1770, Vol.I, P.247.

Council at Murshidabad appointed a person to transact the business of the Raja's zemindari, and sign all papers in his name under the orders of the Supervisor of Nadia. Although we have no direct evidence to attribute these measures to the association of the Raja or his Sezawal with the cruel act of murder, it is not unreasonable to believe that their previous conduct must have partly influenced these determinations of the Chief and Council, particularly when they followed just in the wake of the murder affairs.

Thus, some of the Supervisors, who were inspired by a strong sense of justice, showed signs of resistance to oppressive practices, and tried to secure relief to the oppressed by personal interposition and enquiry either independently of the officers of justice or in conjunction with them. But instances of interposition were only few and far between, and individual attempts were often rendered abortive by fundamental defects arising from the system of double government.

Moreover, no intervention whatsoever was possible in the religious and caste disputes of Hindus.[1] The authority of government, on the other hand, was exercised in enforcing

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1 See D.F.Mulla: Jurisdiction of Courts in matters of Caste, (Bombay, 1901). The book throws useful light on the institution of caste and its importance in the social life of the Hindus. But it deals with the conditions of the 19th century, not the period covered by this thesis.

the invidious rules of caste. A man once excommunicated was not restored to his caste without the permission of government. Verelst quotes an interesting case of a Hindu who was excommunicated for violating the rules of his caste. He had been bribed to procure certain papers belonging to a gentleman whose son caught him in the process of committing this act of treachery. By way of revenge, he was forced "to swallow a spoonful of broth. No sooner was his polution known than he was degraded from his caste, lost all the benefits of society, and was avoided as a leper by his tribe." Such was the miserable situation of the Hindu, adds Verelst, "when Lord Clive desired the Brahmins to assemble and consider if there could be no remission of the involuntary deviation from their law. After many consultations, a similar case was said to have been discovered in the sacred books; but although the Brahmins effected a compliance, the man was never restored to his caste."[1]

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1 Verelst: Views of the English Goverment in Bengal, P.142. The writer further says: When all measures of force and intimidation failed to extort money from the Hindus, the Mahomedan governors applied threat of defilement in which they invariably succeeded "Should this species of oppression be now practised in Bengal", he commented upon the inadequacy of the English laws,"what adequate punishment could our law inflict for so atrocious an injury ? or how can we teach the natives to acknowledge our justice, when rights dearer to him than life are left wholly unprotected?"

State of the Magistracy - The Supervisor of Rajshahi described the qazis as highly exorbitant and arbitrary in realising fines for criminal offences. These fines were used as a source of private emoluments "retailed out to the inferiors without number from the head qazi at Murshidabad down to the Naib of a village".[1] The office of a qazi, he added, "was bought and sold, cancelled and transferred from motives of personal interests." He expressed surprise and resentment over the corrupt state of the magistracy obtaining throughout his jurisdiction. "The magistracy which formerly afforded protection and security to the people," he complained, "hath latterly set the example of violence and rapacity. How much the system of farming out the perquisites of the Judge, indiscriminately to the capable or unworthy, must have contributed to the practice of venality and the disgrace of government; it is too obvious to need elucidation."[2] The Supervisor of Purnea made similar complaints about the system of arbitrary fines and the farming of public offices.[3]

Holwell gives an earlier picture of the abuse of punishment by fines, which prevailed in his own time in 1752, when

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1 From C.W.B.Rouse to Richard Becher (Resident at Murshidabad), 21 January, 1770 (Letter Copy Book of the Supervisor of Rajshahi at Nator, P.4.
2 From Rous to Becher, 26 March, 1770, (Letter Copy-Book of the Supervisor of Rajshahi at Nator, P.11.
3 See 4th Report from the Committee of Secrecy (1773),P.114.

he/Zemindar of Calcutta. "This method of punishing as well as the lash," he observed, "is so essential a one in the nature of the country government, that there would be no order or rule preserved amongst the natives without them. The original institution of fines in all countries was doubtless with a design of correcting the manners of the people; of being a check on such kind of vagueries as did not require the lash or other corporal punishments; and consequently, of being a defence to the property of honest men: but I am sorry to say, I have too much reason to think these intentions have been kept very little in view; and a power assumed to inflict fines, and oppress the people, where by no means it ought to have been allowed; and which have been raised from motives much worse, and applied to baser uses, than were the crimes for which it was imposed."[1]

It seems that conditions had begun to deteriorate much earlier than the establishment of British power in Bengal. They grew worse in the course of a number of political revolutions, which the province experienced before the grant of the Diwani in 1765.

The question of reform was undoubtedly beset with enormous difficulties which we have already examined in

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1 From Holwell to President and Council at Fort William, 18 Dec., 1752 (See India Tracts, P.228).

the second chapter. Any radical departure from the existing mode of judicial administration was regarded by the Company as outside the range of practical politics. All that the Directors desired their government in Bengal to do was to secure the abolition of arbitrary fines in consultation with the Nawab. They did not question the principle or practice of succession to public offices by heredity. Their object was only to ascertain whether persons exercising public jurisdiction did so on the basis of any original sanad granted to them or to their ancestors.

The Chief and Controlling Council at Murshidabad formally recognized the office of qazi as a private and hereditary source of subsistence rather than a public post of responsibility. In the course of a petition made in January, 1771, for instance, the daughters of the late qazi of Murshidabad, by name Abdul Reza Khan, stated that on the death of their father one Zaid Mahomed succeeded to that office. He was one of their relations. He continued in that post till his death in the time of Nawab Mir Kasim, who confiscated most of their effects to his government. They were deprived of everything, they complained, excepting their place of residence, some lands and the office of qazi of Murshidabad, which served "as a means of sustenance" to them.

In the absence of any heir for the moment, the daughters added, "we deputed Mullah Wofa, who had a long time being a student and had received his support from us, to perform the duties of the office till heirs should arrive, but... he has usurped the office of qazy in his own name, which we poor widows with a multitude of dependents are in want of bread and spend our lives in misery. Now that Mirza Abdullah, the nephew of Zaid Mahomed Cawn deceased, is arrived, and has paid his respect to his excellency, we are hopeful that the qazishipp may be appointed in his name who is the lawful heir, and that Mullah Wofa may be obliged to pay the 45000 rupees of which he has deprived us."[1]

The Naib Subah confirmed the statement of the widows, and the Murshidabad Council accordingly adjudged that it was "the right of Mirza Abdullah to succeed to the Cazeeship."[2] He then received an order of appointment from the Naib Subah.

State of Law and Order - In a report of 23 May, 1770, William Harwood, the Supervisor of Bhagalpur and Rajmahal described the state of law and order as miserable and disappointing. He observed that "villages (were) daily pillaged, and travellers frequently robbed and murdered."[3] The picture

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1 See Proceedings of the Controlling Council of Revenue at Murshidabad, 10 Jan., 1771, Vol.III, P.37.
2 Ibid., 21 Jan., 1771, Vol.III, P.80.
3 Press List of Ancient Documents, Series, II, Vol.II, P.9.

given by the report of the Supervisor of Jessore was still darker. "It was so much infested with robbers," he wrote, "who travel in large parties from three to four hundred in number, that many of the inhabitants of the different villages where they have resorted have left their houses and fled to other parts of the country for their more immediate security. These banditti have committed great slaughter among the poor wretches of this province, and after plundering their habitations, have set fire to them, and marched to the next town which they have treated in the same manner, not to mention the authority they assumed in making collections in the pergunnahs they passed through, which they have done to a very considerable amount."[1]

The Supervisor of Purnea declared that the dacoits of his district were robbers by profession.[2] Likewise, Grose,

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1 From William Rooke, Supervisor of Jessore, to the Chief and Council at Murshidabad, 28 Jan, 1771 (See Murshidabad Proceedings, 4 Feb., 1771, Vol.III, P.110).

2 Ducarell's Letter to Murshidabad (18 Feb., 1771), Murshidabad Proceedings (26 Feb., 1771), Vol.IV, P.20. "The Dacoits of Bengal" says the Com. of Circuit, "are not like the Robbers in England, Individuals driven to such desperate courses by sudden want. - They are Robbers by Profession and even by Birth. - They are formed into regular communities and their Families subsist by the Spoils which they bring home to them." - Letters of the Committee of Circuit to the President and Council at Fort Wm.(15 Aug., 1772), See Proceedings, Com.Cir.at Kasimbazar, Vol.1-3 (in one), P.23.

the Supervisor of Rangpur, referred to the activities of the "numerous tribes of lawless plunderers"[1], who ravaged the several districts of Rangpur, Bdrakpur, Baharband, Dinajpur and Rajshahi. In the course of his letter, he stressed the great necessity of the immediate suppression of their regular acts of depredation which tended, as he said, "to the ruin and destruction of the country," besides contributing to the decrease of the revenues. Similar reports were made by the Supervisors of Saran[2] and Tirhut[3] to the Chief and Controlling Council at Patna.

The Committee of Circuit referred to the organised bands of Sanyasis[4] and Fakirs, who in their religious garb constituted

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1 See Proceedings of the Murshidabad Council, (28 Feb.,1771), Vol.IV, P.96.

2 Letter of Edward Golding, Supervisor of Saran and Champaran to the Chief and Council at Patna (7 April, 1773), Press List of Ancient Documents etc., Series II, Vol.I, P.333.

3 Letter from Keighly, Supr. of Tirhut to Patna (22 July,1771), Ibid. Series II, Vol.I, P.117. The Supervisor requested the Commission of a special Daroga from Raja Shitabroy, who might successfully deal with the marauding activities of the "itinerant robbers" who were reported to be in the secret pay of Raja Partap Singh, the Zemindar of Darbhanga.

4 A community of Hindu Mendicants traced back to the early sects of Puri, Parbat, Giri, Sagar, Vana, Aranya, Tirtha, Asrama, Saraswati and Bharati. See J.N.Ghose: Sanyasi and Fakir Raiders in Bengal. It deals with a history of their raids which menaced the peace of Bengal and Bihar in the early years of the Company's rule in the Province. The Committee of Circuit mentions a number of expeditions led against them to suppress their movements. See Proceedings, Com.Cir.at Rajmahal, Vol.VIII, PP.172-176. Also see Bengal Dist.Records, Chittagong, Vol.I, Part I, PP. 73, 74-75, 108. A letter of 5 Feb., 1771 from the Chief of Dacca informed the Chief and Council at Murshidabad that the sanyasis made pilgrimages on religious purposes. But they went armed in large bodies, levying considerable sums from the different districts. See Proceedings of the Murshidabad Council (11 Feb.,1771), Vol.III,P.155.

a powerful source of menace to public peace. They moved in groups of hundreds and even thousands, plundered villages and levied forced taxes on the people. Their activities were particularly felt on the frontiers of Saran and Champaran, Purnea and Bhagalpur, Rangpur and Rajshahi. Similarly, on the Chittagong side the constant raids of the Arakanese[1] and Mugs[2] endangered the security of person and property.

The peace of the country was also menaced by many of the zemindars who were responsible for its preservation. In the course of a controversy on the police duties of the zemindar in December, 1771, the Naib Subah gave an opinion which stressed this responsibility of his office. "Throughout Hindostan, in Bengal as well as in every other province," he observed, "in case of theft, robbery or murder, the zemindar in whose territory it is committed, if he is possessed of authority, is bound to surrender or produce the murderer with the effects - Where the Zemindar posesses the sole-power, he alone is responsible, - and where the Authority is jointly vested in the zemindar and the amil, they are both answerable - If they could not produce them, they were made to account for them. If they on the other hand did produce them, they were held free and clear - If the

1 See Chittagong District Records, Vol.I, Part II, P.69.
2 See Proceedings, Committee of Circuit at Dacca, Vol.IV, P.130., also Chittagong Dist.Rec. I, P.31.

robbers were not under his jurisdiction he from whose district they come was called upon."[1]

But most of the zemindars hardly conformed for the object of their institution. The Supervisor of Rangpur reported in August, 1770 that the zemindars of his district as well as those of Rajshahi secretly harboured dacoits and robbers.[2] The Supervisor of Jessore assigned, the increase of robbery to the machinations of the zemindars of his district.[3] The Supervisor of Birbhum complained that the zemindars of his district conspired to bribe his men into neglecting the discharge of public duties.[4] Raja Pratap Singh, a zemindar of Darbhanga was suspected of having maintained a number of robbers in his pay. The Supervisor

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1 Extract of translation of the Naib Subah's opinion on the responsibilities of the zemindar in policing the country. See Proceedings of the Controlling Council of Revenue at Murshidabad, 30 Dec., 1771, Vol.VIII, P.102-103. The controversy had arisen from the murder of an Englishmen, by name Holland, in the district of Jessore, when the zemindars of the locality, where the murder had taken place, were called upon to explain their conduct.

2 See Press List of Ancient Documents, Series II, Vol.II, p.24 (20 Aug., 1770). Also see Letter Copy Book of the Resident at the Durbar at Murshidabad, Vol.II, PP.4-5.

3 From Wilbot to Richard Becher, 29 Aug., 1770, Press List of Ancient Document, Series II, Vol. II, P.25.

4 Ibid. Series II, Vol.II, P. 22.(Letter of C.Stuart to Richard Becher, 21 July, 1770).

of Tirhut therefore asked the Chief and Council at Patna to send on deputation to his district an especial officer of Raja Shitabroy to handle the situation with success. The semindars of Husepur and Berbaria in the district of Saran were similarly reported to be a constant source of danger to public security.[1]

Open breach of peace was as common a phenomenon with zemindars as secrect machinations. A zemindar of pargana Mahmudshahi in Jessore openly raided the house of a village woman with a large body of men, robbed her of all her property, and finally put her to death. The maltreatment of his men caused abortion of three-to-four women, who immediately died on that account. Their oppressions left the village entirely depopulated.[2] The Supervisor of Jessore could not help the oppressed, and described the state of law and order in the whole district as definitely alarming.[3] Reports of open defiance of authority were likewise received from Dinajpur and Nadia.[4] The security of the Company's own property was at times endangered by the ravages of zemindars.[5]

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1 See Press List of Ancient Documents, Series II, Vol.I.

2 See Proceedings of the Controlling Council of Revenue at Murshidabad, 30 Sept., 1771, Vol.VIIA, PP.95-96.

3 From the Supervisor of Jessore to the Chief and Council at Murshidabad, 5 Dec., 1771, Murshidabad Proceedings, 17 Dec., 1771, Vol.VIII, P.43.

4 The ryots of Nadia made a collective representation against acts of oppression. See Murshidabad Proceedings, 21 Oct., 1771, VolVII, P.88. For the report of open disorder in Dinajpur see Murshidabad Proceedings, 28 March, 1771, Vol.VII, P.112.

f any 5 See the report of the Supervisor of Rajmahal and Bhagalpur, nishment 23 March, 1771, Murshidabad Proceedings, 28 March, 1771, Vol. atsoever. IV, P.147. One Lakshmi Narain, Zemindar of Rokanpur, plundered the Company's market at Nabobganj, looted property, set fire to the market and put several persons to death without fear *

Much of the trouble arose from the inadequacy of the Company's police forces. The Supervisors often felt helpless for want of adequate means of protection. In February, 1771, for instance, the Supervisor of Rangpur applied to the Council at Murshidabad for the re-inforcement of his command to suppress the growth of robbery in his district. "Our force is so very inconsiderable," he wrote, "that we are not able to protect the ryots from the oppressions of the dacoits, who encouraged by our want of force, do considerable mischief."[1]

But the Chief and Council expressed their inability to meet his demand for additional forces, and desired him to make the best use of the troops already assigned to his command.[2] Likewise, when the Supervisor of Jessore complained of the insufficiency of police forces, the Council gave the same instructions to him as they had done in the case of Rangpur.[3] The request of the Chief of Dacca for additional troops to suppress the movements of the Sanyasis had met with a similar fate of rejection.[4]

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1 Murshidabad Proceedings, 28 Feb., 1771, Vol.IV, P.38.
2 See Murshidabad Proceedings, 28 Feb.,1771, Vol.IV, P.39.
3 From the Supervisor of Jessore to the Chief and Council, 5 Dec., 1771 and from the Chief and Council to the Supervisor of Jessore, 17 Dec., 1771 (Murshidabad Proceedings, Vol.VIII, P.43 and 44.)
4 From Kelsall to the Chief and Council at Murshidabad, 5 Feb., 1771 (Murshidabad Proceedings, Vol.III, P.155. The reply of the Council is on P.167 of the same volume).

As for the Nawab's police force, the agreement of 1765 had already reduced it to insignificance. A further reduction was effected in December, 1770, when the Faujdars were recalled from several districts, except that their establishments were retained only in those places which were contiguous to the factories of other European powers. The object of the President and Council at Fort William was to preserve the appearance of the country government wherever it might have any connection with other foreign nations.[1] And even those who were retained were lacking in proper means of defence. They had to rely for their own protection under the Company's forces in the districts. Even the private merchants of the Company used to seize and put thanadars into confinement.[2]

In such a state of confusion and uncertainty, the Company's troops also indulged at times in acts of pillage and plunder. In April, 1770, the Supervisor of Bhagalpur complained of "the desolate and ruined state of the country" caused partly by "the ravages of the troops on their march through the villages."[3] In August, 1770, the Supervisor

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1 See Murshidabad Proceedings, Vol.II, P.35 and 58.
2 Compare the case of the thanadar of Rangmati, who was confined by one Haush, a private European gentleman working in the factory of Gwalpara. The thanadar was rescued by John Lumsdain, Commander of the Company's forces in Rangmati. See Murshidabad Proceedings, Vol.VII A, PP.135-138.
3 Press List of Ancient Documents, Series II, Vol.II, P.9.

of Jessore reported that the sepoys he had sent to suppress the bands of robbers in one of the parganas of his district, themselves began to plunder the inhabitants.[1] In November, 1770, one of the Company's revenue agents in the district of Rangpur stated that about fifty sepoys from the command of one Captain Mackenzie went out under the pretence of searching robbers, made various disturbances and embezzled about a thousand ruppes of the Company's revenue of the district.[2] In the course of his tours in the district of Rangpur, James Lawrell, a member of the Controlling Council at Murshidabad, personally detected several cases of exactions in which a number of sepoy officers were involved. They had extorted money from the ryots of Dinajpur under various pretences, and put them unjustly into confinement to exact more. Some part of this money was recovered by Lawrell himself, who left instructions to the Supervisor of Rangpur to see that the grievances of the ryots were fully redressed.[3]

But the Supervisors had their own limitations. Their powers were not adequate to the responsibilities of their station. They were simply reporting and recommending

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1 See Ibid. Series II, Vol.II, P.26.
2 From the Chief and Council at Murshidabad to John Grose, Supervisor of Rangpur, 15 Nov., 177[illegible], Murshidabad Proceedings, Vol.I, P.208.
3 See From James Lawrell to Charles Purling, 12 July, 1771, Murshidabad Proceedings, 8 August, 1771, VolII, P.68.

authorities with practically no powers of execution. The Supervisor of Rajshahi, for instance, clearly pointed out that injunctions without control were thoroughly incompatible[1]. A zemindar of Rakanpur burnt the Company's market at Nobobganj under the Supervisor of Rajmahal and Bhagalpur. But, for want of authority the Supervisor felt helpless to be able to do anything by way of redress to the sufferers. His duty, as he deplored, was to represent their grievances to Murshidabad, but not to take measures to relieve their distress.[2]

John Grose, the Supervisor of Rangpur, expressed his limitations in much stronger terms. "Am I quietly to stand by," he wrote, "and see them (amils and zemindars) commit the vilest acts of oppression without being able to render the aggrieved redress - a hard cause indeed on the poor ryots, who must not look to me with hopes of having their cause enquired into till such time, as the amils, zemindars and other creatures of (native) government have enriched themselves at their expense, nay even their ruin, when it may be too late and not in my power to grant them redress."[3] Such a state of helplessness had particularly arisen from the withdrawal of the controlling authority of some of the Supervisors

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1 See from Rous to Becher, 1 Aug., 1771 (Letter Copy-Book of the Supervisor of Rajshahi at Nator, P.34.)
2 See Murshidabad Proceedings, 28 March, 1771, Vol.IV, P.147.
3 Rangpur District Records, Vol.I, P.8. (From Grose to Becher, 14 July, 1770.)

in June, 1770, which was subsequently restored in September of the same year. But this affected only their revenue powers. In judicial matters, however, their position continued to be negative as before. The Supervisor of Rajshahi, for instance, was required to furnish a length explanation for the simple reason that he wanted to introduce certain measures of reforms,[1] which were likely to affect the private perquisites of the qasis. "If I shall appear to you in any respect to have encroached upon the due authority or emoluments of the Cawzy's office," he wrote, or forged regulations incompatible with the constitution of the Hindustan government before the Company's possession, you will be pleased to signify your pleasure for their abolition."[2] Nonetheless, it was doubtful whether his reforms were adopted by the Chief and Council at Murshidabad.

The task of supervisors became all the more difficult on account of the terrible effects of the famine of 1769-70. Writing on 20 December, 1771, the Supervisor of Purnea observed that all his endeavours for the improvement of the country had "met with the most material check from the ravages of the famine," causing the greatest mortality of the inhabitants, "which continued almost twelve months in a degree of severity hardly to be parallelled in the history

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1 See Appendix to this chapter.
2 From Rous to the Chief and Council at Murshidabad, 19 January, 1771, (See Murshidabad Proceedings, 7 Feb., 1771, Vol.III, PP.140-141).

in the history of any age or country."[1] Similar reports of misery and desolation came from all parts of the province. The dislocation of the economic life of the province had a serious repercussion on the administration of law and order in so far as many of the hungry peasants took to theft and robbery, which increased immensely in the course of the famine.

There was yet another source of trouble for them. It arose from the conflict between the Select Committee and Council at Fort William. In the state of conflict between the superior authorities of the Company in Bengal it was, indeed, difficult for Supervisors to pursue a consistent course of action. In March, 1771, for example, there occurred a significant occasion, which brought into light the anomaly of their position. In accordance with the orders of the Chief and Council, the Supervisor of Dinajpur resumed all such charitable lands as were not registered within the time specified by the said Council.[2] But far from appreciating the compliance of their own orders, they expressed their disapprobation of the Supervisor's measure, and addressed the following reply in resentment:

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1 From G.G.Ducarell to the Chief and Council at Murshidabad (See Murshidabad Proceedings, 30 Dec., 1771, Vol.VIII,P.109.)
2 See Murshidabad Proceedings, 14 March, 1771, Vol.IV, P.87.

"We are sorry to be under the necessity of signifying our disapprobation of the steps you have taken relative to the Bazee Zemeen lands. Allowances should be made for the superstitious prejudices of the Natives and instead of enforcing our orders on them with vigour and severity all lenient measures should be adopted to ingratiate their affections to our government, admitting therefore in the present case that the proprietors of the Bazee Zemeen, have been guilty of an infringement of the publication for registering their summuds, we think you was too hasty in immediately ordering these lands to be resumed. You ought not to have taken these steps without express authority for us."[1]

The Supervisor was thus asked to prolong the period for registration, and restore the proprietors to the lands from which they had been dispossessed.[2]

In these circumstances, it was impossible for Supervisors indeed to accomplish the objects of their establishment. It is true that many of them were lacking in honesty and experience. It is also true that most of them were ignorant of local customs and practices. The native officers of justice or those in charge of law and order might easily bluff them, as they did, without any fear of detection. But

1 See Ibid. Vol.IV, P.98.
2 Ibid. Vol.IV, P.98.

what about those who were both honest and experienced ? Their efforts to fight against corruption were likewise foiled.

The basic trouble arose not so much from a defect in individuals as from a lack of system. There was no definition of public offices. Their powers were exercised without any regard being paid to their limits. Judicial posts were held by persons either on hereditary principles or of right acquired by purchase. There was no code of law in English, which might have enabled Supervisors to ascertain the correctness or otherwise of judicial decisions of country courts.

The financial policy of the Company was equally responsible for the continuance of corruption in the administration of the country. The evil could not possibly be stopped so long as the Company continued to appropriate the maximum share of the public finance to the increase of its investments. A reform of the officers of justice required a substantial portion of its revenues to be used on the payment of adequate salaries to them, which it was not prepared to do.

And above all was the double government of Clive which obstructed the advance of any real progress in the field of judicial reforms. It often set at naught even individual efforts of relief. But there was no option. In fact, it was a natural consequence of the process of transition in which one power was being supplanted by the other.

APPENDIX

REGULATIONS[1] PROPOSED BY C.W.B.ROOS, SUPERVISOR OF RAJSHAHI, FOR THE CONDUCT OF THE PERGANA QAZIS WITHIN HIS JURISDICTION

Observing that the great degree of Negligence which has latterly been shown to the Punishment of Offenders, and the Oppression which the Ryotts have suffered from the Rapacity and maladministration of the Officers of Justice and their various dependents, have thrown disgrace to the Government. I have therefore judged it necessary to impress upon your Conduct the underwritten Regulations -

1. You are to hold no Court of Justice, but in the public cutcherry.
2. You are to transmit to me at the close of every Month an exact Register of all your proceedings; whether upon Matters referred to you by the Officers of the Adawlut, or upon Complaints, which are made to you on the spot.
3. In misdemeanors of a religious nature, such as Thefts, Adultery, and in Variances betwixt Mohammedans regarding Inheritances, Marriages, - all which are explicitly described in the Koran, you will adjudge such Punishment or pass such Decision, as the Law of the Mahommedans, therein specified, particularly directs.

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1 Quoted from the Murshidabad Proceedings (7 Feb., 1771), Vol.III, PP.142-143.

4. You are to take cognizance of no Capital Crime, and inflict none but corporal Punishment. Criminals whom the Mahomedan institution holds worthy of Death, you will send, with the circumstances of their crime, to me, or to the Adawlut of the District.

5. In Affairs relative to the Casts and Religious Tenets of the Hindus you must not interfere. But, if you see any Injustice committed by the Brahmins, or the Zemindars officers over the Hindoos, You will give me Information of the Circumstances.

6. You will upon no account whatsoever demand any Composition for crimes and punishments, under the name of Seremannah and Tazeerana, but will make the Koran, as the nature of your office requires you should, the strict Rule of your Decisions, which does not admit of any such compromises.

7. In variances relative to the recovery of Debts and Mercantile Transaction You will take your measures with the concurrence of the Zemindar's Deputy in the Pergannah and when there is a difference of opinion, the matter must be decided by Arbitration, or be referred to me, or to the officers of Adawlut. Observe also, when it is demanded by the parties, you must never refuse Arbitration. Each party is to appoint one Arbitrator; and the two Arbitrators shall appoint a Third.

8. You are never to interfere in matters relative to the Revenue.

9. For the Performance of religious ceremonies, such as Marriage (Akdamah) Burial (Chellanah) the Ode, - and upon the two Harvests you may demand the fees which years since been fixed and established. But if you make the smallest demand beyond what is your due, you shall assuredly be punished with dismission.

10. The Rate of your Fees is to be stuck up on the wall of the Cutcherry in the Persian and Bengal Languages authenticated by your seal and the Attestation of the Zemindar's Head Officers in the Pergunnah.

11. You are not to suffer the Peons, whom you send out to apprehend prisoners to take more than two Annas per diem, besides Victuals, and never send more than one, or at the utmost two Peons, upon one Business.

12. When any Person who has been summoned can give good security for his Appearance, You are not to keep Peons upon his Person: and will always dispatch causes with all possible Expedition.

13. If you hear of any English Gomashahs who take upon them to send Peons and Cetain Prisoners &c. or Talookdars or Daroghas of Cauges who exercise an authority in criminal

or civil matters beyond their own precincts, you will exert yourself in conjunction with the Zemindar's Deputy, to put a check upon their proceedings. If they disregard your admonitions, give immediate information to me, that a stop may be put to such unwarrantable practices.

14. As there are several Portions of Land granted by the Goverment for the charges of religious Illuminations, and repairs of Mosques, which you appropriate to your private Emolument, to the dishonour of your character and religion; I warn you to act in such a manner as may prevent similar complaints in future.

CHAPTER VI

JUSTICE IN THE SETTLEMENT AND DEPENDENCIES OF CALCUTTA 1765-1772

THE INDIGENOUS COURTS OF JUSTICE

The indigenous courts of justice in the settlement of Calcutta derived their form, character and authority with the purchase of the three villages of Sutanati, Govindpur and Calcutta from a family of Mazumdars who transferred their so-called zemindari rights by a bainama or sale deed executed on 9 November, 1698 in favour of the English Company on payment of thirteen hundred rupees.[1] By virtue of this deed the English now came to acquire a legal status in Bengal with authority to collect rents from ryots, to dispose of waste lands and impose petty taxes, duties and fines within the limits of their zemindari. Besides the powers of revenue administration, it also implied, as the Company then understood, rights to administer justice, both civil and criminal.[2] In fact,

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1 The transfer of the zemindari rights of the three villages was effected at the instance of Azimushan, the then Mughal governor of Bengal, who interceded in favour of the Company on the Mazumdars having declined to part with the villages which had been in their possession for a long time. See Wilson: Old Fort William, P.40.

A translation of the bainama or sale deed is given in Wilson's Old Fort William, PP.40-41.

2 See General Letter of Bengal (14 December, 1694) proposing a court of judicature to be set up in Bengal by procuring a firm settlement of the above three villages. Wilson: Old Fort William, PP.14-15.

the zemindars had then virtually assumed this power in practice, although there was no legal basis for doing so. The Company only followed their example in this respect.

A Member of the Council was appointed by rotation to the post of Collector of the Company's zemindari. He was called the Zemindar. Besides managing the revenues, he administered both civil and criminal justice. He also superintended the work of the Kotwal who was the police and municipal officer of the town and its suburbs. There was a deputy to the Zemindar, who helped him in the execution of his responsibilities.[1]

From a general letter of 18 January, 1708, it seems that the Directors were very keen about justice being impartially administered. "Although we have no reason to doubt," they wrote, "yet We can't omitt here to recommend to you an impartiall administration of Justice to all your Innabitants in the three townes and the Natives will soon see the difference between the mild English Government and the Arbitrary typanny of the Moors."[2]

A letter of the President and Council revealed that adequate provision existed for the night patrolling of the town. The burglars apprehended in the course of patrols

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1 Govindram mitra was the Deputy Zemindar of Calcutta in 1752, when Holwell was appointed Zemindar.
2 From the Court of Directors to the President and Council (18 Jan., 1706), Wilson: Old Fort William, P.62.
3 See Wilson: Old Fort William, P.84.

were chained and forced to work for the Company. This mode of punishment was reported in 1711 to be very effective in securing peace and tranquillity. In a subsequent correspondence we find that the Directors appreciated the manner in which justice was administered by the Zemindar in Bengal. "It is a great satisfaction to us to read," they wrote, "that exact Justice was administered to all under you and that it shall be continued. We know no better way to People your Towns nor any better proof of it than the encrease of useful Inhabitants who to be sure will resort where they may best be secured from oppression or secret or open squeezing and treated with humanity. The more such Inhabitants there are the more will our revenue encrease besides other benefits to the Place."[1]

The administrative arrangements made with the purchase of the Zemindari continued to operate till 1752 when Holwell was appointed Zemindar under the orders of the Directors, not by the Council as before. He could not be, therefore, removed without the express authority from England.

His account forms the earliest authentic source of information about the mode in which justice was formerly administered in the Company's possessions in Bengal. "The Zemindar," he writes, "acts in a double capacity, distinct, and independent

1 From the Courts of Directors to the President and Council at Fort William (9 January, 1713) Ibid.Para.61, P.106.

of each other, (with very few exceptions) the one as Superintendant and Collector of your revenues, the other, as Judge of the Court of the Cutcherry, a tribunal constituted for the hearing, trying, and determining all matters and things, both Civil and Criminal, wherein the natives only, subjects of the Mogal, are concerned. He tried in a summery way, had the power of the lash, fine and imprisonment; he determined all matters of meum and tuum; and in all criminal cases, proceeded to sentence and punishment immediately after hearing, except where the crime (as murder), requires the lash to be inflicted until death,[1] in which case he suspends execution of the sentence, until the fact and evidence are laid before the President, and his confirmation of the sentence is obtained. He has also the power to condemn thieves, and other culprits, to work in chains upon the roads, during any determinate space of time, or for life. In all causes of property an appeal lay to the President and Council against his decrees."[2]

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1 William Bolts explains the reasons for inflicting this mode of punishment for death. He says: "The ancient Moguls and Nabobs would not permit any of the professors of Islam to be hanged according to the English custom, esteeming that too ignominous a death for a Mahomedan to suffer; in such cases as were deemed capital only the lash was permitted to be inflicted on the Mogul's subjects, Mahomedans and Gentoos." Bolts: Considerations on India Affairs, (2nd Ed.) Vol.I,P.81.)

2 Holwell: India Tracts, PP.177-178.

In a letter of 15 December, 1752, addressed to the President and Council at Fort William, Holwell explained the importance of arbitration as an instrument of determining civil causes. It was "an invariable rule," he writes, "to have every cause determined by arbitrators of the parties own choosing, unless in claims so obvious as to admit of no contest, such as those arising on mortgages, &c. or those of very small value, where the parties are so indigent as not to be able to pay the fees on the arbitration bond. And when the arbitrators happen to be equally divided in their judgments, the Zemindar interferes no farther than in nominating an umpire, who shall be acceptable to both parties; but if objected to by either, then each to nominate an umpire, and chance to determine; but an instance of this kind has not happened since I have been in office."[1]

It appears from the proceedings of the President and Council (1st May, 1756) that Holwell exercised jurisdiction over the cases of Europeans and Indians of European birth; and a dispute arose between him and the Mayor's Court which claimed exclusive rights of jurisdiction in such matters. The trouble actually began with a case of one Mons. Demondteguy, and his wife Phoebe who "laid a complaint in the Cutcherry against the latter's mother, black Fringy

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1 Holwell: Indic Tracts, PP.203-204.

named Sarah Shadow setting forth that prior to the marriage of the said Phoebe the said Sarah Shadow had prevailed her to secrete and lodge with her a pair of Diamond Ear-rings a Gold headed cane13 gold buttons and a silver cup and salver telling her that as she was a stranger to the principals of the man she was going to marry she had better conceal the above things from him and that she might have them again whenever she pleased this cause coming to issue before him (Holwell) the Defendant asserted the things were deposited with her by Phoebe for the use of a child the said Phoebe had by a former husband: but this being absolutely denied by the said Phoebe and the Defendant having no proof beyond her own assertion nor any written obligations produced or pretended to have been given by the said Phoebe to her Mother, he decreed the Restitution of the above things to the complainants to whom they were delivered the same day."[1]

On the basis of an information received from an indirect source the Mayor's Court served a notice on Holwell to appear before the court to explain his conduct, and deposit all the things he had recovered from the defendant. He took a serious objection to this proceeding which, as he thought, was extra-judicial and injurious to his Court. The Mayor's Court, on the other hand, questioned the very judicial powers of the Zemindar's office, particularly in relation to the case

1 Bengal Past and Present, Vol.10, PP.124-125.

in dispute, which, according to the Charter of Justice, fell to the original jurisdiction of the Mayor's Court. The matter was finally referred[1] to the Court of Directors who did not justify the action of the Mayor's Court in having taken cognisance of the case without formal complaint being instituted against the determination of the Court of Cutcherry.[2] But no final decision was reached on the point of contention between the two courts of Judicature.

However, the conflict of jurisdiction was not without effect. In 1758, the Court of Directors, on the recommendation of Holwell, bifurcated the civil and criminal functions of the Zemindar's office. Three Members of the Council were appointed to sit by monthly rotation in the trial of criminal cases.[3] This tribunal of the three judges had the power of dealing with the cases of the Europeans also. In capital cases, the permission of the President and Council was obtained before executing the penalty of death. The trial and determination of civil cases were vested in a separate court, consisting of five severents of the Company below the rank of the Council. It took cognisance of the cases of the value exceeding twenty rupees. An appeal could lie with the President and Council where the value of the case was more then a hundred rupees.

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1 Bengal: Past and Present, Vol.X, PP.143-145.
2 Despatches to Bengal (27 April, 1759), Vol.I, Para 128-136, PP.641-45.
3 Holwell: India Tracts, P.178.

But this arrangement did not continue for long. William Bolts, who was the Secretary of the Court of Cutcherry, made no reference to the tribunal of the three members of the Council for the trial of criminal cases. Only a member of the Council, or sometimes a servant below its rank, presided in the Faujdari Court.[1] He was supported by the Report of the Committee of Secrecy (1773), which pointed out that "one judge only sits in that court, appointed by the Governor and Council."[2] Criminals, however, were punished as before by fines, imprisonment or condemnation to work in chains upon the roads for any space of time. Flagellation even to death was inflicted in capital offences.[3] As to the Court of Cutcherry, or the Civil Court, it was composed, according to Bolts, of three servants of the Company including the president. The Committee of Secrecy reported that it consisted of several Judges, also appointed by the Governor

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1 Bolts: Considerations of India Affairs, Vol.I, (2d.Ed.)P.80.
2 7th Rep.Com.Sec.(1733) P.331. On the basis of the evidence of Russell (a member of the Sel.Com.under Clive) the Committee says "that formerly one of the Council was always appointed to this office; but that since the increase of other Business in the Council this duty has been entrusted to Junior Servants, one of the Council being appointed monthly to Superintend." Ibid.P.331.
3 Bolts: Considerations on India Affairs, Vol.I, P.81. "In capital cases, Three Members of the Board sit as Judges in this (Faujdari) Court, and before execution of the sentence the Proceedings must be laid before the Governor and Council." - 7th Rep.Com.Sec.(1773),P.331.

and Council, out of the Junior Servants, but seldom more than one actually sits"[1] The Judges decided suits of any value between the natives[2] in a summary[3] manner. The plaintiff and the defendant were summoned along with their respective witnesses. The Court heard what they had to say and prove vive voce and then immediately proceeded to judgment except in matters which admitted of serious disputes.[4] Provisions existed for appeal from its decision to the President and Council. But almost all matters were normally determined by "arbitrators or umpires, chosen by the parties, or with their consent, whose decision (was) final." It was "made a decree of the Court."[5] Recourse was taken to this mode of trying civil cases in spite of the great delay it involved in securing the attendance of arbitrators at the court. They were usually grudged the time they had to spend from their professional pursuits.[6]

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1 7th Rep.Com.Sec.(1773), P.331.
2 The Civil Court also decided causes between a native and a European where the latter happened to be plaintiff. In such a case the native had a right to remove it to the Mayor's Court - See 7th Rep.Com.Sec.(1773), P.331.
3 J.Long: Selections from the Unpublished Records of Govt., P.xxxi.
4 Bolts: Considerations of India Affairs, Vol.I, P.86.
5 Ibid. P.80. Customs and usages of the Country formed the rule of judgment in these Courts. The Judge applied his discretion in the absence of Customs. Chauth, which was a recognised perquisite before, was subsequently abolished by the President and Council. See 7th Rep.Com.Sec. (1773), P.331.
6 See J.Long: Selections from the Unpublished Records of Government, Nos.578, 651.

In addition to these Zemindari Courts of Justice, there was a third Court called the Collector's Cutcherry. Bolts observes that the farmers and tenants, who were found backward in their payments, as well as others for crimes and misdemeanours, were "confined, whipped and otherwise punished, independently of other courts established in Calcutta."[1] With the cession of the zemindari of the 24 Parganas by Nawab Mir Jafar, the Zemindar or Collector of Calcutta came to be styled as the Collector General with rights to exercise full jurisdiction over this new acquisition in matters of both revenue and justice. His regulations applied equally to all the 24 Parganas. The following regulations issued in 1767 by the Zemindar for the conduct of justice under his dependencies are significant in so far as they distinctly reveal the process adopted in the various types of suits, both civil and criminal. They were addressed to each of the pargana officers:

"You will not let the Cawzy or Mufti receive anything from the tenants unlawfully.

"The Crimes belonging to the Phonsdarry, such as thefts, robberies, murders, hidden goods discovered, &c., that may happen in your pergannah, you are to send the persons accused to Calcutta, with the proofs thereof, and the list of such goods as may be found in these cases.

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1 Considerations on India Affairs, Vol.I, P.82.

"Such persons that may die without issue, you are to take an inventory, of their effects, in the presence of the Cormocharries (public servants) and pikes of the said villages as also some of the creditable inhabitants, and let the inventory be signed by them, as witnesses...

"Family complaints about any share of property, if under Rs.100, you may refer the cause to an arbitration, and after the cause is awarded you are to forward the proceedings here; but if the parties are not satisfied by the award of the arbitrators, you are to send the parties to the Collector's Cutcherry, and if above Rs.100, you are to send the parties to Calcutta.

"Complaints about debts may be decided by you , your Comastah and two creditable persons and if the parties are not satisfied therewith, they may appeal to the Collector, the duties thereon you are to receive 5 per cent., and send the proceedings to Calcutta, the interest to be allowed at the rate of 12 per cent., and if it be discovered that the lender of the money received more than the above interest, or benefited himself by any other means, you are to send the lender and the borrower to Calcutta.

"Liberty to marry was to be granted to the labourer without any fee, the higher class was to apply to the Collector for licence; a list of marriages was required to be regularly transmitted to the Collector for his information.

"In disputes about grounds, if any one use force or strikes any person, and the same be proved, such person is to be fined Rs.3, and of less substance R.1, and of no substance to be kept whole day in the Stocks.

"If anyone be falsely accused, you will examine into the affairs and write to the Collector, and such orders as shall be sent you, you are to execute accordingly."[1]

The Zemindar of Calcutta and Supervisors - A conflict of jurisdiction arose in April, 1771, between the Zemindar[2] of Calcutta, and the Supervisor[3] of Rajshahi. The former required the latter to send two persons from his district as prisoners to Calcutta to appear in a suit exhibited against them. The Supervisor, however, refused execution to this claim of the Zemindar. He insisted that the jurisdiction of the Zemindari Court of Calcutta did not extend to the Diwani province. The matter was finally referred to the President and Council at Fort William, who adjudged that "the jurisdiction of the Zemindari Court at Calcutta might extend over all persons, as agents or Gumastahs, in the Service of any English merchant, or of any native residing at Calcutta; and that as the persons in question appear to stand in that predicament, they should be sent to Calcutta to answer the suit against their principals."[4]

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1 J.Long: Selections from the Unpublished Records of Government, No.967, (1 October, 1767).
2 Charles Purling was the Zemindar of Calcutta at this time.
3 C.W.B.Rouse was the Supervisor of Rajshahi.
4 The Report from the Committee of Secrecy (1773), P.331.

BRITISH COURTS OF JUSTICE

The Company's legislative and judicial authority over European subjects in its employment was derived from the charters granted to it from time to time by the rulers of Great Britain.[1] The original purpose of this authority was to enable it to maintain its monopolist rights of trade against acts of aggression or infringement by what were usually known as interlopers.

The very first Charter of Queen Elizabeth granted on 31 December, 1600, vested the East India Company with powers to make all reasonable constitutions, &c., agreeable to the laws of England, for their good government," and punish by "fines and imprisonment," any offenders against such laws. The Company's right of justice and legislation were confirmed by subsequent charters. Additional powers were granted to enable it to cope with growing needs. In 1661, the Governors

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1. The Mughal Emperors recognised the free exercise of British law within the limits of the Company's factories. Sir Thomas Roe's agreement with Emperor Jahangir, for instance, provided that "the English should enjoy the free exercise of their own religion, and be governed by their own laws; that in any disputes between the English and the natives, reference was to be made to the (Mughal) governor and his officers, who should decide speedily and justly; but disputes among themselves were to be decided by their own Factory." See Bruce: Annals of the Hon'ble East India Company, Vol.I, P.204. In practice, the natives residing within the area of the Company's factory were also rendered immune from the jurisdiction of the country courts.

and Councils in India were vested with powers to exercise, within the limits of their settlements, civil and criminal jurisdiction according to the laws of Great Britain. The President and Council at Fort St.George in Madras were constituted into a regular Court in 1666. In 1772, a court of judicature was set up at Bombay, which derived its form and jurisdiction from the laws made by the Company under the authority of the royal charter of 1668. In 1678, the President and Council at Fort St. George were formed into a court of judicature with powers to try and determine cases by jury in accordance with English law. In 1686, it was substituted by a Court of Admiralty which, besides dealing with admiralty causes, served as a general court of judicature for the settlement of Madras.

The Early Position of Bengal - The factories in Bengal were subordinate to Fort St. George till late in 1699 when Fort William was formed into an independent Presidency for the first time.[1] The insignificance of its territorial position was an important cause of its backwardness. It was only in 1698 that the Company acquired the three villages of Sutaneti, Govindpur and Calcutta. In 1717,

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1 An independent agency of the Bay of Bengal was constituted in 1681 with William Hedges as its first Governor. But on the Company's setback in the Anglo-Mughal rupture in 1686 it was once again made subordinate to Fort St. George. With the formation of the independent Presidency of Fort William in 1699 Sir Charles Eyre was appointed its first President.

it obtained an imperial grant for thirty-eight more villages, which were adjoining to the r irst three. But the execution of the grant was opposed by Nawab Murshid Quli Khan, who did not favour the expansion of the Company's territorial influence in the province.

Since the formation of the Presidency of Fort William the only court, which exercised jurisdiction over the European servants of the Company, was that of the President and Council. The administration of justice in the settlement of Calcutta was supplemented, however, by the Zamindari courts which were presided over in rotation by a Member of the Council.

The King's Courts - The courts established in the settlements of Calcutta, Bombay and Madras under the Charter of Justice granted by King George I on 24 September, 1726 were known as the King's Courts. They were distinct from the earlier courts of the Company which, though authorized by royal charters, were governed by the laws framed either by the Directors or by the President and Council in their behalf. The most serious drawbacks of the Company's Courts was their subordination to the executive. The position of Calcutta was still worse, because of the absence of any court of judicature of the type which obtained at Bombay or Madras: the Executive was the Judiciary at Calcutta.

The Directors therefore represented to King George I in 1726 that "there was great want at Madras, Fort William and Bombay of a proper and competent power and authority for the more speedy and effectual administration of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanours."[1] King George I was accordingly pleased to grant a Charter of Justice and letters patent on 24 September, 1726 for the establishment of a Mayor's Court at Madras, Bombay and Fort William, each consisting of a Mayor and nine Aldermen, seven of whom, including the Mayor, were to be

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1 Peter Auber: Analysis of the Constitution of the East India Company, P.229; see also Cowell: History and Constitution of the Courts and Legislative Authorities in India, P.17; Morley: Administration of Justice in British India, P.6; Kaye: History of the Administration of the East India Company, P.320.

Sir Charles Fawcett gives two reasons to justify the establishment of the King's Courts in place of the Company's Courts. The first reason was that a court instituted by the King of England was believed to carry more weight with the Company's recalcitrant and refractory elements, who often deserted its service, and at times joined the enemies in their attacks upon it. Secondly, the Preisdent and Council often seized the property of the deceased servants of the Company, and attached it under the pretence of their alleged indebtedness to the Company. Such extra-judicial proceedings often involved it in several suits instituted against it by the relations of the deceased, which often became a cause of bother and loss. In all such matters of dispute a decision of the King's Court was bound to be respected more than that of the Company's Court. With this end in view, as Sir Charles Fawcett believes, the Mayor's Court was vested with powers "to grant probates and letters of administration, even in a case where the executors of the deceased, or his legal representatives, if he died intestate, were not in the settlement." See Fawcett: The First Century of British Justice in India, PP.215-216.

natural born British subjects. The Mayor's Court was to be a Court of Record with powers "to try, hear and determine all civil suits and actions and pleas between party and party."[1] The Governor and Council were to act as a Court of Appeal, which was also to be a Court of Record, to hear appeals from the decisions of the Mayor's Court. Their determination was final in cases of the value up to 1000 pagodas,[2] over which appeals lay with the King in Council in England. The Governor and Council were also formed into a Court of Oyer and Terminer and Gaol Delivery with powers to hold a Court of Quarter Sessions[3] for the trial of all criminal offences excepting high treason. They discharged this function in their capacity of being the Justices of the Peace. In respect of the natives residing within the limits of the Settlement the Court of Oyer and Terminer exercised a concurrent jurisdiction with the Zemindari Court of Criminal Judicature. In such case proceedings were conducted consistently with the conditions and circumstances of the place and inhabitants.[4]

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1 Auber: Analysis of the Constitution of the East India Company, P.229.

2 About £400.

3 "The Court of Quarter Sessions was authorised to hold quarter sessions of the peace four times a year within the district of Calcutta, and were at all times thereafter to be a Court of Record in the nature of a Court of Oyer and Terminer and Gaol Delivery for trying and punishing of all offenders and offences (high treason excepted) done or committed within the district of Calcutta and the factories subordinate thereunto." - Bolts: Considerations on India Affairs, Vol.I, P.79.

4 Cowell: History and Constitution of the Courts and Legislative Authorities in India, P.19. See also

The Charter of 1726 was superveded by a new one granted by King George II on 8 January, 1753. It ordained "That there should be forever thereafter, within the Factory of Fort William in Bengal, one Body Politic and Corporate by the Name of the Mayor and Aldermen of Calcutta, at Fort William in Bengal; to consist of a Mayor and Nine Aldermen, the Mayor and Seven of the Aldermen being natural-born British Subjects, but the other Two allowed to be Foreign Protestants: And it is further granted, that the Mayor and Aldermen should forever thereafter be, and are thereby constituted, a Court of Record, by the name of the Mayor's Court at Calcutta, at Fort William in Bengal, and that they or any Three of them (the Mayor or Senior Alderman then residing there to be One) may, and they are hereby authorized, to try, hear, and determine, all Civil Suits, Actions, or Plaints, between Party and Party, arising within the Said Town or Factory of Calcutta, or any of the Factories subordinate thereunto; except such suits as shall be between Indian Natives, which shall be determined among themselves, unless both Parties consent to the Determination of the Mayor's Court: And this Court is also authorized to try Suits brought against the Company, or by the Company against any person.

"This Charter also constitutes the President and Council to be a Court of Record, in order to receive, try

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Letter of the Court of Directors to the President and Council at Fort William (17 Feb.,1726/27) quoted in Fermminger's Introduction to the Fifth Rep.of the House of Commons (1812), PP. lxxx-lxxxiv

and determine, appeals from the Judgments or Decrees of the Mayor's Court: The Determinations of this Court to be final, if the value exceed not 1000 Pagodas; but if it exceeds that sum, the Parties are allowed, within Fourteen Days after such Decree or Judgment is entered of Record, to appeal to His Majesty, his Heirs or Successors, in Council.

" It further gives Authority tothe President and Council, or the Major Part of them, upon reasonable cause, to remove any of the said Aldermen, so as there be a complaint in Writing first exhibited against him, and reasonable Time allowed for his Defence, after being summoned for that Purpose with Power to any Person, thinking himself aggrieved by such Removal, to appeal to His Majesty in Council.

"The Said Charter also establishes a Court for the Recovery of Small Debts, within the Said Town or Factory of Calcutta, and that Factories and Districts subordinate thereto, to be called the Court of Request: This Court to consist of some of the principal Inhabitants (not more than Twenty-four, nor fewer than Eight) to be appointed by the President and Council, and to determine all suits brought before them, not exceeding the value of Five Pagodas.

"And the Said Charter further grants and ordains the Governor and Council to be Justices of the Peace, and have Power to act as such, and to hold Quarter Sessions

of the Peace, and also to be Commissioners of Oyer and Terminer, and General Gaol Delivery, for trying and punishing all offences (High Treason only excepted) committed within the Said Town or Factory, or its subordinate Factories; to proceed by Indictment, or such other Way as is used in that Part of Great Britain called England, as near as the Circumstances of the Place and Inhabitants will allow.

"The Said Charter further grants, That the Said Mayor's Court shall have power to grant Probate of Wills and Letters of Administration."[1]

Thus the new Charter introduced three main changes from the constitution of 1726. In the first place, the Mayor's Court was not to take cognizance of such suits and actions as related to the natives, unless both parties consented to its determination. Secondly, a new Court called the Court of Request was instituted, which was to deal with small cases of debt. Lastly, the Mayor's Court was made subservient to the Governor and Council, who were vested with powers to nominate or remove any of the Aldermen[2] on reasonable grounds of which they themselves were to be the Judge, the only safeguard being the power of the aggrieved to make an appeal to the King in Council against such a

1 Quoted in the 7th Rep.Com.Rec. (1775), PP.331-332.
2 An Alderman refusing to serve on his election was to be fined £50 sterling. See Long: Selections, etc., P.43,f.n.

decision of removal. Bolts says that the Governor also exercised a jurisdiction over caste cases in so far as he had a right to prevent a man from returning to his caste after he had been punished by excommunication.[1]

The inferior officers[2] of the Mayor's Court, who were associated with the administration of justice in it, were the Sheriff (1) the Clerk of the Peace (1), Interpreter (1), European Court-Sergeants (2), Native Court Sergeants (2) and Brahmin (1).

Significance of the King's Courts - The establishment of the King's Courts in Bengal, as elsewhere in India, symbolized the advent of a new ideal and method of justice. Freedom of Judiciary was the basic conception of the new system. It introduced the system of trial by jury in criminal cases. It required the maintenance of regular records of proceedings of the Court. Attorneys were introduced for the conduct of judicial process. Although they were no more than ordinary covenanted servants in the beginning appointed primarily to conduct the cases of the Company, they took up individual cases beyond the sphere of their official duty, acting independently of the wishes of Government and the Court even

1 Considerations on India Affairs, Vol.I, P.83. Fawcett refers to a dispute of jurisdiction, which arose on this point in 1730 between Cowen, the Governor of Bombay, and the Mayor's Court. The Company ultimately gave its award in favour of the latter. See Fawcet: The First Century of British Justice in India, PP.218-219.

2 See J.Long: Selections from the Unpublished Records of Government, P.43, f.n.1 and P.56.

at the cost of their displeasure.[1] In 1736, Henry Lowther,, a Member of the Bombay Council was sued in a case in which John Cleveland appeared as an Attorney on behalf of the plaintiff. In the course of the trial he made serious observations on the public conduct of the Councillor. This brought on him the stern attitude of the Council, which felt slighted at the insult of one of its Members. He was saved, however, by the Court of Directors, who justified his action in face of the Council's opposition.[2]

But the new system of justice in Bengal under royal letters patent represented after all the first link in the long chain of the Indo-British judicial developments. It naturally suffered from a number of setbacks which could be overcome only with the lapse of time. Although the Judges of the Mayor's Court, for instance, were bound to judge according to the laws of England, at least with respect to the Europeans, yet they had little knowledge, education or training in those laws. They were ordinary junior servants of the Company, possessing "the slenderest legal attainments and the slightest judicial training."[3] To such men was

1 See J.Long: Selections from the Unpublished Records of Government, P.46, No.123. We shall presently examine the case of one Mr.Richard Whittall who was dismissed by the Mayor's Court in 1769. He was one of the Four Attorneys of the Calcutta Mayor's Court.
2 See Fawcett: The First Century of British Justice in India, PP.220-221.
3 Kaye: History of the Administration of the E.I.C., P.321.

committed the important trust of justice, which affected "the Property, the Liberty, and the Lives of His Majesty's subjects in Bengal."[1] The Parliamentary Committee of Secrecy clearly pointed out in 1773 "that the Judges of these Courts are justly sensibly of their own deficiency of knowledge in the Laws of England; and that therefore they, as well as the President and Council, have frequently applied to the Court of Directors, to lay particular points, respecting their jurisdiction, before Counsel, and to transmit the Opinions of such Counsel to be the Guide of their Conduct."[2]

The second important limitation of their office was their subjection to the President and Council who were vested with the authority of their appointment and dismissal, subject only to a review by the tedious mode of an appeal to the King in Council in the event of dismissal. In practice, the Judges thus "exercised their judicial Functions at the pleasure of the President and Council."[3]

And, lastly, the jurisdiction of these courts was restricted by the terms of the Charter to the "offences committed within the Town or District of Calcutta, and its subordinate Factories." Thus no provisbn existed in the

1 7th Rep.Com.Sec.(1773), P.333.
2 Ibid. P.333.
3 Ibid. P.333.

Charter to cope with fresh problems arising out of the subsequent territorial acquisitions that followed in the wake of Plassey.[1] Consequently, many of His Majesty's subjects, residing in Bengal were "neither under the protection or control of the Laws of England, nor amenable to the criminal Judicature of the Country."[2]

In these circumstances, it was no wonder if irregularities were committed in the course of the administration of justice in the Mayor's Court as well. The point is substantiated by the case[3] of Richard Whittall who was an Attorney of the Mayor's Court. He was dismissed by an order of the Court passed on 4 August, 17[illegible] without any specific cause whatsoever. The only ground for dismissal was that he had received the rebukes of the Court while transacting the business of his office. Whittall

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1 In a letter of 6 February, 176[illegible], addressed to the Court of Directors, for instance, the President and Council at Fort William wrote as follows: "137. As we are in doubt how far the charter allows of Cognizance being taken of Murders, Robberies and other misdemeanours which may be committed by Europeans not immediately under our flag at the Presidency or the Subordinate Factory but may elope and find their way into other parts of these Provinces. We request you will procure for our guidance such Instructions on this subject as may distinctly point out our Authority in future." Bengal Letters Received, Vol.VIII.

2 7th Rep.Com.Sec.(1773), P.333.

3 See Ibid. Appendix No.I, PP.336-337.

made an appeal to the President and Council against the orders of his removal. But it was not accepted. He, therefore, represented his cause to the Court of Directors on 1 March, 1771, and stated that he had been dismissed without any specific charge against his conduct which he could not even defend for want of sufficient time being allowed by the Court. His complaint was specially directed against the President and Council, who had refused enquiry into the proceedings of his case, which he characterised as arbitrary and illegal. The matter was referred to the standing Counsel of the Company for his legal opinion. In the course of his reply, the Company's legal adviser deplored the alleged refusal of an appeal on the part of the President and Council, and declared that it was not only advisable but "necessary for the Directors in their General Letter to the Governor and Council to state their thought on Mr. Whittall's dismission, as to that Part of the order that declares without specifying any Particulars of the bad conduct Mr. Whittall was guilty of." Continuing the Counsel observed that "Such general charges of Misbehaviour without Facts are very gross and unbecoming a Court of Justice and have more the appearance of private resentment than public good, especially from a Court whose orders may be reversed by Appeal. The Directors should recommend to

the Governor and Council, to admit the Appeal and act there as the Justice of the case should require."[1] The Directors accordingly expressed their disapprobation of the general charges contained in the order of Whittall's dismissal and desired the President and Council to comply with the recommendations of their Counsel.[2] Whittall returned to Bengal to lodge his appeal which was accepted in obedience to the Company's orders.[3]

Another important illustration of irregularity is furnished by the case of one Jephson and his wife Philadelphia who were detained in 1768 in the Calcutta Jail by the Mayor's Court in spite of the leave they had obtained for returning to England. Jephson had complaints, not only against the Mayor's Court, but also against the Mayor[4] himself who was alleged to have disregarded English law and process. His appeal to the Governor and Council was not accepted on the plea of the Court's proceedings being interlocutary, not final. On his arrival in England,

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1 I.O.Despatches to Bengal, (3 May,1771), Vol.VI, Para.7, PP.31-32.
2 I.O.Despatches to Bengal, (3 May,1771), Vol.VI, Para.8, PP.32-33.
3 7th Rep.Com.Sec.(1773), P.333. The Committee reported that no further proceedings on the subject appear till the last General letter from Bengal dated 3 Nov.,1772. I have not been able to trace them even in subsequent letters from Bengal.
4 Cornelius Goodwin. See for Jephson's Case, 7th Rep.Com. Sec.PP.338-342.

Jephson, therefore, submitted on 2 March, 1771, a memorial to the Court of Directors, who consulted a number of eminent counsels on the point of his allegation.[1] They all affirmed the illegality of the ground on which his appeal had been refused. "There is not a syllable in it (the Charter)," the Company remarked, "that can lead you to suppose, that only final Judgments or Decrees were meant to be the subjects of appeal. In this Kingdom it is every day's practice, to see appeals lodged in the House of Lords, and at the Council Board, against Interlocutory Orders of the Courts of Chancery of England, and Ireland, and of the Courts of Justice in the King's Dominions abroad in numberless instances where there is not the least Decision upon the Merits; frequently upon the competency or Admissibility of business, before it is possible to know what evidence they would give or how far when given, it would affect the Laws, Often upon Orders for Trials at Law, or new Trials, the Event whereof cannot be foreseen."[2] The Directors expressed in strong terms their disapproval of the Court's order, and directed their President and Council at Fort William to make a strict enquiry into the

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1 I.O.Despatches to Bengal (2 May,1771), Vol.IV, Para.13, PP.39-40; 7th Rep.Com.Sec.PP.342-343.

2 From the Court of Directors to the President and Council at Fort William (3 May,1771), I.O.Despatches to Bengal Vol.VI, Para.12, P.39.

facts of Jephson's allegation. "It is with much Concern and Indignation," they wrote, "We observe our Courts of Justice prostituted to such purposes, as must carry with them, not only an indelible reproach to the Courts themselves, but to that Government by which they were instituted, and that we may entirely acquit ourselves of giving the best Countenance to such illegal Acts, We Injoin immediately to receive Jephson's Appeal whenever he shall present the same, that you encuire strictly and minutely into all the circumstances of his complaints and cause full and ample Justice to be done therein."[1]

The President and Council accepted the desired appeal and made an enquiry into the conduct of the Mayor whom they subsequently declared to be not guilty. It is difficult to resist the conclusion that they would hardly give a decision on a remand unfavourable to the Mayor and his Court, when once they had refused an appeal against their orders, because a decision favourable to the appellant would amount to a judgment against themselves.

We have on record an interesting illustration which shows the weakness of the Judiciary and its utter dependence on the mercy of the Executive. The President and Council withdrew, of their own accord in 1766, the protection of Law from

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1 Ibid. Vol.VI, Pars.14, PP.40-41.

an Armenian merchant and a women of the same nationality. The need for such an infringement of the judicial authority arose, as they said, from the alleged inability of the Mayor's Court to establish, through a legal process, any successful case against the said Armenians. They admitted unreservedly this act of interposition and justified their conduct in the following words:

"115. Having been inform'd from undoubted authority that one Coja Mockil an Armenian in the Settlement had fil'd a fictitious Suit in the Mayor's Court against Johanna Morcat, an Armenian Widow, who is actually in custody of the Sheriff, merely with a view to evade the Demands of the Country Government, with which she has large accounts, and had taken refuge here without our concurrence or even knowledge - As nothing is so difficult as to investigate Collusion of Parties to the Satisfaction of the Law, the Court, tho' sensible of this fraud, may not have the power of redress; We have therefore inform'd the Mayor's Court, that We think it necessary to interpose our authority as President and Council, in order to put a stop to practices so highly prejudicial to your affairs, and therefore have withdrawn your protection, from both the Complainant and Defendant, and turn'd the former out of the settlement, as we shall the latter, when regularly releas'd from the custody of the Sheriff - Should such unwarrentable proceedings be encouraged, this Settlement would soon become

an Asaylum for all persons indebted to the Country Government who can so easily free themselves from any lawful Demands which may be made upon them."[1]

There was yet another case of some Armenian merchants who, during Verelst's government, were alleged to have been seized, imprisoned and brought down from the territory of Nawab Shujauddaula of Oudh to Murshidabad, where they were kept under confinement for a long time. On their release they applied to the President and Council at Fort William to let them know the reasons of their ill-treatment, so that they might justify themselves. On being refused any access to justice or redress, they went to England and lodged a memorial to the Court of Directors "in order to seek that Justice they were denied in Bengal."[2] The Company referred the case back to the President and Council with directions to give satisfaction to the complainants. "Though we hope," they wrote, "the allegations are not well-founded, you should have endeavoured to have accommodated this affair in Bengal as their appearing here in a clamorous manner may prove prejudicial to our affairs, and is very unpleasing."[3]

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1 From the President and Council to the Court of Directors (24 March, 1766), I.O.Bengal Letters Received, Vol.VII, PP.231-232.
2 I.O.Despatches to Bengal (23 March, 1770), Vol.V, Para. 98, P.166.
3 Ibid. (23 March, 1770), Vol.V, Para.98, P.167.

The fact that they took so much trouble and spent money to represent their grievances to the Directors lends support to the belief that their complaint was not without foundation. It might be possible they exaggerated the degree of their suffering. But the allegation that they did not get justice in Bengal went without any challenge.

In the light of our study of these cases it is reasonable to conclude that justice in relation to the European subjects of the Company often suffered on account of the dependence of the Judiciary on the despotism of the Executive.[1] It seems the President and Council interposed in the judicial administration of the Mayor's Court in the same manner as the Mughal rulers did in that of the Qazi. The ignorance of the Judges in the laws of England, which they were expected to administer, could not give them strength to assert themselves against the irregular proceedings of the Executive. In these circumstances, it was not unnatural that the ends of justice should have been defeated more often than not.

Application of British Law to Native Causes - The limitation of the King's Courts became all the more pronounced when they were required to apply British law to the causes in which the natives were involved. The British system

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1See Bolts: Considerations on India Affairs, Vol.I, P.15.

of justice
/had grown and reached a certain degree of perfection in a social setting which differed widely from that of Bengal. It was enormously difficult to reconcile such a system to the Indian ideals of social relations.[1] Verelst has quoted two cases which amply illustrate this point. In regard to the first he writes:

"In the year 1762, a native detected one of his women in an act of infidelity. Throughout the East, women are wholly subject to the will of their masters, and every husband is the avenger of his own wrongs. The man, therefore, satisfied of her guilt, proceeded to punishment, by cutting off her nose. He was arraigned at the Calcutta Sessions. He confessed the fact, but urged that he had done nothing to offend the laws and customs in which he had been educated. That the woman was his property, and that, by such customs, he had a right to set a mark upon her for her infamy. That he had never heard of the laws by which they tried him, but desired to put one question to the bench: Did they believe that if he had known the punishment to be death, he would ever have committed what they now called a crime. The man, notwithstanding this defence, was condemned and hanged; for if the Court possess jurisdiction, they must proceed according to the English laws."[2]

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1 See Verelst: View, etc. Chapter V, where the writer deals with the problems of introducing English laws in Bengal.
2 Verelst: Views, etc., P.26.

The second case related to the prosecution of one Radhacharan Mitra[1]. "The amazing extent of public and private credit in England," writes Verelst, "has induced our legislators to punish forgery with death. Under this law a native of Bengal was condemned in the year 1768.[2] But so extra-vagant did the sentence appear, where experience had never suggested the principle, such the disproportion in their eyes between the punishment and crime, that the principal inhabitants of Calcutta expressed their astonishment and alarm in a petition to the Governor and Council,"[4] and upon a proper representation Rada-Charn Mitra received a pardon.[5]

Verelst, therefore, wanted to by-pass this difficulty instead of facing it at the risk of courting the suspicion of the natives. His policy was to allow their customs and usages to govern the administration of justice in all courts of original jurisdiction. The appellate Courts alone, he recommended, should be presided over by the English justices,

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1 He was the grandson of Govindram Mitra, the "Black Zemindar" of Calcutta who was dismissed when Holwell became Zemindar in 1758.

2 Fermínger wrongly quotes it as 1768. Vide his introduction to the Fifth Rep. of the Selec.Com.of the House of Commons (1812) P.Lxxxvii.

3 See Verelst: View, etc., Appendix PP.177-178, No.63; Long: Selections from the Unpublished Records of Government, No.840.

4 Verelst: View, etc., P.141.

who should act under the control of the Executive.[1] Verelst's judgment that it was utterly impossible to introduce British principles and process of justice in Bengal was, however, not based on sound calculations. The later legal history of the country completely proved the incorrectness of his thesis. In fact, much of the trouble was due to the conflict of ideals and institutions, which was bound to occur, as it did, during the formative period of the British power in the country. Such a conflict could be resolved only by a mutual understanding and adjustment of the two different conceptions of justice, which could not be achieved overnight without proper education.

PROVISIONS FOR PROSECUTIONS IN ENGLAND

By an Act passed in the year 1754 provision was made for "the punishment committed in the East Indies." It was provided that "if any of the Company's Presidents or Council, at any of their principal settlements, shall after the 25th of March 1754, be guilty of oppressing any of His Majesty's subjects within their respective Jurisdictions or Commands, or of any other Crime or Offence contrary to the Laws of that Part of Great Britain called England, or in force within their respective Jurisdictions or Commands;

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1 Ibid. Chapter V, PP.143-148.

or of any other Crime or Offence contrary to the Laws of that part of Great Britain called England, or in force within their respective Jurisdictions or Commands; such Oppression, Crimes, or Offences, may be enquired of, heard, and determined, in His Majesty's Court of King's Bench, within that part of Great Britain called England, or before such Commissioners, and in such country of that Part of Great Britain called England, as shall be assigned by His Majesty's Commission, and by good and lawful Men of the same Country; and that such Punishments shall be inflicted on such offenders as are usually inflicted for offences of the like Nature, committed in that Part of Great Britain called England."[1] This Act applied to the trial and punishment of offences commited by the Company's servants in Bengal.

Another Act was passed in the tenth year of the reign of King George III "for better regulating Persons employed in the Service of the East India Company." It was enacted "That if any Person employed in the Service of the Company, in any Civil or Military Station or Office, or claiming any Power, Authority or Jurisdiction, from the said Company, shall, after the passing of this Act, be guilty of oppressing any of His Majesty's Subjects , or in the Exercise of such Employment or Authority shall be guilty of any other Crime or Offence, such Oppressions, Crimes, and Offences, shall

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1 7th Rep.Com.Sec.(1773), P.333.

and may be enquired of, heard, and determined, in His Majesty's Court of King's Bench in England; and that such Punishments shall be inflicted on such offenders as are usually inflicted for Offences of the like Nature, committed in that Part of Great Britain called England; and that all Offences against this Act may be alleged to be committed, and may be laid, enquired of, and tried, in the County of Middlesex."[1]

The Acts in Operation - In spite of the existence of these provisions, the actual task of prosecuting a person in England for his offences committed in Bengal was beset with great difficulties. The Parliamentary Committee of Secrecy rightly pointed out that the distance and expense of the voyage between the two countries made it well nigh impossible for the prosecutors to bring over witnesses from India. Added to it was the difficulty of religion with respect to a Hindu witness. A voyage to England entailed a clear risk of forfeiting his caste, in which case, he lost his qualification to receive credit as a witness. And, lastly, there was the power of the General Court to put a stop to the proceedings ordered by the Court of Directors, which might often defeat "the efficacy of the statutes" providing for the conduct of prosecutions. "The Person charged, especially where he is, or has been, in any considerable

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1 7th Rep.Com.Sec. (1773), PP.333-334.

station in the Company's Service," observed the Committee of Secrecy, "may have it in his Power, by the Management of his Friends, to contrive, at some time or other, by the Majority of a General Court, to put a stop to the intended or depending Prosecution."[1]

In the face of these handicaps, prosecutions for offences committed in Bengal were only few and far between. And, even those few were not attended with success. During the span of sixteen years of his charge as a Solicitor of the Company, for instance. Nuthall had only two instances to quote before the Committee of Secrecy in 1773, in which proceedings were actually drawn for offences under the said provisions. The first case, which was filed in 1766, related to Messrs. Johnson, Leycester, Burdett Senior and Gray, Members of the Bengal Council in 1765, who were charged with having received diverse sums of money, jewell and other valuable things in the form of presents from Nawab Najimuddaula and his Ministers. The suit demanded payment to the Company of these sums received in Bengal. But the case was withdrawn subsequently in obedience to a decision adopted on 6 May, 1767 by the General Court who resolved "That the various Prosecutions commenced by Order of the Court of Directors in the Name of the India Company against

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1 7th Rep.Com.Sec.(1773), P.334.

their former servants in Bengal, and also all Attachments ordered against the Effects of such Servants on Account of the Presents received before signing the Covenants on the 9th May, 1765, be discharged.[1] The other case related to William Bolts, a Servant of the Company in Bengal, who resigned his post in 1766.[2] He was also an Alderman of the Mayor's Court, which office he continued to hold. He amassed a large fortune by carrying on illicit trade after his resignation. With the approval[3] of the Company he was, therefore, compelled to leave for Europe in 1768. The Company claimed a share in his gains to the extent of 30 per cent. But I have not been able to trace any evidence to show whether this claim was met.

The Court of Directors ordered proceedings to be drawn in 1772 against Lord Clive and a number of his associates also, wherein they claimed considerable sums to be due to the Company on account of the duties realised by them on salt, betel nut and tobacco. But it seems that no further action was taken in this direction in view of the brilliant defence put forth by Lord Clive in justification of his public conduct in Bengal. In course of his long speech made

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1 7th Rep.Com.Sec.(1773), P.334.
2 Verelst: View, etc., Appendix, P.193, Nos.99-100. The correspondence that transpired between Bolts and Verelst (Governor) on the subject of the charges against the former is printed in Ibid. Appendix PP.191-212.
3 I.O. Despatches to Bengal (11 Nov.,1768).Vol.IV,PP.146-147.

in the House of Commons on 30 March, 1772, he proved with success the great value of his services to the Company and the British nation. Hence, far from proceeding with prosecution, the Company, in recognition of his services, directed the Governor General and Council that the proceeds of the Jagir of the 24 Parganas should continue to be "paid to his Lordship or his Heirs during the Term of ten years from the 5th May, 1774."[1]

Thus, in spite of statutory provisions for punishing in England the crimes of the Company's servants in Bengal, no satisfactory measure of success could be achieved on account of the practical difficulties and personal influences which often obstructed the regular course or justice. The factor of distance, as we have seen, was the most serious setback. The means of transport and communication were so backward that it ordinarily took about eight to nine months for a sailing vessel to reach England from India. To have witnesses and other necessary evidences requisitioned from Bengal was, therefore, much beyond the resources of ordinary persons to meet. Recourse to law in these circumstances was equivalent to falling from the frying pan into the fire, and it, therefore, remained for the most part inoperative.

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1 I.O. Despatches to Bengal (23 Dec., 1774), Vol.VII, Para. 35, P.341. It may be recalled that this Jagir was granted to the Company personally in the name of Lord Clive by Nawab Mir Jafar in 1759. The Company endorsed this grant in the name of Lord Clive on 4 November, 1767.

CHAPTER VII

POLICY AND PLANS FOR THE ADMINISTRATION OF CIVIL JUSTICE 1772-1780

THE ADALATS OR COUNTRY COURTS OF JUDICATURE

The study of the Company's judicial administration in Bengal before 1772 has revealed, as we have seen, certain fundamental defects in principle, which obstructed the advancement of any real progress in this direction. We shall briefly review them, and then proceed to the examination of the judicial policy and plans, which were subsequently adopted in order to remove those defects.

The exercise of power without responsibility was the greatest drawback of the Company's government in Bengal. No reform could bring redress to the people so long as political authority was held and supported on commercial principles. The ruling influence of the Company had rendered the Nawab's government completely impotent without providing for a suitable substitute to serve in its place. Lyall correctly observed that the policy of Clive had become productive of abuses and oppressions, much worse than the worst of all the purely native governments.[1] It is true, no doubt, that Supervisors and Controlling Councils had been set up to serve as instruments of protection against acts of violence and aggression. But the principal object of their insti-

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1 Warren Hastings, P.10.

tution was to supervise and control the revenue functions of the diwani. The regulation of the conduct of judicial officers did not form a part of their official responsibility. The power of punishing these officers of justice was still recognized as the sole province of the Nawab's government which, in its turn, lacked both the character and means to enforce its decisions. As a matter of fact, the Company was not prepared to allow its investment to be affected by allocating, out of its revenues, funds sufficient to finance the administration of justice. In the absence of any financial responsibility for judicial establishments, no measure of discipline, however strict, could possibly become effective against acts of misconduct on the part of the judges, who naturally regarded their office as a source of emolument rather than a means of redress. The zemindars, farmers and other offices of revenue consequently continued to assume and exercise that power of justice for which no provision existed in the law of the land. In fact, it was actually exercised by any person possessing means to impose a decision.[1]

The Committee of Circuit at Kasimbazar (15 August, 1772) deplored this state of affairs, and pointed out that the

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1 Sixth Report from the Committee of Secrecy (1771), P.301. See also Proceedings of the Committee of Circuit at Kasimbazar, (15 August, 1772), Vol.1-3 (in one), P.121, wherein the Committee refers to the heavy exactions by persons who exercised judicial powers in the distant parts of districts without any lawful Commission.

judicial authority, lodged in the hands of men earning their livelihood by the profits of jurisdiction, constituted the greatest source of oppression to the inhabitants.[1] Thus, the first basic drawback of the Company was its lack of a political outlook and principle of government consistent with the extent of its territorial authority, together with an efficient machinery necessary to enforce that principle.[2] The fulfilment of these conditions necessitated a change in the constitution and character of the Company which, however, still continued to function essentially as a commercial corporation. In the course of his letter of 1 September, 1772, Warren Hastings emphatically declared to the Directors this basic point of their weakness. "The affairs of the Company," he wrote, "stand on a footing, which can never last as it is, nor be maintained on principle of private justice. You must establish your own power or hold it dependent on a superior, which I deem to be impossible."[3]

The lack of a proper legal system was the second fundamental drawback of the earlier administration. Justice suffered for want of a definite code of law in English, which

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1 Proceedings of the Committee of Circuit at Kasimbazar, 15 August, 1772, Vol.1-3 (in one), P.120.
2 Gleig: Memoirs of Warren Hastings, Vol.I, P.368.
3 I.O.MSS.Bur.12, f.44.

might enable the Supervisors to determine the correctness of legal decisions. Similarly, legal proceedings varied with individuals and circumstances.[3] The jurisdiction of public offices was all undefined. Lines between superior and subordinate courts of justice were equally undemarcated.[1] Hastings deplored this miserable state of administration, which he characterised as a "confused heap of undigested materials, as wild as chaos itself." The powers of the government, he added, "are undefined, the collection of the revenue, the provision of the investment, the administration of justice (if it exists at all), the care of the police are all muddled together, being exercised by the same hands."[2]

In these circumstances, the courts of justice not only encroached upon each other's authority, but different courts took cognizance of the same subject.[3] Security against oppression lay for the most part in the mercy and goodness of individuals in power. Even the Company's government derived its strength from the "unremitted labour and exertion of individuals in power instead of the vital influence which flows through the channels of a regular constitution, and imperceptibly animates every part of it."[4]

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1 Hastings to the Court of Directors, 11 Nov., 1773 (Gleig: Memoirs of Warren Hastings, Vol.I, P.369).
2 Hastings to R.C.Barwell, 22 July, 1772, (Gleig: Memoirs of Warren Hastings, Vol.I, P.317). He expressed a similar noteof complaint in his letter to George Colebrooke, one of the Directors. See Ibid. Vol.I, P.289.
3 Proceedings of the Committee of Circuit at Kasimbazar, 15 August, 1772, Vol.1-3, P.119.
4 Hastings to the Court of Directors, 11 Nov., 1773, (Gleig: Memoirs of Warren Hastings, Vol.I, P.361.)

These basic troubles affected the unity and strength of the Company's government in Bengal, which, in its turn, contributed to the deterioration of the state of justice all the more. Even in the absence of a well-regulated judicial system some measure of relief might have been rendered available, if only the Select Committee and the Council at Fort William had agreed to work in co-operation. But their internal struggle for power hampered the execution of reforms for the peace and happiness of the province.

The famine of 1769-1770 made confusion worse confounded. It completed the process of administration and economic dislocation of the country and proved, beyond doubt, the incapacity of the existing mode of administration. In the course of a general letter the Directors expressed their deep concern over the loss of about one-third of the total population of the province. They severely condemned the conduct of many of the English agents who were reported to have aggravated the misery of the people by monopolising the principal articles of food, and compelling poor ryots to sell out even the seeds required for the subsequent harvest.[1] They also deplored the incapacity of the Bengal government who had failed even to enquire into "the universal distress of the miserable natives", whose dying cries were said to have been "too affecting to admit of an adequate

1 Despatches to Bengal, 28 August, 1771, Vol.6, P.34.

description."[1] The conduct of Mahomed Reza Khan, the Naib Diwan of Bengal, and Raja Shitabroy, the Naib of Bihar, was also suspected by the Company.

It was in such a state of internal crisis that the Marathas threatened the frontiers of Bengal with invasions; the movements of the Nawab of Oudh were regarded as suspicious and mixed with duplicity. Hyder Ali was growing into a menace to the security of British interest in Madras. The increasing influence of the French at the Courts of native princes was yet another source of danger. It was during these fateful years that British interests were also threatened by the revolutionary upsurge of the American colonies. And above all was the miserable state of British politics at home, which had hardly ever been so divided as during this period.

The Company's Approach to the Problems - In the course of their General Letters of 28 August, 1771, the Directors indicated two main policies to be pursued by their President and Council at Fort William. In the first place, they directed that strict enquiries should be made into

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1 See Ibid. Paras. 10-11, PP.84-86. See also Laurence Sulivan to Hastings, 20 Feb., 1775, B.M.Additional Mss. 29136, ff.59a-60a; Hastings to Laurence Sulivan, 22 Feb., 1775, (B.M.Addl.Mss.29136, ff.70a-70b.)

the conduct of all offenders and that exemplary punishments should be inflicted upon them, so that they might serve as serious warnings to others. Secondly, they expressed their "determination to stand forth as Diwan by the agency of the Company's servants," and take upon themselves "the entire care and management of the Revenues."[1] Mahomed Reza Khan was thus ordered to be divested of his office of Naib Diwan, which was abolished altogether. A similar measure of discipline was to be adopted against Raja Shitabroy, the Naib Diwan of Bihar, whose office was no longer allowed to continue. The execution of these policies was entrusted to the President and Council at Fort William, who were vested with discretionary powers of planning the details. They, however, specified their objective for the guindance of their government in Bengal. In the pursuit of every measure of reforms, care was to be taken "to ensure to the Company every possible advantage, and free the ryots from the oppressions of zemindars and petty tyrants."[2]

But so far as the administration of the Nizamat was concerned, the Directors did not recommend any departure from their previous line of action. They continued to hold the Nawab's government responsible for criminal justice, law and order. Moreover, they stressed the great need of maintaining

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1 I.O.Despatches to Bengal, 28 August, 1771, Vol.6, Para. 21, P.103.
2 Ibid. Para. 21, PP.103-104.

a minister at the Darbar, who might conduct his political affairs in the interest of the Company. "We are sensible of the expediency," they observed, "of supporting some ostensible minister in the Company's Interest at the Nabob's Court to transact the political affairs of the Sircar, and interpose between the Company and the subjects of any European power in all cases wherein they may thwart our Interest or Encroach on our authority."[1] They accordingly ordered the appointment of any suitable person whose attachment to the Company's interest could be easily trusted. The re-appointment of Mahomed Reza Khan or Shitabroy was, however, specifically opposed by them because the Directors had lost confidence in them and ordered enquiries into their conduct. A sum of money not exceeding three lacs of rupees was set apart for the annual establishment of such a minister.

In their subsequent letter[2] of 18 December, 1771, addressed to Warren Hastings, the Directors reiterated their policy of promoting the prosperity and happiness of the provinces from which, as they observed, the public as well as the Company derived so much advantage.[3] They renewed their complaints against those, who, in the course of the late famine, had unduly exercised the power and influence of their stations,

1 Despatches to Bengal, 23 August, 1771, Vol.6, Para.24, P.107.
2 Vide Despatches to Bengal, 18 December, 1771, Vol.6, Paras. 1-4, PP.217-222.
3 Ibid. Para.1, P.217.

and monopolised the most essential articles of food without any consideration for "the principles of justice and humanity."[1] The Directors, therefore, stressed the great need of bringing the offenders to punishment in order to conciliate the minds of the natives to the Company's Government. They were entitled to its utmost care, they added, "both from the ties of interest and humanity."[2]

The Company's decision "to standforth as Diwan" undoubtedly constitutes the first genuine advance in the field of revenue and judicial administration. This decision, however, did not go far to remove the basis troubles, which obstructed the regular flow of justice. Its main object was to bring the Collections and civil justice under the direct management of the Company's servants in order that both the ryots and government might be saved from the repacity of intermediearies. The Directors were by no means prepared for political reasons to nullify the authority of the Nawab whose jurisdiction over the Nizamat continued to be recognized as before.[3] Under such

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1 Ibid. Para.2, P.213.
2 Ibid. Para.3, P.222.
3 In their letter of 3 March, 1775, the Court of Directors advised their President and Council at Fort William to repudiate all pretensions of the French for a jurisdiction independent of the laws and authority of the established government of the Nawab. "We shall never contribute towards enslaving the natives," they wrote, "by compelling them to yield an implicit obedience to the Mandates of the French in matters of private property .... We direct, that you afford the country Government all necessary assistance in the execution of such equitable laws, as are, or may be framed for the protection, the security of their

a system of control, it was well nigh impossible to co-ordinate the administration of civil and criminal justice. The Company's new policy thus differed from Clive's system of double government in that the Collections were completely removed from the control of the Nawab's government and placed in the hands of European servants, who were now to superintend the administration of civil justice.

The Company was, however, fortunate to have in its service a person, who possessed both character and talents to stabilised the affairs of his employers as well as secure relief to the people. It was Warren Hastings to whom the Directors committed the execution of their policy. He was the person to supply the motive force, which influenced the course of every branch of the Company's administration in Bengal during this period. We shall briefly trace his early career and certain features of his character in order to enable ourselves correctly to appreciate the nature of his public policy.

Warren Hastings was born on 6 December, 1732 of a Worcestershire family of distinguished ancestry.[1] He was

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property, or for the better government of the provinces." - Vide Dispatches to Bengal, 3 March, 1775, Vol.7, Paras. 54, 58-59, PP.435-436, 441-442.

1 G.D.Oswell: Sketches of Rulers of India, Vol.II,P.53. The History of his ancestors is given in some detail in Lawson's "The Private Life of Warren Hastings," Chapter I. The latest biography of Warren Hastings has been written by A.Mervyn Davies (1935). It is a decided improvement both in point of facts and criticisms of his life.

educated at Westminster, where he left marks of outstanding merit and profound scholarship. Elijah Impey, who later on became the Chief Justice of the Supreme Court at Calcutta, was one of his fast friends at Westminster. The adverse circumstances of his family and the death of his uncle forced Hastings to terminate his academic career and take to commercial training for an employment under the East India Company. At the age of seventeen he was appointed clerk, in which capacity he proceeded to Calcutta, where he reached in 1750. He worked as an assistant in the Kasimbazar factory for about three years, when he was promoted to the rank of Councillor there. On the seizure of the factory by Nawab Sirajuddaula in 1756 Warren Hastings was made a prisoner at Kasimbazar. Released from the confinement through the intercession of a Dutch friend, he proceeded to join the English refugees at Fulta. When Clive marched towards Calcutta, he joined him as a volunteer, and fought against the Nawab. During all these years he spent his spare time in learning Bengali, Urdu and Persian of which he acquired a working knowledge. He was therefore entrusted with the negotiation of treaty with the Nawab on the recapture of Calcutta. After Plassey he was sent to Murshidabad on special duty. In 1759, he succeeded Luke Scrafton as Resident at the Darbar. In 1760, he was promoted to the

Council at Fort William. In that capacity he supported the government of Henry Vansittart in fighting against the corruption of the Company's servants. In February, 1765, he sailed for England after resigning his service in Bengal. But pecuniary difficulties soon obliged him to apply to the Directors for re-appointment. On the recommendation of Clive in 1768, he was appointed second of Council at Fort St. George in Madras, where he established his reputation for ability and honesty of purpose. In April, 1771, he was nominated to the post of governor at Fort William, in Bengal. In February, 1772, he reached Calcutta, and took charge of government from Cartier on 13 April, 1722.[1]

Controversy exists on the merits of his public policies and measures. But opinions rarely differ on the ability, honesty and the great force of his character, which left their marks on every branch of public administration. "No one can deny," writes Lyall, "that Warren Hastings possessed, to a degree rare at that period, the talents of political organisation."[2] The Directors admitted his great "ability and unblemished character", which, in conjunction with his "just merits and general knowledge of the Company's affairs," had induced them to appoint him next to the President of Council at Fort St. George.[3] We

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1 See Bengal Letters Received, 13 April, 1772, Para.9, P.353. This letter is signed by Hastings and other Members of the Council, but not by Cartier.
2 Warren Hastings, P.84.
3 Forrest: Selections, etc. Vol.I, P.vii.

cannot regard without admiration," wrote Macaulay, "the amplitude and fertility of his intellect, his rare talents for command, for administration and for controversy, his dauntless courage, his honourable poverty, his fervent zeal for the interest of the State, his noble equanimity, tried by both extremes of fortune, and never disturbed by either."[1] A master of details, it had always been his habit to go through all the particulars of administrative branches either weekly or monthly.[2]

In the interests of the Company or the good name of the British Nation he could suppress personal resentment, and would not allow private sentiments to clash with public welfare.[3] Malleson observes that he was "essentially a man of peace, of order, of recognized methods; when forced into hostility, he was open and straightforward."[4] He was a man of conviction and possessed great "Confidence in the certainty of victory over his enemies," which confidence grew "from his consciousness of integrity

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1 Macaulay: Essays on Warren Hastings, P.[illegible] Prof. Dodwell writes that he had no patience with men moved to exult or to despair. He never despaired. Warren Hastings' Letters to Sir John Macpherson, P.105. Laurence Sulivan once observed that the merit of the immense service of Hastings poised the scale of his great opposition at home. See Laurence Sulivan to Hastings, 1 Feb., 1776, (B.M.Addl.Ms.29137, f.58a.)

2 Sydney C. Grier: Letters of Warren Hastings to his Wife, P.13.

3 See Letter of the Court of Directors to Hastings, 16 April, 1773, (Gleig: Memoirs of Warren Hastings, Vol.I, P.257.)

4 G.B.Malleson: The Life of Warren Hastings, Vol.I, P.X. In a letter of 25 October, 1781, Hastings wrote to Sir John Macpherson his views about the Maratha policy, which distinctly revealed his quality of frankness. See Dodwell: Warren Hastings' Letters to Sir John Macpherson, P.103. See also Hastings' Letter to the Court of Directors, 3 Dec., 1774, (Bengal Letters Received, Vol. 13 PP.200-202.)

and honour."[1] A man of practical statesmanship, he was "uncommonly dexterous at extricating himself out of difficulties."[2] In private dealings, he was simple and obliging. This feature of his character was admitted even by his great opponent Philip Francis who observed that in private life both Hastings and Barwell were "easy to live with."[3]

Hastings' Policy - Warren Hastings wanted to make British rule a source of security to the people of the province as well as a permanent benefit to the Company and the British nation. He regarded the state of insecurity as not only prejudicial to the interest of the government, but "opposed to the rights of mankind in general."[4] The Directors and Hastings both desired to exercise, as they did, the powers of sovereignty which had been established in the country by the force of their arms. But while the former wanted a partial continuance of the veil, concealing the source of

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1 Diary and Letters of Mme.d'Arblay quoted in Sydney C.Grier: Letters of Warren Hastings to his wife, P.25. See also the Calcutta Review, (1856), P.63. An interesting episode has been quoted to show Hastings' constructive attitude of life even in his private dealings. This attitude arose from his profound confidence in the uprightness of his conduct.

2 See Parkes and Merivale: Memoirs of Sir Philip Francis, Vol.II, P.81.

3 See Francis to Christopher D'Oly, 13 July, 177[illegible] MSS.Eur.13, f.63b). Also see Francis to Henry 23 Sept., 1774, MSS. Eur.13, ff.21-22.

4 Bengal Letters Received, 31 March, 1773, Vol.II, P.403.

power, by continuing to recognize the Nizamat as the exclusive part of the Nawab's responsibility, the latter proposed to lay bare the entire fountain of authority by openly avowing the sovereignty of Great Britain in the constitution of the country. "All the arts of policy," he declared, "cannot conceal the power by which these provinces are ruled, nor can all the arts of sophistry avail to transfer the responsibility of them to the Nabob, when it is as visible as the light of the sun that they originate from our own government, that the Nabob is a mere pageant without so much as the shadow of authority, and even his most consequential agents receive thier appointment from the recommendation of the Company and the express nomination of their servants."[1] His object was evidently to put an end to every form of the secret influence of the Nawab's Court, which seriously obstructed the course of justice.[2] Thus the point of difference between the Directors and Hastings was one of the approach rather than the ideal. The approach of the former was commercial, while that of the

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1 Proceedings of the Secret Select Committee, 7 Dec., 1775, (Forrest: Selections, etc. Vol.II, PP.452-453. See also Hastings to Colonel Macleane, his agent and friend in England, 14 July, 1776, (Gleig: Memoirs, Vol.II,P.50), where he observed that "the British sovereignty, through whatever channel it may pass into these provinces, should be all in all."

2 See Hastings to Laurence Sullivan, 21 March, 1776 (Gleig: Memoirs, Vol.II,P.30), where the writer refers to various maxims, which he had laid down in the beginning of his government for the guidance of his public conduct. They included direct avowal of British sovereignty, abolition of secret influences in the administration and provision for a regular system of justice to protect the people against oppression.

latter political.

Secondly, Hastings proposed to create a strong centralised machinery of government at Calcutta. His objects were mainly two: he wanted to bring the Company's supreme administration into direct contact with the complaints of the people in order to redress them without undue intervention, and to establish uniform regulations of justice designed to facilitate supervision and detection of abuses.

The necessity for such a policy arose from the existence of the Controlling Councils at Murshidabad and Patna, which prevented the knowledge of local affairs from directly reaching the supreme government at Fort William. The Supervisors were immediately responsible to those councils. To them they submitted the reports of their enquiry and supervision. They determined all important issues with the nominal approval of their superior authority at Calcutta. They were guided in their decisions by the variety of local manners and customs.[1] For lack of adequate power and direct knowledge of distant affairs the President and Council at Fort William could not normally interfere with the determinations of their subordinate councils, who exercised the virtual powers of government in practice.[2]

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1 See Letter of the President and Council to the Court of Directors, 3 Nov., 1772 (Sixth Rep.from the Committee of Secrecy, 1773, P.301), where the evils resulting from the variety of customary practices are clearly set forth.

2 See Proceedings of the Committee of Circuit at Kasimbazar, 28 July, 1772, Vol.1-3 (in one) P.83. While justifying its proposal for the abolition of the Murshidabad Council,

Hastings, therefore, recommended the abolition of the council at Murshidabad and the transfer of the seat of judicial and revenue administration from there to Calcutta, which was accordingly done in September, 1772.[1]

Thirdly, in his plan for the direct administration of civil justice Hastings was guided by two main considerations. In the first place, a radical departure from the existing forms of judicature was not possible because the knowledge of the Company's servants about the affairs of Bengal had not materially advanced from the earlier position. The native inhabitants, on the other hand, were equally ignorant of the language of their new rulers, their laws and institutions. Innovation was therefore regarded as completely beyond the range of practical politics. Secondly, Warren Hastings had conviction in the original efficacy of the

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the Committee complained of its ignorance of what was locally transacted except from the information supplied by the subordinate Council of Revenue, "which however fair and impartial cannot possibly convey that intimate intelligence which arises from daily practice and a direction communication with the servants of the Revenue." The Committee then observed how justice was allowed to suffer owing to an indirect approach of the people to the government. See Ibid. PP.83-84. See also Hastings to John Purling (Chairman of the Court of Directors), 22 Feb., 1772 (cited: Memoirs of Warren Hastings, Vol.I, P.226.) His subsequent letters to J. Purling, 22 March, 1772, and to George Colebrooke, 26 March, 1772, on this point are printed in Monckton Jones: Warren Hastings, PP.146-47.

1 In adopting this measure the President and Council made use of the discretionary authority which the Directors had given them for planning and executing their policy of standing forth as Diwan through the agency of their own servants.

indigenous institutions of justice, which he considered conformable to the genuis and temper of the people. He therefore stressed the need of allowing Indians to enjoy the benefit of their own laws. "It will be a grievance," he observed, "to deprive the people of the protection of their own laws, but it would be a wanton tyranny to require their obedience to others of which they are wholly ignorant, and of which they have no possible means of acquiring a knowledge."[1]

The object of his judicial policy was to restore the country courts of judicature to the original principles of their institution. This he intended to achieve by reconstructing the distinct jurisdiction of each court, which had disappeared on account of the looseness of the Mughal government for some years. In recommending a plan for judicial administration, the Committee of Circuit therefore scrupulously confined itself to the constitutional forms of judicature already established in the country.[2] A few alterations that the Committee suggested, were calculated "to give them that efficacy of which they were deprived by venal and arbitrary innovations, by partial immunities granted as a relief against the general and allowed abuse of authority, or by some radical defect in the constitution of the courts

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1 See Hastings to Lord Mansfield, 21 March, 1774 (Gleig: Memoirs of Warren Hastings, Vol.I, PP.399-403.

2 Proceedings of the Committee of Circuit at Kasimbazar, 15 August, 1773, Vol.1-3 (in one), P.118. This Committee

in being."[2]

But then the question of how to execute such a policy formed an equally difficult matter. Hastings was convinced of the utter incapacity of the Nawab's servants. And as for the Company's European servants, most of them were lacking in honesty and experience. Hastings, however, had confidence in the potential ability and integrity of the latter, who, as he believed, constituted the only force capable of regenerating the country and bestowing on it the benefits of a benevolent government. Moreover, the copperation of the English servants was indispensable for the execution of his administrative plans, which awakened the suspicion and jealousy of the native officers of government.[1] He therefore tried to save them from the condemnation of the Directors who insisted on strict enquiries to be made and exemplary punishments inflicted upon all those who were reported to have misused the powers of their station in the course of the late famine. He admitted the existence of corruption, but assigned it to the want of a principle of government adequate to its substance, and a coercive power to enforce

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had been appointed by the President and Council at Fort William on 14 May, 1772.

1 Ibid. P.118.

2 Because the direct assumption of civil administration implied the dismissal of many of the Nawab's officers, who held positions of trust and responsibility.

that principle.[1] In the absence of any organised system of administration, he observed, it was not feasible for ordinary persons to resist temptations by starting the reforms on themselves. "Whenever this work shall be accomplished on a foundation of consistency," he added, "I will venture to foretell, from the knowledge which I have of the general habits and manners of your servants, that you will hear of as few instances of licentiousness amongst them as among the members of any community in the British Empire."[2]

It is true that in some of his earlier letters Hastings made certain observations prejudicial to the character of the English Supervisors. He characterised them as "heavy rulers of the people,"[3] enjoying "more trust, dignity and consequence than the Governor of Bengal."[4] He added that they were often supported by strong connections either in the Council or the Court of Directors. He therefore desired their recall.[5] But all these reflections related to a time

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1 From Hastings to the Court of Directors, 11 Nov., 1773, (Gleig: Memoirs of Warren Hastings, Vol.I, P.368).
2 Ibid. Vol.I, P.369. See also Hastings to Laurence Sulivan, 21 March, 1776, (Ibid.Vol.II, P.40), where the writer attributed the disorders and irregularities of the service "to a defective constitution, not to a depravity of principle in the servants of the Company."
3 Hastings to Josias Dupre at Madras, 26 March, 1772 (Gleig: O.P.Cit.Vol.I, P.234.)
4 Hastings to John Purling, 22 March, 1772, (Monckton Jones: Warren Hastings in Bengal, P.147.)
5 Ibid. PP.146, 148.

time when he was "little more than a compiler of other men's opinions."[1] He personally did not assert that the complaints he received about the conduct of the English Supervisors were actually true. Far from having acquired correct knowledge of public affairs in the distant parts of the provinces, he was only a stranger in the beginning, as he admitted, to the character and disposition of many of the members of government in Bengal.[2] But even in the midst of conflicting views about the English servants, he formed a fair impression of what few supervisors he happened to know personally.[3] He, therefore, entrusted the execution of his plan to them, but not to the native officers of the Nawab's government.

In short, the outstanding feature of Hasting's internal policy was to make a genuine attempt to supply a political outlook to the Company's administration which he tried to set up on a uniform principle and system of organisation. These two elements of his policy laid down the foundation of the modern system of Indo-British administration in the country, and clearly stood out in all his measures of reform.

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1 Hastings to Colebrooke, 26 March, 1771, (Ibid.P.151).
2 Hastings to the Secret Committee of the Court of Directors, 1 Sept., 1772, (Bengal Letters Received, Vol.II, Para.3, P.34.)
3 Hastings to Colebrooke, 26 March, 1772, (Monckton Jones, OP.Cit.P.149). Hastings writes: "At the same time in justice let me add that they are in general composed of the best of the Company's servants, and such as I am acquainted with amongst them I know to be men of worth and ability."

In accordance with the orders of the Directors, the President and Council at Fort William directed the Murshidabad Council on 28 April, 1772, to take over the charge of the Diwani and perform its duties in place of Mahomed Reza Khan, who was divested of his office and brought down to Calcutta to take his trial there.[1] A similar order was transmitted to the Chief and Council at Patna on the arrest of Shitabroy, who was also sent to the Presidency for trial on the same charge.

By a proclamation issued on 11 May, 1772, the Company's decision to stand forth as Diwan through the agency of their own servants was publicly announced at both Calcutta and Murshidabad. The Controlling Councils of Revenue for the moment assumed charge of the Revenue and civil justice, and advised their subordinate agents and officers to communicate directly with them in all matters which in any respect

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1 See Proceedings of the Controlling Council of Revenue at Murshidabad, Vol.XI, P.1. Mahomed Reza Khan was arrested a few days earlier than 28 April, 1772. See Hastings' letter to the Secret Committee of the Court of Directors, Para.3, Pp.32-34 of Bengal Letters Received, Vol.II. Hastings justified the employment of secret methods to secure his arrest, which took place soon after the 24 April, 1772.

He was dismissed from the post of Naib Diwan under the Company's orders; but to secure his dismissal from that of Naib Nazim also an application was made to the Nawab, who accordingly divested him of that office. See Hastings to Josias Dupre, 8 Oct., 1772 (Gleig: Memoirs of Warren Hastings, Vol.I, P.261).

related to the Diwani.[1]

On 14 May, 1772, the President and Council at Fort William adopted a number of regulations for the settlement of revenue. As the administration of civil justice formed part of the responsibilities of revenue authorities, these regulations were equally significant from the judicial point of view. Farms were let for a fixed term of five years commencingfrom 10 April, 1772. The Board appointed a Committee of four Members[2] to go on a Circuit

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1 The proclamation is printed in the Proceedings of the Controlling Council at Murshidabad, Vol.XI, P.15. The Murshidabad Council took over the charge of the Diwani just on the receipt of the letter of 28 April, 1772, from the President and Council at Fort William. In their letter of 11 May, 1772, they transmitted copies of their proclamation to the Supervisors of the various districts for information and guidance. See Ibid. Vol. XI, PP.16-17.

2 Middleton, Dacres, Lawrell and Graham with Warren Hastings as the President of this Committee. On the conclusion of the proceedings of the Com.at Kasimbazar on 17 Sept., 1772, Warren Hastings returned to Calcutta, and S.Middleton was appointed Resident at Murshidabad. Since then the remaining three members formed the Com. of Cir. with P.M.Dacres as President. From 3 Oct.,1772 to 27 Nov.,1772, they conducted the settlement at Dacca; from 16 Dec., 1772 to 30 Dec., 1772 at Rangpur; from 2 Jan., 1773 to 26 Jan., 1773 at Dinajpur; and from 2 February to 9 February, 1773 at Purnea where they terminated their proceedings. The settlement of the districts of Hughli, Hijili Calcutta, Burdwan, Midnapur, Birbhum, Bishnapur and Panchkot was left to the rest of the members of the Board. The Council at Patna managed the affairs of Bihar.

The Committee of Circuit comprehended within its scope all the important administrative affairs of Bengal including the administration of justice. A list of the various aspects of administration covered by the Committee in the course of its investigation and settlement is given in an introduction to its Proceedings at Krishnagar and Kasimbazar, Vol. 1-3, (in one), P.V.

through the provinces and form the settlement at the Sedar Kachahri of each district.[1] The servants of the Company employed in the management of the collections were henceforth to be called Collectors instead of their previous designation of Supervisors.[2] The Board was to nominate a Diwan for each district, who was joined with the Collector in the superintendence of the revenues. He was required to keep seperate accounts of the Collections and countersign all orders to the mufassil, all receipts granted to the farmers and all invoices and accounts transmitted to the Sadar. The Collector and the Diwan were thus individually

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1 The principle of the Committee of Circuit was to give preference to the zemindars who possessed hereditary interests in their lands. It did not want to dislodge them from the position they had come to occupy. "To expose the zemindars and Talukdars to this Risk," the Committee observed, "is neither consistent with the Committee's notions of equity, nor with the orders of the Honble Company which direct that we do not by any violent sudden change deprive the zemindars of their ancient privileges and immunities." Proceedings of the Com.Cir.at Kasimbazar, 20 July, 1772, Vol.1-3 (in one), PP.52-53. But this principle was subsequently given up, and lands were farmed to the highest bidders in order to obtain an accurate idea of the revenue capacity of the province.

2 "They were originally what the word Supervisor imports, simple lookers-on, without trust or authority; they became collectors, and ceased to be lookers-on." - Hastings to Josias Dupre, 6 January, 1773, (Gleig: Memoirs of Warren Hastings, Vol.I, P.268).

responsible to the Board. They were to act within the jurisdiction specified to each. The Collector was not to use his private seal in the execution of public business. A general seal was to be struck in the name of the Company as Diwan of the provinces. The executive power of the Collector and Diwan was restricted in so far as they were no more to be allowed "to send Sepoys, Peons or any other Persons with Authority, into the lands belonging to the Farmers, excepting only on such occasions as shall indispensably require it for the Maintenance of the Peace or the immediate execution of Justice, in which the Authority of the Farmer shall be insufficient."[1] On all such occasions a warrant under the seal and signature of the Collector was to be given in writing to the officer employed, which was to be recorded in the judicial proceedings with reasons for issuing it. Restrictions[2] were imposed on the zemindars and farmers of the government revenue with a view to protect the peasants against their extortions,[3] which included exorbitant rates of

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1 6th. Rep.Com.Sec.(1773), P.307.

2 See Copy of the Form of Ameinama (Instrument of Instructions) given to the Farmers of Madia, which is printed in the Proceedings of the Committee of Circuit at Krishnager, Vol.1-3 (in one), PP.16-18. It reveals the anxiety of the Com.to ensure protection to the ryots against the exactions of the Farmers.

3 The President and Council, in their letter of 3 Nov., 1772, wrote to the Directors in justification of their measures, which applied for the first time a check to the rapacity of the zemindars and farmers who plundered

interests on debt. These restrictions were further increased by the additional regulations of 28 May, 1772[1].

Warren Hastings set out with the Committee of Circuit on 3 June, 1772 and first visited Krishnagar, the chief town of Nadia. They concluded the settlement of Nadia from 10 June to 23 June, 1772. The Committee then proceeded to Kasimbazar, where they stayed from 7 July to 17 September, 1772, and conducted the settlement of several districts there. It was here that Munni Begam, the widow of Mir Jafer was proposed to the superintendency of the Nawab's household and the guardianship of his person[2]. Raja Gurudas[3], the son of Maharaja Nandkumar, was proposed

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the peasants without any restriction or remorse. "Though Seven Years had elapsed since the Company became possessed of the Dewanny, yet no regular process had ever been formed for conducting the Business of Revenue. The Nazims exacted what they could from the Zemindars and great farmers of Revenue, whom they left at liberty to plunder all below...." 6th Rep.Com.Sec.(1773), P.301.

1 See Murshidabad Proceedings, 28 May, 1772, Vol.XI, PP. 91-93.

2 See Hastings' justification of this proposal in (1) Hastings to the Secret Committee of the Court of Directors, 1 Sept., 1772, Bengal Letters Received, Vol.II, Para.6, pp.40-41, (2) Hastings to Josias Dupre, 8 Oct., 1772, Gleig, Vol.I, PP.261-262.

3 He was appointed to win the support of Nandkumar who had served as Diwan under Nawab Mir Jafer. He was an enemy of Mahomed Reza Khan whose influence Warren Hastings wanted to destroy under the orders of the Company (Bengal Letters Received, Vol.II, Para.6, PP.40-41). See also Gleig: Memoirs of Warren Hastings, Vol.I, P.282. Munni Begum and Gurudas were appointed, because both of them happened to be declared enemies of Mahomed Reza Khan. Hastings was guided by the said orders of the Company, although the Committee of Circuit was opposed to the appointment of the latter because of Nandkumar's previous complicity in a conspiracy against the Company. (See Proceedings of the Com.Cir.at Kasimbazar, 26th and 28th July, 1772, Vol.1-3 (in one), PP.70-82.)

by the President to the post of Diwan of the Nawab's household, who might assist Munni Begam in the conduct of public affairs. This nomination was, however, opposed by the majority of the Committee but subsequently it was approved by the Board which unanimously confirmed the appointment of Munni Begam. The Nawab's stipend was reduced to sixteen lacs. In the course of its consultations of 25 July, the Committee recommended the transfer of the supreme courts of revenue and justice to the Presidency and the abolition of the Council of Revenue at Murshidabad.[1] On 20 August, it proposed the formation of a Board of Revenue consisting of the President and all the Members of Council at Fort William, who were to conduct the entire management of the Collections at the Presidency on the proposed transfer of the revenue establishment from Murshidabad.[2]

The Judicial Plan of 1772.[3]

The first judicial plan was drawn up by the Committee

1 See Proceedings of the Com.Circuit at Kasimbazar, Vol.1-3 (in one), P.86.
2 This transfer was effected on 8 Sept., 1772. See Murshidabad Proceedings, Vol.XI, P.131. See also letter of the President and Council at Fort William to the Court of Directors, 3 Nov., 1772, referring to the advantages brought to the Company as a result of this transfer (6th Rep. Com.Sec.(1773), P.304.
3 Entered in the Proceedings of the Committee of Circuit at Kasimbazar, 15 August, 1772, Vol.1-3 (in one), PP.112-118. It is also printed in Appendix II of the 7th Rep.Com.Sec. (1773), PP.348-351. See also Colebrooke Supplement to the Digest of the Regulations and Laws of Bengal, Vol.III, PP.1-8.

of Circuit with Warren Hastings in the chair at Kasimbazar on 15 August, 1772, and was approved by the President and Council at Fort William on 21 August, 1772.

This plan provided for the establishment of two courts of judicature under a Collector in each district.[1] The one was a Provincial Court of Diwani Adalat for the cognizance of civil causes, and the other a Faujdari Adalat for the trial of all crimes and misdemeanours. Provisions were made at

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1 There were as many Courts of Diwani and Faujdari Adalat as there were Collectors. See Bengal Rev.Letter to the Court of Directors, 29 Dec., 1785, Home Misc.584, PP.120-121. During 1772-1773 the total number of collectorships was as follows:
In Bengal - The eleven Supervisorships of Birbhum, Dacca, Dinajpur, Hugli, Jessore, Nadia, Purnea, Rajmahal and Bhagalpur, Rajshahi, Rangpur, and Tipperah were turned into Collectorships. Tipperah was re-annexed to Chittagong in Nov., 1772 (See Proceedings of the Com.Cir.at Dacca, 27 Nov., 1772, Vol.IV, P.165). Then there were the three districts of Burdwan, Midnapur and Chittagong, each under a Resident or Chief. The five additional districts of Chunakhali (in Murshidabad), Jahangirpur (in Dacca), Lashkarpur (in Rajshahi), Mahmudshahi and Rokanpur were created by Hastings in 1772. Murshidabad was under the Resident of the Darbar. The Collectorship of Calcutta was abolished by an order of 24 Nov., 1772, The administration of justice was placed under a Member of Council at Fort William.
The districts of Cooch Behar, Jungalterry and Palamow were subsequently conquered and placed under military control. A useful description of the geography, people and government of the Jungalterry districts is contained in a letter of Captain James Browne addressed to the Governor General and Council on 15 Feb., 1778. See B.M. Addl.Ms.29210, ff.100-166. These districts were better known as Military Collectorships.
In Bihar - The Supervisorships of Saran and Champaran, Tirhut, Monghyr and Rohtas were turned into Collectorships. The Supervisor of Shahabad was recalled in September, 1772 for the alleged mismanagement of revenue. This district was placed under the direct charge of the Patna Council who asked the renters of Shahabad to communicate directly with them at Patna, which constituted the special charge of

Calcutta for two courts of Adalat on a plan similar to that of the districts. The difference, however, was that while the district Courts of Diwani Adalat were presided over by their Collectors, the one at Calcutta was placed under the charge of a Member of the Council serving by rotation.[1] The Collector was attended by the provincial Diwan and the other offices of the Cutcherry.[2] Corresponding Courts of superior jurisdiction were established at the seat of government at Calcutta. The one was called the Diwani Sadar Adalat and the other the Nizamat Sadar Adalat. The Diwani Sadar Adalat had powers to hear and determine appeals from the decisions of the inferior Diwani Courts of the districts. The President and two members of the Council were to preside in this superior court of civil judicature. In the absence of the President, a third member of the Council was required to sit, so that no less than three members should decide on all appeals. They were attended by the Superintendent (Roy Royan) of the Khalsa (Supreme Revenue Court), the head Qanungo and the other officers of the Cutcherry.[3] Besides these Courts of Judicature, the

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of the chief there.

1 In actual practice only the Faujdari Court at Calcutta was placed in charge of a Council. The Diwani Adalat was superintended by a covenanted servant under Council. See Bengal Revenue Letter, 29 Dec., 1785, Home Miscellaneous Series, Vol.584, PP.113-119.

2 One Peshkar, 3 Moherrirs. The Peshkar was paid @ 25/-P.M., and 2 Moherrirs @ 15/- P.M., while the third @ 10/- P.M. See Proceedings of the Com.of Cir.at Kasimbazar, 29 August, 1772, Vol.1-3, (in one), P.178.

3 One Peshkar, one Persian Moherrir, two Bengali Moherrirs. See Proceedings of the Com.Cir. at Kasimbazar, 29 August,

head farmers of parganas were allowed to exercise a local jurisdiction in all petty disputes of property, not exceeding the value of ten rupees, and his decrees were final in all such cases.[1]

Matters cognisable by each Court were clearly defined. The Mofassil Diwani Adalat of the district was to take cognizance of all disputes of property, whether real or personal, all causes of inheritance, marriage and caste,[2] all claims of debt, disputed accounts, contracts, partnerships and demands of rent. The decree of the district Diwani Adalat on all causes for sums, not exceeding five hundred rupees, was to be final. But for all sums above five hundred an appeal could lie with the Sadar Adalat.

1772, Vol.1-3 (in one), P.179.

1 The Committee of Circuit at Kasimbazar, 15 August, 1772, clearly admitted that this privilege was allowed to the farmers according to the exigencies of the time, although they had no legal rights to such jurisdiction.

2 Kantu Babu, an agent of Warren Hastings ultimately decided the cases of caste or marriage. Under him there was a Daroga as well as a Moharrir (clerk) who settled small causes of caste. Maulavies determined similar disputes of Mahomedans. An appeal lay from the decisions of Kantu Baboo to the Governor. But such appeals were only rare. The personpunished under this offence was usually required to give an entertainment to his friends and Brahmins. The number of Brahmins to be entertained varied according to the degree of his offence. Disobedience to the Court's decision was punishable by forfeiture of caste or confinement. - Vide Forrest: Selections, II, PP.371-372.

Questions of successions to the zemindaries and talukdaries formed an exclusive jurisdetion of the President and Council at Fort William.

In suits regarding inheritance, marriage, caste and other religious usages the laws of the Quran were invariably applied to Mahomedans and those of the shastras (Hindu scriptures) to the Hindus. The Maulavies or Brahmins were required respectively to expound, under their signature, the law applicable to a case and assist the Court in passing a decree.

The process to be followed in the trial of all civil causes was prescribed by definite rules. First, the petition of the complainant was to be filed and read. Secondly, a limited time was to be allotted to the defendant to give his answer which, when received, was also to be filed and read. Thirdly, both parties were to be heard viva voce, and, if necessary, evidence could be examined. Lastly, the Court passed a decree. If in adhering to this order of process a defendant was found to have evaded or delayed giving answer within the time specified, the Court had a right to pass a judgment against him. It was provided that the Court should be held regularly at least on each Monday and Thursday. No case could be heard except in the open Court regularly assembled. In order to ensure a free access to justice the Collector was required to be

ready at all times to receive petitions of complaint. He was to have a box placed at the door of the Court in which the complainants might lodge their petitions at any time they pleased. The Collector was expected to keep the key to the box with himself. On each Court day he was to have the petitions read in his own presence. This device was calculated to counteract the designs of the officers and servants of the Court, who, from motives of interest or resentment, often prevented these complaints from being entertained. The Collector was, however, directed to avoid, as far as practicable, summoning any person from the Mufassil, who was in any way connected with the Collections, especially during the months of Bhado, Asin, Aghan and Pus, unless the case required an immediate enquiry and example.

It was provided that an amin[1] should be appointed with the consent of both parties to make a local investigation, if necessary, into causes of disputed property regarding lands, houses, landmarks, and the like. The parties, if they so liked, might nominate their own amins. The Collector was to decide upon their joint report of circumstances. In all cases of disputed accounts, partnership, debt and non-performance of contracts it was recommended to the parties to have their disputes submitted to arbitration, the award of which became the decree of the Diwani Adalat. The

1 An inferior/officer of the Diwani Adalat.

choice of the arbitrators rested with the parties, but they were to decide the cause without any fee or reward. The Collector was, however, not to use any coercion on any person to become an arbitrator.

The regulation governing the adjustment of the debts provided that they should bear no further interest after such adjustment, and that the amount so adjusted should be payable in instalments according to the circumstances of the party. The rates of interest and the mode of realising them were both specified. On all sums not exceeding a principal of a hundred rupees an interest of three rupees and two annas per cent. per month was fixed; but on sums above a hundred rupees as principal the rate of interest payable was set at two rupees per cent. per month. In a debt sued for upon a bond specifying an interest higher than the established rates, the interest was wholly to be forfeited to the debtor, the creditor being entitled to the recovery of only the principal.

The object was to put an end to the most exorbitant usury that was practised in those days by moneylenders. All bonds were, therefore, required to be executed in presence of at least two witnesses. By a public announcement made in each district, the Collector was also asked to declare the illegality of individuals exercising judicial authority over their debtors, which was not only oppressive to the debtors, but also direct

infringement of the prerogatives and powers of the regular government. Money lenders were, therefore, required to prefer their suits to the established courts of Diwani Adalat in order to secure the realisation of their debt.

Records of cases, containing the petitions of the complainants, the answer of the defendants, the proceedings and the decrees of the Court passed thereon, were required to be maintained in each Diwani Adalat of the district. The Collector was directed by the regulations to furnish authenticated copies of the decree of the court to both parties without any fee whatsoever. He was also required to transmit, twice a month, a copy of the entire records of proceedings to the Sadar Diwani Adalt through the President and Council at Fort William. It was also provided that the Collector should maintain an abstract register in English, which should contain the names of plaintiffs and defendants, a substance of each suit with the date of the cause filed and the decree passed thereon. A copy of the abstract register was to be transmitted to the Sadar Diwani Adalat.

In order to discourage litigation time limit was fixed to the institution of civil suits, so that they might not cause inconvenience and produce endless expense and oppression to the parties concerned. It was, therefore, provided that complaints of over twelve years of date

should ceaseto be actionable. Offenders, found guilty of flying from one court to the other to protract and pervert the course of justice and avoid the application of this regulation, became liable to punishment. This limit was fixed at twelve years on the basis of both Hindu and Muslim laws.

Arbitrary fines of various descriptions previously levied in the form of perquisites or commission on the amount of money recovered in the Court were absolutely abolished by the regulations of 21 August, 1772. The qazis and muftis wereintroduced in the list of adalat officers at a monthly salary, in which capacity they were allowed to continue to attest all writings, to perform all ceremonies of marriages, births and funerals, and to discharge all their customary fuctions. But they were to exact no fees, dues or taxes whatsoever, because they were now supported at the expense of government. It is true that they were still permitted by the regulations to accept any present or gratification made with the entire consent of the party on occasions of either matrimonial or funeral ceremonies. But on proofs being found of any application of force or undue influence to extort such gratifications, the qazis or muftis were ipso facto to be dismissed from their office with marks of public

disgrace. Besides, the Collector was empowered to frame, with the approval of the Board, all such additional regulations as he might think necessary to eradicate the evils of bribery on the part of adalat officers.

Thus the first plan for the administration of justice was drawn out to secure the ends of justice within the framework of the country courts of judicature, not to impart to it the quality of legal perfection. As a matter of fact, the latter was not within the capacity of the members of government, who framed these regulations. Nor did they assert the merit of their plan on this score. On the contrary, they requested the Court of Directors to look upon it with indulgence which was due to a work of this kind "undertaken on the plain principles of experience and common observation, without the advantages, which an intimate knowledge of the theory of law might have afforded (them)."[1] Their purpose was to draft a plan in conformity to the manners and understandings of the people as well as to the exigencies of the country, which they did to the best of their intentions. Warren Hastings, therefore, wrote to his friend Josias Dupre at Madras that the people were given such laws "as they were capable of receiving, not the best that could be framed."[2]

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1 Vide 6th Rep.Com.Sec.(1773), P.304.
2 Hastings to Josias Dupre, 6 Jan., 1773, Gleig: Memoirs, Vol.I, P.268, 272.

The System of the Provincial Councils.

The judicial plan of 1772 underwent certain organisational changes in 1773. These changes were necessitated by the orders of the Company transmitted to Bengal in the General Letter of 7 April, 1773, asking the President and Council to recall the Collectors from their districts and substitute some other mode of collection till the Company should be able to send complete regulations for conducting this important branch of its affairs.[1]

The revision of a system, which had only lately been established in 1772, was most likely to prove hazardous to the Collections. In their meeting of 23 November, 1773, the Board, therefore, devised a double plan of revenue. The first half, which was of a permanent nature, was designed on the previous principle of bringing down all the 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."[2] The second half of the plan was declared to be only "a temporary expedient for the immediate collection and management of the revenues," which might

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1 See Home Miscellaneous Series, Vol.351, P.15. I have not been able to trace the suggested regulations in any of their subsequent despatches to Bengal.
2 6th Rep.Sel.Com. (1782), I.O.Parliamentary Branch, No.14, P,4.

serve "as a means of carrying the permanent one into execution in such a manner and at such times as might be found most convenient for effecting the purposes intended by it, and preventing the ill consequences to which the collections would be exposed by an improvident and precipitate innovation."[1]

According to the temporary scheme, the provinces were divided into the following six grand Divisions, each consisting of several inferior districts:[2]

Grand Divisions	Inferior districts
1. Calcutta	The Calcutta Pargannas, Hughli, Hijili, Maisadal, Temluk, Nadia, Jessore, Mahmudshahi, including lands belonging to the persons of credit whose constant residence was in Calcutta.
2. Murshidabad	Rajshahi, East and West Divisions, Rokanpur, Chunakhali, Lashkarpur, Jahangirpur, Khas Taluks, Rajmahal and Bhagalpur and part of Monghyr. (Currickpur-Jangalterry under the command of Capt. Brooke.)
3. Burdwan	Burdwan, Midnapur, Bishnupur, Panchkot, Birbhum and Ramgarh-Palamow (the last being under the command of Capt.Carnac.)
4. Dinajpur	Dinajpur, Selbari, Purnea, Rangpur, Rorakpur, Baharband, Cooch Bihar and Rangamati.

1 Home Miscellaneous Series, Vol.351, P.16.
2 The districts of Chittagong and Tipperah continued to be under the Chief of the Chittagong factory. The newly-conquered districts of Currickpur-Jangalterry, Ramgarh-Palamow, and Cooch Bihar were placed under Military commands in the interest of peace and tranquillity. They

5. Decca	Dacca, Sylhet, Attia, Kagnari and Barbazu (now in Mymensingh.)
6. Patna	Patna, Seren and Champaren, Tirhut, Monghyr, excepting parts annexed to Bhagalpur, Rohtas and Shahabad.

Each of the last five grand divisions was placed under a chief and council consisting of four-to-five members with a Secretary, a Persian Translator, an Accountant and a few assistants. The division of Calcutta was superintended by a Committee of Revenue composed of two members of the Board and three senior servants below the rank of Council, with a Secretary, a Persian Translator, an Accountant and five assistants. The Chief and Council received their orders from the Board at large, and reported their proceedings to them in a separate department called the Council of Revenue. A Diwan was appointed to the seat of each Provincial Council. He maintained the accounts of the Collections in the country languages. The English Collectors were recalled from their districts,[1] and in their places were appointed[2]

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were betterknown as Military Collectorships responsible directly to the President and Council. They, however, deposited their revenues to the Provincial Council under whom they were placed.

1 See (a) Proceedings of the President and Council in the Rev.Dept., 23 Nov., 1773, (Colebrooke: Supplement, Vol.III, P.200); (b) From President and Council to the Court of Directors, 31 Dec., 1773, (Bengal Letters Received, Vol. 12, Para.15, P.224), (c) Bengal Revenue Consultations, 12 Jan., 1774, (Home Misc.Series, Vol.206, PP.37-46); (d) Bengal Letters Received, Rev.Dept.,15 March, 1774, Vol.12, Para.3, P.374; (e) Bengal Rev.Consultations, 18 Feb., 1774, (Home Misc.Series, Vol.206, PP.49-60); (f) Bengal Rev. Letter, 23 Dec., 1785, (Home Misc.Series, Vol.584,PP.120-121)

2 By the Board on the recommendation of the Provincial

native Superintendents of revenue under the title of Naibs whose business it was to manage the collections of the districts, excluding those which formed the seat of the Provincial Councils. They corresponded with the Provincial Councils and the Diwan of their Division. The provincial Diwans transmitted their accounts to the Khalsa (Superior Country Establishment of Revenue) under the charge of an officer called the Roy Royan. This officer occasionally sat at the meeting of the Council of Revenue and was "the Channel of communication between the Board and the Diwans transmitting to the latter the counterparts of the orders of the Board which (were) sent to the Provincial Councils and received their answer."[1]

The administration of justice formed a part of the functions of these Provincial Councils.[2] A Court of Civil

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Council under Rev.Regulation XVI of 23 Nov., 1773.

1 Minutes of the Governor General in the Rev.Dept., 25 Oct., 1774, (6th Rep.Sel.Com.of 1783, P.22.)

2 The Chief and Members of the Council were granted a monthly allowance as follows:

To the Chief	Rs.	3000	Per	Mensem
" Second	"	600	"	"
" Third	"	500	"	"
" Fourth	"	400	"	"
" Fifth	"	400	"	"
" Sixth	"	400	"	"
" Secretary	"	100	"	"
" Accountant	"	100	"	"
" Persian Translator	"	100	"	"

See Rev.Consultations, 18 Feb.,1774, Home Misc.Vol.206, P.53 - Allowances to the Chiefs were not to be drawn until further instructions.

Judicature was annexed to each of the Six Provincial Councils of Calcutta, Murshidabad, Burdwan, Dinajpur, Dacca and Patna. It was superintended in monthly rotation by one of the members of the Council, who did not jointly sit on the Council at Fort William. This Superintending Member exercised an original jurisdiction in all such causes as arose within the district forming the seat of the Provincial Council. But in those relating to the other constituent districts, he acted as a court of appellate jurisdiction. In the latter capacity the Court was often known as the Provincial Sadar Adalat, hearing appeals from the decisions of the Naibs who were vested with powers to hold courts of diwani adalat in their districts, which were previously presided over by the Collectors. The Naibs adjudged civil cases according to the Regulations of 21 August, 1772, and transmitted their proceedings to the Provincial Council of their Division. The Provincial Sadar Adalat decided finally on all causes of the value not exceeding the sum of one thousand rupees, which included malguzari or rented land, of which the jumma or produce was not more than Rs. 1000/-, or alienated or free land, of which the jumma was not more than a hundred rupees. In cases above the value of one thousand rupees an appeal lay before the Sadar Diwani Adalat. All decisions of the Superintending

Member were subject to revision by the Provincial Council, wherein he could sit in the course of a discussion on his own decision. Complaints against the head farmers Naibs of the districts, zemindars and principal officers of government relating to their conduct in revenue matters were to be determined by the Provincial Councils, and entered on their own proceedings.[1] In all such cases a final appeal might be preferred to the Superior Council of Revenue at Calcutta in the event of any party feeling aggrieved. The Provincial Council and the Provincial Sadar Adalat thus served as a link between the mufassil adalats of the inferior districts and the Sadar Diwani Adalat of Calcutta.

The revenue regulations of 23 November, 1773 thus affected the judicial plan of 1772 in so far as the Collectors were replaced by the Naibs in the districts, which were grouped together under six Provincial Councils vested with powers to manage the Collections and superintend justice within the extent of their jurisdiction.

Miss Monckton Jones, however, contends that the Collectors remained in their districts as before, and that the temporary plan of 1773 differed from the system of 1772 only in setting up a Chief and Council to control a group of Collectors who were now "empowered to appoint their own Naib Diwans." She adds that "there were grave risks of

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1 See Rev.Regulation XX of 23 Nov., 1773.

tyranny in this retention of the part of the old order."[1] Hastings was therefore anxious to "root out" what he called "the heavy rulers of the people,"[2] whom he finally removed in 1781. In short, her analysis boils down to the following issues:

1. That the Collectors were retained in their districts as before.
2. That they were empowered in 1774 to appoint their own Naibs.
3. That the retention of the Collectors necessitated the establishment of the Provincial Councils to counteract the grave risks of their tyranny, suggesting that the Councils were composed of persons other than the Collectors.
4. That Hastings' anxiety to remove the collections to the capital arose from his determination to root out the Collectors, which he actually did in 1781.

Answers to these issues would more pertinently affect revenue administration than justice. But they are in no sense less significant from judicial point of view. They are concerned with the fundamentals of Hastings' internal policy which influenced his revenue or judicial arrangements.

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1 Monekton Jones: Warren Hastings in Bengal, P.291.
2 Ibid. P.292.

Besides, Justice was after all subordinate to revenue authorities. Any alteration in the latter was bound to affect the former. It is, therefore, necessary to examine the truth of her contention.

The first contention of Miss Jones needs no further discussion. We have already shown that Collectors were recalled and replaced by Naibs in their districts.[1] This fact is also supported by eminent secondary authorities.[2]

Secondly, the Naibs were appointed, not by Collectors, but by the Supreme Council at Fort William on the recommendation of the Provincial Councils. Revenue Regulation XVI of 23 November, 1773, distinctly provided that "as the immediate responsibility of their management rests upon the Provincial Councils, they shall be allowed the recommendation of the persons they think most proper for the trust

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1 See Regulation XX of 23 Nov., 1773, Home Misc.361, P. 18; Home Misc.362, PP.43-44; Harington: Analysis, Vol. I, P.20; C.D.Field: The Regulations of the Bengal Code, P.137; Cambridge Hist.of India, Vol.V, P.418.

2 Harington: Analysis, Vol.I, P.20; C.D.Field: The Regulations of the Bengal Code, P.137; Cowell: History of the Constitution of Courts and Legislative Authorities in India, P.49; Morley: Admn. of Justice in British India, P.49; Rev.Firminger: Introduction to the Fifth Rep.etc. P.ccxxxiv.

Sarkar and Dutt in their text Book of Modern Indian History, Vol.I, P.147 (1932 Edn.) have carried the mistakes of Miss Jones. They also state that the Collectors were retained in their districts.

but their nomination shall proceed from the Board."[1]

Thirdly, in the light of our previous discussion on the attitude of Hastings towards the Company's European servants, it is impossible to accept Miss Jones' contention that the necessity of the Provincial Councils arose from the retention of the Collectors in their districts. If the sole object of their institution were to watch the movements of these collectors, as she contends that it was, the Provincial Councils should have been constituted of persons distinctly other than those whose conduct they were designed to control and supervise. In actual practice, however, most of them were absorbed as Members of the Provincial Councils of their respective divisions.[2] For instance, the Provincial Council of Dinajpur, which was formed in February, 1774, consisted of William Lambert (Chief), Herbert Harris, George Robertson, G.G.Ducarel, A.B.Goodlad and Francis Gladwin (Members). Lambert[3] had been Collector of Dacca before he was appointed Chief of Dinajpur. Harris,[4] Robertson,[5] and Goodlad

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1 Colebrooke; Supplement, etc., Vol.III,P.203.
2 See Bengal Rev.Consultations, 18 Feb.,1774,Home Misc. 206, P.51.
3 He was succeeded in that office by Grueber in July, 1772.
4 He had succeeded C.Purling in July, 1773.
5 He had succeeded Marriott in April, 1773.

were Collectors respectively of Rangpur, Dinajpur and Purnea, who all took their seats in the Council at Dinajpur after making over the charge of their respective districts to the Chief. Ducarel had been Collector at Purnea till December, 1773, and Gladwin had served as an assistant to C.W.Boughton Rous, the then Collector of Rajshahi.

As a matter of fact, the object of the Provincial Councils was not to counteract "the grave risks" of the Collector's tyranny, who no longer remained in the districts, but to supervise the conduct of the Nabs, who replaced them on their recall. The occasion for this recall, as we have seen, arose from the peremtpory orders of the Directors, who had ostensible reasons to suspect the conduct of the English Supervisors.

The removal of Collectors from their districts created a situation, leaving the President and Council with only two options: to bring down the Collections to the Presidency to be there administered under their direct supervisions with the districts being left in the hands of the native superintendents, or to set up the intermediate arrangement of local councils of the Company's English servants. The first proposition was adjudged impracticable for two reasons: First, the Council at Fort William was still ignorant of the exact value of each district. So dependence on the local instruments of Collection was indispensable. Secondly, the native superintendents of revenue, who supplanted the

Collectors did not carry the confidence of the Company's government. A direct control from Calcutta was beset with evident risks of loss. The second option was therefore regarded as the only practical proposition in the circumstances. The President and Council, therefore, adopted it as a temporary expedient. The necessity of the Provincial Councils thus arose from the recall of the Collectors, not from their retention in the districts.

Fourthly, we have already discussed why Hastings desired the transfer of administrative control to Calcutta. It was at any rate not his determination to root out the Collectors from the districts. The consideration, which guided him in all his measures of reform was to establish a regular system of administration based on the fixity and uniformity of rules of conduct.[1] And he strongly believed that a direct mode of supervision from the centre could alone accomplish such an object. Besides, he wanted to use the English capital at Calcutta as the means of conveying to the native inhabitants a more intimate and correct knowledge of British justice in order to conciliate them to the government of the Company. This, he believed, could be achieved only by permitting appeals to the Sadar directly from the decisions of inferior courts.[2]

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1 See Letter of the President and Council to the Court of Directors, 3 Nov., 1772, (6th Rep.Com.Sec.1773, P.302.)
2 Ibid. 6th Rep.Com.Sec.(1773), P.304.

If Hastings had been determined to root out the so-called heavy rulers of the people, he would not have alienated, as he did, a number of districts from the grand divisions, and formed them into separate collectorships for the sake of efficiency and good government.[1] This alienation also paved the way for the final liquidation of the Provincial Councils in 1781. Their Members were ordered to repair to the Presidency.[2] But the Chiefs and the separate collectors of the alienated districts were allowed to remain in their respective stations.[3]

Thus the contention of Miss Monckton Jones does not bear the testimony of historical facts. Her error appears to have arisen from a wrong interpretation of some of Hastings earlier letters which gave rise to a number of misgivings about the English Supervisors, although he did not accept them as the expression of his own views.

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1 The districts alienated were (1) Rajmahal and Bhagalpur including parts of Monghyr (1774) under Barton succeeded by Cleveland in 1779; (2) Tipperah placed under Williams as assistant to Chittagong Collector in Jan., 1774, became a separate collectorship in April, 1775 under Campbell; (3) Ramgash alienated in Sept., 1775 under Heatly as the first civil collector; (4) Panchkot (Feb., 1776) under Hewitt; (5) Silhari alienated from Dinajpur (1776) under Gladwin; (6) Rangpur (July, 1777) under C. Purling; (7) Midnapur (Dec., 1778) under Pearse, (8) Saran (1779) under Greame.

2 See Sixth Rep. from the Select. Com. of the House of Commons (1782) PP. 16-71, 18-22.

3 Colebrooke: Supplement, III, P. 214. (Rev. Reg. III & IV of 20 Feb., 1781). Although subject to removal, the chiefs and collectors were allowed to continue. See Ibid. PP. 216-217.

Additional Regulations.

On 12 January, 1774, the President and Council at Fort William adopted certain additional regulations. Their principal object was to lay down rules for the conduct of justice in the Provincial Sadar Adalat, and define its relations with the Chief and Provincial Council, who were empowered to select cases to be determined by the Adalat. The whole Council, if they so desired, might try a civil suit without any reference to the Superintending Member. Executive powers vested exclusively in the Chief. The Superintendent of the Adalat had no executive authority except in judicial capacity. Nor could he summon on his own initiative any zemindar or farmer of revenue. If he required of necessity the attendance of a zemindar, he had to make application in writing to the Chief and Council, who adjudged the propriety and urgency of his requirement and advised him accordingly for his guidance. Civil Justice thus continued to be subservient to revenue authorities.

In all other matters, the judicial regulations of 1772 continued to guide the course of justice. The additional regulations further stressed the principle that all cases should be tried and determined in the open court regularly assembled for the purpose.

This system of the Provincial Councils continued to operate for judicial purposes till April, 1780, when civil justice was for the first time seperated from the administation of revenue.[1] Before proceeding to examine how this system worked in practice during this period it is necessary to give an account of the Supreme Court of Judicature established at Fort William in 1774 to administer justice according to British principle and system of adjudication. The point is that the history of the Company's judicial administration for the most part of this period was one of conflicts between these two systems, which fundamentally differed with each other both in legal concept and constitutional practice. Nor could we form an adequated impression of the actual state of civil justice except through these conflicts which were inevitable in the formative stage of the Company's judicial history.

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1 The Provincial Councils were finally abolished in Feb., 1781, when the Collections were committed to the charge of four members immediately responsible to the Governor General and Council at Fort William.

CHAPTER VIII

THE SUPREME COURT OF JUDICATURE 1773-1782

In the previous Chapter we have examined the policy and plans for the administration of justice in so far as they related to the country courts of Adalat exercising jurisdiction over the native inhabitants of the country. We shall now set forth the main outlines of the Supreme Court of Judicature, which administered justice according to the law of England.

This British Court of Judicature was established at Fort William in Bengal by the Regulating Act of 1773. To form a correct appreciation of the nature of its constitution and jurisdiction, a brief review will be made of the circumstances in which this Act was passed.

The framers of this Act suffered from certain limitations, which affected the character of their legislation. Situated as they were at a great distance from the land, for which they were called upon to legislate, they could not possibly keep pace with the rapid developments, which took place in the affairs of the Company there. Nor could they claim to possess a first-hand and up-to-date knowledge of Indian conditions. Besides, the entire question of British dominion in Bengal was inextricably woven with party politics at home, and it was no easy task to glean the truth from the maze of controversy that hung around every political issue.

The Company, too, was not able to present a unified policy for the guidance of Parliament. The Courts of Directors and Proprietors often worked at cross purposes on the question of dividends. The Directors being alive to the real state of the Company's financial weakness, stressed the need of preserving its permanent interests by keeping low the rates of dividends. But the Proprietors were guided rather by individual interests. They cared little whether they were paid out of the Company's revenues received or loans raised in anticipation of the sale of 'investments'.

However, there stood out of the controversy a strong voice for reform. The extent of the Company's territorial acquisition had exceeded in size and population the kingdom of Great Britain herself, although it was still held and governed as private domain of a commercial corporation. The continuance of such a state of affairs was beset with evident risks of misgovernment, which "might tarnish the name of Great Britain as an imperial state."[1] The need of subjecting the quasi-sovereignty of the Company to the control of Parliament was universally felt by the people.

The task, however, was not easy to accomplish. The Whigs, who were the champions of vested rights of property, opposed the idea. Moreover, it was fraught equally with

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1 Cambridge History of India, Vol.V,P.283.

legal and political difficulties. The Company held the provinces as the Diwan of the Mughal Emperor, in which capacity it might easily assert that it possessed no real property whatsoever. Annexation by British Crown might easily be interpreted as an act of usurpation against the legal authority of the Mughal Empire, which it was not expedient to support. Added to these was the lack of any precedent to guide and determine the relation of the Company and the State. In these circumstances, the framers of the Regulating Act had no other option than to proceed, as they did, by compromise, trial and error.

Earlier in 1767, Parliament had already established its right to control the distribution of the Company's dividends, which were directed to be voted by ballot at General Courts expressly convened for the purpose. The dividend to be voted was set at ten per cent. up to a maximum limit of twelve and a half per cent. subject, of course, to improvement being made in the financial state of the Company. The outstanding feature of the Act of 1767 was that the Company was required to pay into the Exchequer an annual sum of £400,000 in consideration of the enjoyment of the Indian Revenues. In 1769, this demand was repeated and was required to be met for a total period of five years on conditions already stipulated in 1767.

The Company's troubles headed towards a crisis in 1772. In the month of March of the same year, it declared

a dividend of 12½ per cent. in spite of its utter incapacity to meet it on the strength of its own resources. On the receipt of the news of the terrible famine of Bengal and the successful raid of Haider Ali, the ruler of Mysore, on Madras, the Company's investors began to lose hopes of recovery of their investments. Their confidence in the Company was completely shaken, and they demanded an immediate reform of its constitution. The Directors, in their turn, attributed the state of deterioration to the corruption of their servants in Bengal, and tried to forestall a drastic reformation from outside by asking leave of Parliament to introduce a bill for the better regulation of their administration in the province. The desired permission was accordingly sought by Sulivan, their Deputy-Chairman, who made Lord Clive the target of his attack. In the course of a long and effective speech[1], however, the latter defended his conduct with success, and exposed the inefficiency of the Directors and the outrageous proceedings of General Courts. Sulivan's bill was finally defeated, and in April, 1772, Burgoyne, who led the opposition, carried a motion to appoint a Select Committee to enquire into the affairs of the Company before adopting any legislation on the subject

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1 Delivered in the Commons on 30 March, 1772. Vide Parliamentary History of England, Vol.XVII, PP.327-365.

of reforms. In August, 1772, the Company made an application to Parliament for a loan of at least £1,000,000, and expressed its inability to meet the annual demand of £400,000. This position was highly anomalous, as a dividend of 12½ per cent. had lately been announced in March of the same year. It brought a storm of opposition against the management , and conduct of the Company in Bengal. On the motion of Lord North,[1] a Committee of Secrecy was appointed in addition to the Select Committee already in operation. Both the Committees published reports which exposed the state of maladministration in the various departments of the Company's affairs in the province. On the basis of these reports, Parliament granted the Company a loan of £1,400,000, and passed the Regulating Act in the month of June, 1773.[2]

The thirteenth section[3] of the Act authorized His Majesty King George III to erect and establish, by Charter or Letters Patent, a Supreme Court of Judicature at Fort William in Bengal, "to consist of a Chief Justice and three other judges, being Barristers in England or Ireland, of not less than five years' standing, to be named from time to time by His Majesty, his Heirs and Successors." It was

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1 The Prime Minister.
2 The Bill was carried by an overwhelming majority in the House of Commons on 10 June, 1773. It passed the Lords on 20 June and got the assent of the King on the day following.
3 Vide Collection of Charters and Statutes Relating to the East India Company, P.148.

declaredto have "full Power and Authority to exercise and perform all civil, criminal, admiralty and ecclesiastical Jurisdiction." By the same section it was vested with powers "to form and establish such Rules of Practice, and such Rules for the Process of the said Court, and to do all such other things as shall be found necessary for the Administration of Justice, and the due Execution of all or any of the Powers which by the said Charter shall or may be granted and committed to the said Court; and also shall be, at all Times, a Court of Record, and shall be a Court of Oyer and Terminer and Gaol Delivery in and for the said Town of Calcutta, and Factory of Fort William in Bengal aforesaid, and the Limits thereof, and the Factories subordinate thereto." It was further provided that the jurisdiction, powers and authorities to be granted to the Court under the Charter of Justice "shall extend to all British subjects who shall reside in the Kingdoms or Provinces of Bengal, Bahar, and Orissa, or any of them, under the Protection of the said United Company, and the same Charter shall be competent and effectual: and the Supreme Court of Judicature, therein and thereby to be established, shall have full Power and Authority to hear and determine all complaints against any of his Majesty's subjects for any Crimes, Misdemeanours, or Oppressions, committed, or to be committed,

and also to entertain, hear, and determine, any Suits or Actions whatsoever, against any of his Majesty's subjects in Bengal, Bahar, and Crimea, and any Suit, Action, or Complaint, against any person who shall at the time when such Debt, or Cause of Action, or Complaint, shall have arisen, have been employed, or shall then have been, directly or indirectly, in the Service of the said United Company, or any of his Majesty's Subjects."[1]

As to actions and suits cognizable, the Act provided that the Supreme Court "shall hear and determine any Suits or Actions whatsoever of any of his Majesty's subjects against any Inhabitant of India residing in any of the said Kingdoms or Provinces of Bengal, Bahar, and Orissa, or any of them, upon any Contract or Agreement in writing entered into by any of the said Inhabitants with any of his Majesty's said Subjects, where the cause of Action shall exceed the sum of five hundred current Rupees; and where the said Inhabitant shall have agreed in the said Contract, that, in case of Dispute, the Matter shall be heard and determined by the said Supreme Court; and all such Suits and Actions may be brought in the first Instance before the said Court, or by appeal from the sentence of any of the Courts established in the said Province, or any of them."[2] Provision was made for appeals in the event of a person feeling aggrieved by any judgment or determination of the Supreme Court of Judicature.

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1 Sec XIV of 13 Geo.III, Cap.Lxiii.
2 " XVI of 13 Geo.III, Cap.Lxiii.

A Governor General and four Counsellors were appointed for the government of the Presidency of Fort William in Bengal. They were entrusted with the whole civil and military government of the said Presidency, including the ordering and management of all territorial acquisitions and revenues in the provinces of Bengal, Bihar and Orissa.

Warren Hastings was appointed the first Governor-General[1]. The four Members of the Council, who were appointed for five years and named in order of seniority, were Lieutenant General John Clavering, George Monson, Richard Barwell and Philip Francis.[2] They could be removed only by his Majesty, his heirs or successors upon representation made by the Court of Directors. In the event of the death, resignation or removal of the Governor General in the course of the first term of five years, the next senior person was to act in his place. But in the case of the death, resignation or removal of a Councillor, the Directors were empowered to nominate and appoint with the consent of his Majesty. On the expiry of the first term, however, the power of nominating and removing the succeeding Governor General and Councillors vested exclusively in the Directors themselves.

The Governor General and Council were authorized under the Regulating Act to make and issue all such rules, ordin-

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1 The annual salary of the Governor-General amounted to £25,000.

2 The annual salary of each of the four Members of the Council was £10,000.

ances and regulations as were necessary for the good order and civil government of the Company's Settlement at Fort William and other factories or places subordinate to it. All such rules and regulations were required to be just and agreeable to the laws of England. The Act also gave them powers to punish their violation by fines or forfeitures.

No rule, ordinance or regulation, however, could be valid or enforced unless it was duly registered and published in the Supreme Court of Judicature with its consent and approbation. For an act of registry to be valid and regular it was necessary that a period of twenty days should have elapsed after a rule or regulation was openly published and affixed in some conspicuous part of the place where the Court was held. It was subject to repeal or modification by the King-in-Council on appeal made by any person within sixty days from its registry and publication in the Supreme Court of Judicature. A copy of every such rule or regulation was required to be transmitted to the India-House in London for a similar publication there. Any person in England might as well appeal to the King-in-Council within sixty days from the date of such publication. Every such rule or regulation, however, could be put into practice soon after it was duly registered and published in the Supreme Court, unless it was set aside or repealed upon hearing and determination by the King-in-Council.

The Governor-General and Council, the Chief Justice and Judges of the Supreme Court were empowered to act as Justices of the Peace for the Settlement of Calcutta and the subordinate factories. For this purpose the Governor-General and Council could hold Quarter Sessions four times a year. These Quarter Sessions were at all times to be a Court of Record. All offences and misdemeanours, which were laid in the Supreme Court, were to be tried by a Jury of British subjects resident in the town of Calcutta.

The Supreme Court of Judicate was not competent to hear, try or determine any indictment or information against the Governor-General or any of the Members of his Council, for any offence except treason or felony committed by them in Bengal, Bihar and Orissa. The person of the Governor-General or any of the Council, the Chief Justice or any of the Judges of the Supreme Court was not subject to arrest or imprisonment upon any action, suit or proceedings in the Supreme Court. Complaints against them could be tried and determined only in the Court of the King's Bench.

The Mayor's Court at Fort William was abolished, and all the records, muniments and proceedings belonging to that Court or to the Courts of Oyer and Terminer and Gaol Delivery were delivered over, and preserved in, the Supreme

Court established under the new Charter of Justice granted by his Majesty King George III on 26 March, 1774.[1] The Court of Request, established under the Charter of 1753 was, however, retained.

The Act declared unlawful on the part of the Governor-General or any of the Council, the Chief Justice or any of the Judges of the Supreme Court to accept directly or indirectly, any present, gift, donation, gratuity or reward, on any account whatsoever. They were further directed not to carry on or be concerned in any dealing or transaction, by way of traffic or commerce of any kind whatsoever. It was further provided that from the 1st day of August, 1774 "no person holding or exercising any civil or military office under the Crown, or the said United Company, in the East Indies, shall accept, receive, or take directly or indirectly, by himself or any other person or persons, on his behalf, or for his use or benefit, of or from any of the Indian Princes or Powers or their Ministers or Agents ... any present, gift, donation, gratuity, or reward, pecuniary or otherwise, upon any account, or on any pretence whatsoever."[2] Similar restrictions were imposed

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1 Parts dealing with criminal and civil suits are given in an appendix at the end of this chapter.
2 Sec.XXIV of 13 Geo.III, Cap.Lxiii.

on every Collector or Supervisor employed in the Collection of Revenue or the administration of Justice in Bengal, Bihar and Orissa. No person appointed to positions of trust was permitted by the Act to buy and sell any goods, wares, merchandize or any commodities whatsoever by way of traffic or trade at any place within the said provinces. No British subject was authorited now to trade in salt, betel nut and tobacco except on behalf of the Company. Violation of this rule became punishable by the forfeiture of all such commodities of trade together with a fine amounting to treble the value thereof.

Thus, the Regulating Act of 1773 provided for a Judiciary, which, unlike the outgoing Mayor's Court, could act independently of the Executive. Its Judges were nominated by the King of Great Britain instead of the Company's Executive Government at Fort William, who previously appointed the Judge and Aldermen of the Mayor's Court. No executive intercession could enable any of the Company's European servants now to escape punishment for acts of violence committed by them. Secondly, the Charter provided that the execution of any decree of the Supreme Court should not be delayed or suspended except when the Court itself so determined in capital sentences. In causes against the Company it was thus competent to render justice

available on the spot without its being required to receive the assent of the King's Bench in England. Thirdly, the Judges of the Supreme Court, unlike those of the Mayor's Court, were to be barristers in England or Ireland of not less than five years' standing. They evidently possessed the benefits of legal knowledge and professional training, which were denied to their predecessors.

As for the territorial and personal jurisdiction of the Supreme Court, Sir J.F.Stephen compares the Regulating Act with the efforts of Parliament to provide in 1885 for "the efficient government of Egypt without openly invading the authority of either the Sultan or the Khedive, or expressly asserting the sovereignty of the Queen."[1]

In the year 1776, Philip Francis made a much stronger reflection on the constitutional anomalies and imperfections of this Act. "We have," he observed, "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. While these contradictions

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1 The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol.I, P.13. The remark implies that the framers of the Regulating Act (1773), desired the establishment of an efficient government for Bengal without openly invading the authority of either the Mughal Emperor or the Nawab of the province.

are permitted to subsist, the actual government of the provinces must continue to be an arbitrary succession of acts of power without right, flowing from different sources, and excluding every idea of unity, regularity or system. It would be absurd to propose a plan for the internal settlement of the country, without taking it for granted in the first instance, that ere long it will be determined, whether the natives of Bengal are to acknowledge one sovereign and be subject to one government; or whether they are to be left in their present state, divided between their native princes, claiming the right of Subahdar; whose government the Company tells us, 'they are engaged by solemn stipulation to support; - the Emperor, whose rights as Lord Paramount, inherent in the constitution of the Empire, have been for a number of years acknowledged by the Company; - the Presidency of Fort William, who hold the sword by agreement with the Nabab, as they do the purse, by grant from the Emperor; and lastly a Court of Judicature, exercising an unlimited jurisdiction through the provinces, in the name of the King of Great Britain."[1]

The Council Majority made similar observations in the course of their minutes of 21 November, [illegible].[2] A proper

1 Quoted in Fermingers Introduction to the Fifth Report of the Select Committee of the House of Commons (1812), PP.ccvi-ccvii.

2 See: Observations upon the Administration of Justice in Bengal, PP.45-46.

want of jurisdictional definition is also stressed by a letter[1] of the Judges of the Supreme Court of Calcutta, dated 16 October, 1830. Writers like Kaye[2] and Cowell[3] have stretched the point too far and used scathing words of criticism to express their views on the imperfections of the legislation.

Their comments are not entirely without justification. The issue of sovereignty, for instance, was left without any settlement, which produced serious repercussions in the actual operation of the Act. The Charter extended the jurisdiction of the Supreme Court beyond the limits of Calcutta and comprehended all British subjects, residing in Bengal, Bihar and Orissa, as well as others found in the service of the Company or any of his Majesty's subjects at the time when any action or suit was brought against them. And, in all such cases beyond the settlement of Calcutta, the Charter distinctly provided that "it shall not be lawful for such offender to object to the legality of the Jurisdiction of the Court, or the grand or petty jury; but he shall be indicted, arraigned, tried, convicted, and punished, or acquitted and demeaned, in all respects, as if the crime had been committed within the said Town of

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1 See Fifth Appendix to the Third Report of the Parliamentary Select Committee of 1831, P.1284.
2 See Administration of the East India Company, P.329.
3 History and Constitution of Courts and Legislative Authorities in India, PP.5, 53-54.

Calcutta, or Factory of Fort William, or the limits thereof."[1] But it left vague the definition of British subjects or the servants of the Company who were rendered subject to the jurisdiction of the Court. Besides, the Act and the Charter were both silent as to the mass of the native inhabitants of the three provinces, who were neither declared to be the subjects of Great Britain nor in the employment of the Company.

These shortcomings were, however, inevitable in the light of the several limitations on the legislation in question. An open declaration of British Sovereignty over the territories, which did not constitute the legal property of the Company, was regarded as a revolutionary act, which was politically inexpedient both in relation to the foreign and domestic policy of Great Britain. An open invasion of native sovereignty might embroil her with the representatives of other European nations in India, which Parliament took care to avoid; while the Tories, who had come into power after a long time, in 1770, were most keen about retaining their hold on the internal politics of their country, and could not radically affect the rights of the Company's de facto sovereignty. Besides, the immediate task of the legislature was to provide, as it

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1 Home Miscellaneous Series, Vol.372, P.305.

did, against the abuse of authority by those in power and influence, and not to worry much about the political question of sovereign authority, which was fraught with several complications.

James Mill's criticism of the Supreme Court bears no contact with the objective facts of judicial administration in the country courts of Adalat. He condemns the English law and process, administered in the Supreme Court, as arbitrary and mechanical. "The English law," he says, "which in general has neither definition nor words, to guide the discretion or circumscribe the license of 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, and gratifying a pedantic and mechanical attachment tothe arbitrary forms of the Westminster Courts, produced more injustice and oppression and excited more alarm, than probably was experienced, through the whole of its duration, from the previous imperfection of law and judicature."[1] We have already seen how the lack of process often led to the perversion of justice in the Courts of Adalat and how Hastings was anxious to enforce the regularity of forms

1 History of British India (4th Edn.,) Vol.III,PP.502-503.

and procedure in all his plans of judicial administration. We shall also have occasion to see how, in spite of his efforts, the conduct of judges in these courts was marked by the irregularity of proceedings, which often became the cause of injustice and oppression. All that the Supreme Court tried to do was to enforce the regularity of process and equality of persons before law without much regard being paid to caste or class privileges. The correctness of its stand may be judged from the fact that the later currents of history followed the course of rationalism laid down by the Supreme Court, and not the course of reaction advocated by Mill or the subscribers of his views.

The Judges of the Supreme Court

Sir Elijah Impey - He was born in a middle-class family at Hammersmith on 13 June, 1732. His father was a wealthy merchant connected with the East India and South Sea trade.

In his seventh year, Elijah Impey was admitted to the Westminster School, where he stood out as a student of great merit and calibre. The most intimate of his school-fellows was Warren Hastings, who was junior to him in age by a few months. In 1747, when Impey and Hastings were admitted as King's Scholars, the former stood fourth, and the latter first on the list of successful candidates.

But Hastings had to terminate his studies for want of support, and join the service of the East India Company; while Elijah Impey proceeded to the Trinity College at Cambridge in 1751, being at the same time a law student at Lincoln's Inn. In 1756, he was called to the bar, and in 1773 recommended by Henry Bathurst, the then Lord Chancellor, to the post of Chief Justice of the Supreme Court of Judicature at Fort William in Bengal. He received his appointment from Lord Shelburne, who was then in charge of the colonial office. Sir Elijah Impey left England in April, 1774 along with the other three Judges of the Supreme Court, and reached Calcutta on 19 October, 1774.

A perusal of the private and public correspondence of Sir Elijah Impey reveals that although he was not oblivious to his personal interests, his sense of public duty was far above the average.[1] Deeply versed in the technique of the legal practice of his country, he had regards for the singularities of Indian customs and usages so long as they were not used as a lever to defeat the ends of natural justice.

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1 See Letter-Book of Sir Elijah Impey, B.M.Addl.Mss.16265-16267. I have also referred to his correspondence contained in B.M.Addl.Mss.16261-16263. Some of his important letters are printed in Touchet's Committee Report of 1781 and Elijah Barwell Impey's Memoirs of Sir Elijah Impey.
J.F.Stephen has examined all the charges under which the Chief Justice was impeached in 1788. He presents a fairly correct view of his public conduct. See The Story of Nuncomar and the impeachment of Sir Elijah Impey, Vol.II. His character has also been examined by Beveridge.

In the discharge of his judicial duties, the Chief Justice inveriably maintained a high level of public conduct. Nonetheless, he was impeached in 1788 under a number of charges, which were finally proved to be unjustified, and he was declared innocent.

He died on 1 October, 1808, at the age of seventy-seven.

Sir Robert Chambers - His learning and integrity of character were both beyond question. He was a friend of Dr. Johnson, and held the office of Vinerian Professor of Law at Oxford at the time of his appointment to a seat on the Bench in the Supreme Court of Judicature.

But he often showed weakness in forming decisions. William Hickey observes that "even in writing a common note he always first made a rough copy, using various words that expressed the same meaning. These words he placed one above another; he then referred to Johnson and other authorities for the purpose of ascertaining which of the selected words would be the most correct for use, and adopted one accordingly."[1] He became Chief Justice in 1791, and remained in India till 1798. He died near Paris in 1803.

See The Trial of Maharaja Nandkumar. But his sources are derived entirely from the writings of Burke, Mill and Macaulay, who lacked in most of the first-hand sources of information. Moreover, Beveridge starts with a prejudice, and says in the very first page of his book: "It will be my duty to comment severely on the conduct of Warren Hastings and Sir Elijah Impey."

1 Memoirs of William Hickey, Vol.III, P.221.

S.C.Le Maistre - J.F.Stephen has described Justice Le Maistre as "narrow-minded, arrogant and violent."[1] In fact, he lacked in the quality of self-control, and at times indulged in emotional outbursts, which estranged relations between the Supreme Court and the Council at Fort William. He died in November, 1777. The vacancy caused by his death was filled by Sir William Jones.

John Hyde - Although well-meaning and good-hearted, John Hyde at times was strangely impetuous. Like his friend Le Maistre, he indulged sometimes in petulance, which often led him into awkward situations.[2] It was indeed a difficult task for the Chief Justice to keep them under proper restraint. He died at the age of fifty-nine in July, 1786.

Establishment[3] - The salaries of the Judges of the Supreme

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1 J.F.Stephen: The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol.I, P.36.

2 William Hickey has quoted a number of instances to illustrate the character of John Hyde. See Memoirs of William Hickey, Vol.III, PP.221-235.

3 The statement of the establishment given in the following pages was prepared by the Company's solicitor for the use of Dundas, the President of the Board of Control, in January, 1786. It is contained in the Home Miscellaneous Series of the India Office, Vol.382, PP.99-136. It is significant in so far as it affords a complete list of the Subordinate officers and other servants employed by the Court in the execution of its responsibilities. The proposed establishment of the Court is entered on ff. 12b - 13a of the Letter-Book of Sir Elijah Impey, Vol. I, B.M.Addl.Ms.16265. The Council's objections occur on ff.13b-14a of the same manuscript.

Court had already been fixed by the Regulating Act of 1773. The Chief Justice was paid at the rate of £8,000 per annum, while each of the three Judges was to have an annual salary of £6,000. The Act further empowered the Supreme Court to appoint a requisite number of clerks and other officers on reasonable salaries to be approved by the Governor-General and Council.

On 8 February, 1775, the Judges of the Supreme Court submitted the proposed establishment to the approval of the Board, who raised certain objections, on financial grounds, to the acceptance of their proposals in entirety, but agreed to concede about two-thirds of their total demand.[1] In a reply of 10 March, the Judges admitted the powers of the Governor-General and Council to allow or disallow the proposed estimates, but questioned their authority to impose any limitations whatsoever. By accepting a position of financial dependence on the Executive, they declared, "the officers would be theirs and not those of the Judges."[2] Consequently, they rejected the limitations of the Board, and reiterated their demand for acceptance or rejection in toto. On 13 March, 1775, the proposed establishment was entirely confirmed,[3] Francis alone dissenting. It stands as follows:

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1 See Home Miscellaneous Series, Vol.352, PP.99-100.
2 Home Miscellaneous Series, Vol.352, P.101. See also Letter-Book of Sir Elijah Impey, Vol.I, B.M.Addl.Mss. 16265, ff.14a-17a.
3 See Letter from the Governor-General and Council to the Chief Justice and Judges of the Supreme Court, 13 March, 1775 Letter-Copy Book of Sir Elijah Impey. Add.Mss. 16265

List of Salaries of the Judges and Officers of the Supreme Court of Judicature according to the Plan of 1775

		Arcot Rs. Per Annum	£. s. d. Per Annum
The Chief Justice	Impey	.....	8,000.0. 0.
2d.Judge	Chambers	.....	6,000.0. 0.
3d.Judge	Lemaistre	.....	6,000.0. 0.
4th Judge	Hyde	.....	6,000.0. 0.
1st Master	R.McVeagh	8,000.0.0.	900.0. 0.
2d. ditto	Ed.Shrimpton	8,000.0.0.	900.0. 0.
Keeper of Records	R.McVeagh	2,000.0.0.	225.0. 0.
Accountant General	Ed.Shrimpton	2,000.0.0.	225.0. 0.
Sealer	A.Frazer	2,000.0.0.	225.0. 0.
1st Reading Clerk	N.Nayler	2,000.0.0.	225.0. 0.
2d. Reading Clerk	R.Litchfield	2,000.0.0.	225.0. 0.
Principal Interpreter & Translator	W.Chambers	8,000.0.0.	900.0.0.
1st Asst.to do...	G.Dass	1,000.0.0.	112.10.0.)Increased to
2d. Asst.to do...	N.Jebb	1,000.0.0.	112.10.0.)Rs.2000 in Jan.1777.
Cryer	H.Robinson	1,000.0.0.	112.10.0.
Court Keeper	H.Robinson	400.0.0.	45. 0.0.
Secy.and Clerk to Chief Justice	J.Pritchard	3,000.0.0.	337.10.0.
Interpreter to do.	G.Dass	1,000.0.0.	112.10.0.
Tip Staff to do.	J.Bennett	1,000.0.0.	112.10.0.
Clerk to 2d.Judge	W.Johnson	3,000.0.0.	337.10.0.
Interpreter to do.	P.Mirza	1,000.0.0.	112.10.0.
	Carried over		£31,220. 0.0.

		Arcot Rs. Per Annum	£. s. d. Per Annum
Brought over			£31,220. 0.0.
Tip Staff to 2d. Judge	J. Sachaverel.	1,000.0.0.	112.10.0.
Clerk to 3d. Judge	J.J. Durnford	3,000.0.0.	337.10.0.
Interpretor to do.	N. Jebb	1,000.0.0.	112.10.0.
Tip Staff to Do.	J. Mayne	1,000.0.0.	112.10.0.
Clerk to 4th Judge	S. Peale	3,000.0.0.	337.10.0.
Interpretor to do.	Jagernath	1,000.0.0.	112.10.0.
Tip Staff to do.	R. Meldrum	1,000.0.0.	112.10.0.
A Baniyan with his Cash Keeper and Writer.	Jagatram[1]	600.0.0.	67.10.0. Baniyan
		360.0.0.	40.10.0. Cash Keeper
		240.0.0.	27. 0.0.
A Brahmin	.....	360.0.0.	40.10.0.
A Mullah	.....	360.0.0.	40.10.0.
A Persian Munshi	.....	360.0.0.	40.10.0.
A Nagari Writer	.....	240.0.0.	27. 0.0.
A Nasir of Peons	.....	300.0.0.	33.15.0.
50 Peons	.....	2,400.0.0.	270. 0.0.
20 Chopdars	.....	1,440.0.0.	162. 0.0.
2 Darwans	.....	144.0.0.	16. 4.0.
1 Mehterani	.....	48.0.0.	5. 8.0.
Crown Side			
Clerk of the Crown	J. Pritchard	6,000.0.0.	675. 0.0.
Clerk of the Indictments	Wm. Beckwith	3,000.0.0.	337.10.0.
		Carried Over	£34,240.17.0.

1 See Letter from the Governor General and Council to the Chief Justice and Judges of the Supreme Court, 13 March, 1775, (Letter-Book of Sir Elijah Impey, Vol. I, B.M. Addl. Mss. 16265.

		Arcot Rs. Per Annum	£. s. d. Per Annum
Brought over			£34,240 17.0.
Common Pleas Side			
Prothonotary	J.Brooker	6,000.0.0.	675.0.0.
1st Clerk of Paper and Depositions	N.Naylor	2,000.0.0.	225.0.0.
2d.Clerk to do.	R.Litchfield	2,000.0.0.	225.0.0.
Equity Side			
Register	C.Sealy	6,000.0.0.	675.0.0.
1st Sworn Clerk	W.Jugo	(not stated)	
2nd do	S.Jolfrey	(not stated)	
Examiner	J.Mills	4,000.0.0.	450.0.0.
Interpretor to Examiner	P.Mirza	360.0.0.	40.10.0.
Ecclesiastical Side			
Register	C.Sealy	2,000.0.0.	225.0.0
Examiner	J.Mills	1,000.0.0.	112.10.0.
Apperitor	H.Robinson	150.0.0.	16.17.6.
Admiralty Side			
Register	C.Sealy	2,000.0.0.	225.0.0.
Examiner	J.Mills	1,000.0.0.	112.10.0.
Apperitor	H.Robinson	150.0.0.	16.17,6.
Total of the Establishment as settled by the Supreme Court and confirmed by the Board in March, 1775.			£ 37,240. 2.0.

			Arcot Rs.Per. Annum	£. s.d. Per Annum
Subsequent Establishment[1]				
	Brought forward			37,240.2.0.
In Jan 1777	Clerk of the Peace	S.Bagshaw	2,640.0.0.	297.0.0.
	Examiner and Reporter	W.Chambers	4,800.0.0.	540.0.0.
	Council to Paupers	C.F.Brill	7,200.0.0.	810.0.0.
	Attorney to do.	W.Johnson	4,800.0.0.	540.0.0.
	Two Maulavies	Natives	4,800.0.0.	540.0.0.
	Two Pandits	Natives	4,800.0.0.	540.0.0.
	Clerk to Grand Jury	G.Broughton	420.0.0.	47.5.0.
	Interpreter to do.	P.Mirza	420.0.0.	47.5.0.
	Also added to the 1st Interpreter's Salary	G.Dass	1,200.0.0.	135.0.0.
	And to the 2nd Interpreter's Salary	N.Jebb	1,200.0.0.	135.0.0.
Feb.1780.	A shroff allowed to Chief Justice to count salaries to officers	(Not Named)	1,200.0.0.	135.0.0.
Nov.1780.	Added to W.Chamber's Allowance	.....	1,800.0.0.	2,025.0.0.
Apl.1781-July 1782	Court-House-Rent	Rs.2700P.M.	32,400.0.0.	3,645.0.0.

Besides the above it appears from the monthly acct.for April, 1780 signed by Mr.S.Touchet, the Buxey, that the following salaries were also on the establishments. But it has not been traced where they were first added.

Clerk to the Acting Justices Peat	3,000.0.0.	337.10.0.	These are
Do. for Stationary.30 P.M.	360.0.0.	40.10.0.	not
Carried over		£47,054.12.0.	

1 See Elijey Impey to Earl of Bathurst, 9 Feb.,1777, (B.M. Addl.Ms.16266,ff.66a-68a). These charges were approved by the Governor General and Council on 10 Feb., 1777. See

		Arcot Rs. Per Annum	£. s. d. Per Annum	
Brought over			47,054.12.0	
Clerk to His Majesty's Justices	Satchell	2,400.0.0.	270.0.0.	properly Court officers, but are inserted in the list of the Baxey for April, 1780.
Do do do.	Cordoso	1,200.0.0.	135.0.0.	
One head Constable @ 70 P.M.& 5 others @ 60 each per month	.....	4,440.0.0.	499.10.0.	
A Munshi to the Chief Justice	.....	1,000.0.0.	112.10.0.	
Stationary to the Justice @ 35 P.M.	.....	420.0.0.	47. 5.0.	
Do. for Grand Jury @ 35 P.M.	.....	420.0.0.	47. 5.0.	
Sheriff's Bill not on the Establishment Per Month Rs.1408-12-9		16,900.0.0.	1901.0. 0.	Casual
Khiderpur Gaol Rs.422 P.M.		5,064.0.0.	569.10.0.	
			£50,637.1.0.	
In the Directors List for the General Department No.2 near the bottom is a Blank for the Registry of Natives amenable to the Supreme Court. The establishment on this account amounted to £3,750 per annum.			3,750.0. 0.	
	TOTAL -		£54,387.1.0.	

from the Governor General and Council to the Chief Justice and Judges of the Supreme Court, 10 Feb., 1777 (B.M.Addl.Ms.16266,f.68a.)

Law Officers in the Company's Service

Advocate-General - In April, 1777, the Court of Directors created the office of Advocate-General in the Supreme Court, and appointed Sir John Day to the post on a salary of £8,000 per annum "in full compensation for all demands and allowances whatsoever for his services at Fort William."[1] In consideration of his being restricted from undertaking the defence of private suits, the Board granted him an additional monthly allowance of current Rupees 2,500, which was recommended, in their letter of 14 January, 1780, for the approval of the Company. The Board's recommendation was, however, rejected outright by the Directors who, in their letter of 2 February, 1781, demanded the immediate discontinuance of the additional allowance, which was accordingly suspended. The Advocate-General then made representation for the reconsideration of his case, and solicited the continuance of the favour in anticipation of the Company's favourable orders. The Board met his request[2], but the Company, in a letter of 28 January, 1784, ordered him to refund whatever he had received in addition to his original salary on the receipt of the previous direction of 2 February, 1781. It may be observed that

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1 Home Miscellaneous Series, Vol.352, P.127.
2 See Letter to the Court of Directors (7 Dec.,1782), Home Miscellaneous Series, Vol.352, P.130.

the Company was not satisfied with the conduct of the Advocate-General, who had refused to comply with certain formalities and orders of the Supreme Court of Judicature.

Counsel - He was responsible for the conduct of the Company's suits and prosecutions. In June, 1781, the business of the Counsel was bifurcated. Two persons were appointed to discharge the duties of this office. One of them conducted suits and prosecutions, and the other was entrusted with contracts and conveyances. The former was granted an allowance of Sicca Rupees 3,000 per Mensem, or £4,500 per annum. He was prohibited from being engaged in any private suit. The latter was allowed a monthly salary of Sicca Rupees 2,000 or £3,000 per annum, in lieu of retainers and fees in suits.

Attorney on Record - The office of the Attorney on Record had been created before the erection of the Supreme Court of Judicature, although no salary was annexed to this post. In 1775, Jarrett, who occupied this office, laid his claim to a salary in order to put himself on the footing of the other officers of the Supreme Court. On 30 October, 1775, he was accordingly granted a salary of £100 per annum as Attorney on Record. In consideration of his being exclusively engaged in the business of the Company, his allowance was increased to £450 per annum on 11 December, 1775.

Commissioner of Law Suits - He was an inferior law officer of the Company. His office was first established in December, 1777. A monthly salary of Rs.2,000 was attached to the post, which included the allowance for house-rent and writers. The provision of a seperate establishment for the Commissioner of Law Suits was, however, not acceptable to the Company, who, in a letter of 23 December, 1778, desired to have the duties of this office performed by the Attorney on Record.

The Revising Act of 1781 - Shortly after the establishment of the Supreme Court of Judicature at Fort William conflicts arose between the Judges and the Supreme Council, which subsequently assumed a serious proportion to the great prejudice of law and order in the country.[1] In the next chapter, we shall examine in detail the main points of contention between the two. It is enough for our purpose to note here that zemindars and other revenue agents combined together for the preservation of their prescriptive rights and prerogative. They made a common cause with the Majority of the Executive Council, who felt their powers abated by the freedom of the Judiciary.

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1 The Governor General and the Chief Justice worked for the most part in friendship and co-operation, keeping in view the larger interests of justice and administration. Troubles between the Council and the Court arose mainly from the extreme attitude of the Council Majority and some of the Judges of the Supreme Court.

The Regulating Act of 1773 was revised in 1781, with the result that the Supreme Court ceased to have jurisdiction over zemindars or farmers of land revenue or persons in any way connected therewith. It was prevented from the exercise of power in any matter concerning the Revenue, or concerning any act or acts ordered or done in the Collections according to the usage and practice of the country or the Regulations of the Governor-General and Council, who were empowered to determine all offences connected with the collections. No person could be subjected to the jurisdiction of the Supreme Court by reason of his being a landowner, or farmer of land, or in any way associated with the exercise of local authority in the administration or collection of land revenue in Bengal, Bihar and Orissa. It was similarly provided that "no person for or by reason of his being employed by the Company, or by the Governor-General and Council, or by any person deriving authority under them, or for or on account of his being employed by a Native or descendant of a Native of Great Britain, shall become subject to the Jurisdiction of the Supreme Court in any matter of inheritance or succession to lands or goods or in any matter of dealing or Contract between Party or Parties, except in actions for wrongs or trespasses, and also except in any civil suit by Agreement of Parties in Writing to submit the same to the Decision

of the said Court."[1] Further, "no Action for Wrong or Injury (could) lie in the Supreme Court, against any Person whatsoever exercising a judicial Office in the Country Courts, for any Judgment, Decree or Order of the said Court, nor against any Person for any act done by or in virtue of the Order of the Said Court."[2] In the event of any act of corruption on the part of any such officer, the Act of 1781 provided that "no Rule or other Process shall be made or issued thereon until Notice be given to the said Magistrate or Officer, or left at his usual Place of Abode, in writing, signed by the Party or his Attorney, one month, if the Person exercising such office shall reside within fifty miles of Calcutta, two months, if he shall reside beyond fifty miles, and three months, if he shall reside beyond one hundred miles from Calcutta, before the issuing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained; nor shall any verdict be given against such magistrate, until it be proved on trial that such notice hath been given, and in default of such proof, a verdict with costs shall be given for the defendant."[3] The Court could not issue a warrant of arrest in such case until such magistrate should have declined to appear to answer after the service of the process directing his appearance by himself or his attorney.[4]

1 Sec.X.21 Geo.III, Cap.Lxx
2 Sec.XXIV, 21 Geo.III,Cap.Lxx.
3 Sec.XXV,21 Geo.III,Cap.Lxx.
4 Sec.XXVI, 21 Geo.III,Cap.Lxx.

The Act of 1781 also provided that all civil suits between party and party should be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Hindus, by the laws and usages of Hindus. In the case, in which only one of the parties happened to be a Mahomedan or a Hindu, the laws and usages of the defendant were allowed to determine the issue. And, in order to have regard for the social and religious customs of the native inhabitants, it was enacted "that the rights and authorities of fathers of families, according as the same might have been exercised by the Gentu (Hindu) or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held or adjuged, a crime, although the same may not be held justified by the laws of England."

APPENDIX

THE CHARTER[1] OF JUSTICE ON CRIMINAL PROSECUTIONS (1774)

"We do hereby grant, ordain and appoint, that the said Supreme Court, shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the town of Calcutta, and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the Factories subordinate thereunto; and shall have the like power, and authority, as Commissioners or Justices of Oyer and Terminer, and Gaol Delivery, have or may exercise, in that part of Great Britain, called England, to enquire by the oaths of good and sufficient Men, of all Treasons, Murders, and other Felonies, Forgeries, Perjuries, Trespasses and other crimes, and Misdemeanours heretofore had, done, or committed, or which shall heretofore be had, done or committed, within the said Town or Factory, and the limits aforesaid, and the Factories subordinate thereto; and for that purpose to issue their Warrant, or Precept, to be prepared in manner above mentioned, and directed to the said Sheriff commanding him to summon a convenient Number, therein to be specified, of principal Inhabitants, resident in the Town of Calcutta, being subjects of Great Britain, of us, our heirs and successors, to

1 The whole Charter as also the Rules of Practice established by the Supreme Court are printed in the General Appendix, Nos. I and 2, of the Report from the Committee of the House of Commons (1781), commonly known Touchet's Committee.

attend, and serve, at a time and place therein also to be specified, as a Grand Jury or Inquest, for us, our heirs and successors, and present to the said Supreme Court, such crimes as shall come to their knowledge, and the said crimes and offences to hear and determine, by the oaths of other good and sufficient Men, being subjects of Great Britain, of us, our heirs and successors, and resident in the said Town of Calcutta, and to cause all such Witnesses as justice shall require to be summoned, and to administer to them, proper oaths, that is to say, an oath upon the Holy Evangelists of God, to such as profess the Christian Religion; and to others such oaths, and in such manner as the said Supreme Court shall esteem to be the most binding upon their consciences; and to proceed to hear, examine, try and determine the said Indictments and Offences, and to give judgments thereupon, and award Execution thereof; and in all respects to administer criminal justice in such or the like Manner and Form, or as nearly as the condition and circumstance of the peace, and the persons will admit of, as our Courts of Oyer and Terminer; and Gaol Delivery, do or may, in that part of Great Britain called England.

"And we do further authorize and empower the said Supreme Court, in like manner, to enquire, hear,

and determine, and to award judgment & execution of, upon and against all Treasons, Murders, Felonies, Forgeries, Perjuries, Trespasses, Crimes, Misdemeanours & Oppressions, had, done, or committed, or which shall hereafter be had, done, or committed, in the Districts, Provinces or Countries, called Bengal, Bahar, and Orissa, by any of the subjects of us, our heirs or successors, or any person or persons, who shall, at the time of committing the same, have been employed by, or shall have been, directly or indirectly, in the service of the said united Company, or of any of the subjects of us, our heirs or successors, and for that purpose to award and issue a writ or writs to the said Sheriff, prepared in manner before mentioned, commanding him to arrest and seize the Body or Bodies of such offenders, and bring him or them to Fort William aforesaid, and keep him or them, until he or they shall be delivered, by due course of Law, and to do all other Acts, which shall be necessary for the due administration of Criminal Justice in such manner and form, or as nearly as the circumstances and condition of the case will admit of, as our Courts of Oyer and Terminer, and Gaol Delivery, may do, in that part of Great Britain called England. And we do further ordain, and establish, that in such case, it shall not be lawful for such offender, to object to the Legality of the Jurisdiction of the Court, or the grand or Petit Jury; but he shall be indicted,

arraigned, tried, convicted, and punished, or acquitted and demeaned, in all respects, as if the crime had been committed, within the said town of Calcutta, or Factory of Fort William, or the limits thereof:

"And whereas cases may arise, wherein it may be proper to remit the general severity of the law, we do hereby authorize and empower the said Supreme Court to reprieve and suspend the Execution of any capital sentence wherein there shall appear, in their Judgment, a proper occasion for Mercy, until our pleasure shall be known, and they shall in such case transmit to us, under the seal of the Supreme Court, a state of the said case, and of the evidence, and of their Reasons, for recommending the criminal to our Mercy; and in the meantime, they shall cause such offender to be kept in strict custody, or deliver him or her out to sufficient Mainprize or Bail, as the circumstances shall seem to require.

"And it is our further will and pleasure, that in all Indictments, Informations, and Criminal Suits and Causes whatsoever, the said Supreme Court shall have the full and also whole power and authority to allow, or deny, the appeal of the Party pretending to be aggrieved, and also to award, order and regulate, the Terms upon which such appeals shall be allowed in such cases in which the said Supreme Court, may think fit to allow such appeal."

The Charter of Justice as to Civil Suits (1774)

"And We further direct, ordain and appoint, that the said Supreme Court may and shall have power and Jurisdiction to hear, examine, try and determine in Manner hereinafter mentioned, all actions and Suits, which shall or may arise upon or concerning any trespasses or injuries, of what nature or kind soever, or any Debts, Duties, Demands, Interests or Concerns, of what nature or kind soever, or any Rights, Titles, Claims, or Demands, of, in, or to any Houses, Lands, or other things, real or personal, in the several provinces or Districts called Bengal, Behar, and Orissa, or touching the possession, or any Interest or Lieu, in or upon the same, and all Pleas, real, personal, or mixt, the causes of which shall or may hereafter arise, accrue and grow, or shall have heretofore arising accrued and grown, against the said United Company of Merchants trading to the East Indies, and the said Mayor and Aldermen of Calcutta, and against any other of our subjects, who shall be resident within the said provinces, Districts or Countries called Bengal, Behar and Orissa, or also shall have resided there, or who shall have any Debts, Effects or Estate, real or personal, within the same Creic & Adincis

of such of our subjects, and against any other person, who shall, at the time of such action being brought, or at the time when any such cause of action shall have accrued, be or have been employed by, or be or have been directly or indirectly in the service of the said United Company, or of the said Mayor and Aldermen, or of any other of our subjects."

CHAPTER IX

THE STATE OF CIVIL JUSTICE 1772-1780

In the preceding two chapters we have set forth the plans of judicial administration in so far as they related to the Company's courts of Adalat and the Supreme Court of Judicature. Our object is now to study them in their actual operation, and see how far they conformed to the design of their institution.

The period 1772-1780 was for the most part occupied by conflicts between the two systems of judicature, which differed fundamentally in both principle and organisation. These conflicts, however, were bound to arise, as they did, through the juxtaposition of the two systems, which laid the foundation for the erection of the subsequent judicial structure. Their significance lies not only in that they disclose how far the reforms of Hastings were put into practice by the country courts of judicature, but that they also enable us to assess the value of the contribution which the English Judicature made in the course of this period.

Basic Causes of Contention - The first basic trouble arose from a defect in their constitution. The two forms of judicature derived their authority and jurisdiction from two diffent sources: the adalats from the Mughal grant

of the Diwani and treaties with the Nawabs of Bengal; the English Judicature from the Charter of Justice granted by the King of Great Britain under the Regulating Act of 1773. No trouble could arise so long as the jurisdiction of the King's Court[1] was confined to the settlement of Calcutta and the subordinate factories, or the European servants of the Company, and so long as the judges of that Court happened to be nominees of the Company's supreme government at Fort William. But troubles were bound to arise when the Act provided for a completely independent judiciary vested with powers to extend its jurisdiction over all such persons as were employed, or were directly or indirectly in the service of the East India Company, or any British subject. The 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.

Nor did the legislators of the Regulating Act make any endeavour to define the relations between the Supreme Court and the Adalats. It is true that they did not intend to subject the natives in general to English laws, and the Judges accordingly recognized the authority of the Adalats established throughout the provinces for the administration

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1 The Mayor's Court.

of civil justice. But the Adalats did not want to be recognized, and looked only to the Council at Fort William for inspiration and guidance. In these circumstances, it was natural for both the systems to work, as they did, as two distinct entities without a common bond to co-ordinate their functions.[1]

The vagueness of the Regulating Act was another important source of trouble. It declared all persons in the service of the Company as subject to the jurisdiction of the Supreme Court, but made no attempt to define or classify the

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1 In a letter addressed to Lord North in February, 1775, Philip Francis admitted this defect, and advised him to declare the King's sovereignty over the provinces. "Without it," he added, "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 conceive that this may be done without touching the country courts, or departing from the laws and customs of the people." (Parkes and Merivale: Memoirs of Sir Philip Francis, Vol. II, P.27.) See also Francis to Lord Clive, 17 May, 1775, (I.O.Mss.Eur..E.13,P.236). Hastings and Impey also experienced a lack of co-ordination between the Adalats and the Supreme Court. This is why they recommended in 1776 a bill for the better administration of Justice, providing for the desired synthesis between the two systems. (See Forrest: Selections, etc., Vol. II, PP. 496-501). But unfortunately it did not materialise.

It should be remembered that Francis was one with the Judges so far as the question of British sovereignty was concerned. But then the former wanted the predominance of the executive government over the Judiciary - an idea which was repugnant to the latter.

Company's servants. Nor had there been any such distinction of public offices in existence from before. In fact it was impossible to drew definite lines of demarcation between the several forms of revenue agents, for instance, who had come into being on the decline of the Mughal rule, and continued to function under the Company as well. The only way left for a defendant in the Supreme Court was to appear before it, and plead to its jurisdiction to secure exemption from its jurisdiction. Thus, the moment its process issued against a person, his appearance became a matter of compulsion under the Act and the Charter. And the Court could not but issue its process, if the complainant happened to make an affidavit on oath to prove the defendant to be subject to its jurisdiction. Much of the trouble, therefore, would have been obviated by a proper definition of the Company's servants under the Charter of 1774.

The difference of legal concept and process constituted yet another point of contention between the Adalats and the Supreme Court of Judicature. The Adalats had been designed to serve the needs of autocracy: the establishment of immutable rules or laws governing the mode and principle of adjudication was incompatible with the exercise of imperial authority. The process of justice was, therefore, simple,

and demanded an ordinary professional skill to administer it. It necessarily varied according to circumstance and the whim of individuals. Definite rules of evidence to guide the course of trial were equally lacking. The reforms of 1772 did not go far to remove these deficiences. The principal object of that plan was to adapt the country courts to the original purpose of their institution. And even this purpose was not fully realised. Justice, therefore, continued to be subservient to the executive functions of government.

The Supreme Court, on the contrary, started from quite a different premise. The function of the judiciary was to secure not only the protection of life and property, but also the liberty of individuals against the arbitrary proceedings of government or its officers. The administration of justice in the Supreme Court, therefore, was guided by fixed and strict rules of evidence. Its process was necessarily rigid and complex, and made prosecution difficult especially on flimsy grounds of complaint. In the exercise of its power to issue a writ of Habeas Corpus[1] it might compel

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1 A prerogative writ directed to a person who detains another in custody and commands him to produce or have the body of that person before the Court.
The Habeas Corpus Act of 1679 made the granting of a habeas corpus compulsory in the case of a person imprisoned without a legal cause being assigned in the warrant of commital, and provided for the speedy trial of persons imprisoned for treason or felony. See P.G. Osborn: A Concise Law Dictionary for Students and Practitioners, PP.145-146.

the appearance of any offender, and protect the person of individuals against acts of illegal detention. The Judges had authority to call upon the members of government themselves to appear before the Court either by themselves or by their attorney to answer to a cause, if pending in the Court against them. In short, it attached as much value to the point of law as to that of form and process of justice.

A series of conflicts between the two systems of judicature was thus inevitable unless either of them agreed to surrender unconditionally before the other. In 1772, the President and Council at Fort William assumed charge of the country courts, and regarded themselves answerable for their conduct in the administration of justice. Any trouble arising between the Adalats and the Supreme Court thus ultimately became a subject of contention between the Court and the Council at Fort William. The extreme views of the Council Majority and the careless utterances of some of the Judges often tended to produce a deadlock. The Governor-General and the Chief Justice, however, were prompted by a common desire to bring the judicial administration of the Company to a regular and uniform system capable of providing against oppression and abuse of power. They worked for the most part in co-operation and understanding, and prepared the

ground for their successors to build an efficient judicial system.

Civil Justice under the Provincial Councils

With a view to forming a clear conception of the state of civil justice under the system of the Provincial Councils (1773-1780) we shall examine a certain number of important cases tried either by themselves or by the Provincial Sadar Adalats subordinate to them. These cases not only illustrate the fundamental points of contention, which we have mentioned above, but also betray a general lack of regularity and system, the very qualities which the reforms of Hastings were intended to enforce in the administration of civil justice. The arbitrary proceedings of civil courts often became the cause of oppression, and forced the oppressed to seek the protection of the Supreme Court of Judicature.

The Case of Cumaul O'Din (Kamaluddin) 1775 - Kamaluddin was a farmer of the revenue of Hijili under the Calcutta Committee of Revenue. The farm was actually managed by one Basent Roy who acted as Counter-Security to Kamaluddin. In 1774, the entire management was publicly transferred to Basant Roy, who was introduced as such by his primcipal to the Members of the Calcutta Committee. The under-

tenant on his part agreed to meet all the demands of Government arising from the tenure of the Hijili farm. "From that time," wrote Hastings, "Basant Roy had possession of the farm, collected the rents, paid the kists (instalments of rent) to government, and all the demands of the Committee were invariably made on him and on him only, till the month of May (1775). In all that time Cumaul O'Din never interfered in the Collections, never paid a rupee, was never called upon for payment, nor ever appeared before the Committee as the Farmer of Hidgely (Hijili)"[1]

On 27 April, 1775, orders were issued by the Calcutta Committee to prepare an account of the balance standing in the name of Kamaluddin. On the first day of the next month it was transmitted to the Council at Fort William who desired the Committee to make a demand on him, which the latter did, for the balance, amounting to one hundred and thirty thousand rupees. In a reply of 30 June, Kamaluddin declared that he had no concern with the management of the farm, and that he had consequently referred the matter to Basant Roy. Nevertheless, he was called upon to appear before the Committee on 11 July, 1775. His vakil was openly tied up

1 Hastings to the Court of Directors, 22 Sept., 1775, I.O. Bengal Letters Received, Vol.14, PP.349-350. This fact is also borne out by a letter of the Chief Justice, addressed to the Court of Directors on 19 Sept., 1776. See General Appendix III, No.25 (Touchet's Com.Rep.1781).

and put into confinement on 14 July. He was released on the next day. But Kemaluddin himself was arrested on 16 July. He made a representation to the Board, but found no redress whatsoever. He ultimately approached the Supreme Court for a writ of habeas corpus, which was issued on 28 July.[1] He was presented before the Court, who held a short trial and enquired whether it was customary to grant bail in such cases. Cottrell, the President of the Calcutta Committee, answered the query in the affirmative, and admitted the existing practice of requiring the security or under-tenant to satisfy the claims of government before they should finally be made on the principal. The usual process, he added, was to take the bail before the President of the Committee, who reserved a right to call upon a prisoner to appear before the Committee whenever necessary. The Court, therefore, made the order on Cottrell to take the bail. "But to prevent the Justice of the Court from being eluded, by immediately calling for the appearance of the prisoner, which the terms of the bond did not guard against," the Court intimated to him "that Cumaul O'Din's appearance should not be required until endeavours had been made, without effect, th recover the money of the under-tenant."[2]

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1 See Impey's letter to the Court of Directors, 19 Sept., 1775, Gen. Appx. III, No.25.

2 From Elijay Impey to the Court of Directors, 19 Sept., 1775, General Appendix III, No.25 (Touchet's Com.Rep.1781).

But the Council Majority resented the action, although it had been accepted in conformity to the opinions delivered by the President himself of the Calcutta Committee. They proposed Kamaluddin to be re-arrested even in defiance of the Court's order. The Governor-General, however, was seriously opposed to their attitude, which he regarded as rash and illegal.[1] In the course of a letter of 16 September, 1775, addressed to the Court of Directors, Hastings was consequently alleged to have acted in a manner prejudicial to the revenue interest of the Company. As for the Judges, they were said to have assumed an authority contrary to the intentions of the Regulating Act. The Provincial Committee of Revenue at Calcutta, the majority affirmed, was independent of the Supreme Court, whose intervention in judicial proceedings they characterised as an act of usurpation.[2]

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1 Hastings to the Court of Directors, 22 Sept., 1775, Bengal Letters Received, Vol.14, PP.366-368. See also B.M.Addl. Mss.29198, ff.370a-375a, wherein Hastings justified the conduct of Kamaluddin in the form of a reply to a minute of the Majority, dated 21.Nov., 1775.

2 See General Appendix III, No.14. (Touchet's Com.Rep.1781). The above letter of 16 September, 1775, bore the signature of Warren Hastings as Governor-General. In fact, he did not share the views of the Majority on the subject of this controversy. He, therefore, clarified his position in a separate letter written independently on 22 Sept., 1775. "I have already recorded my dissent from the Letter (of 16 Sept.), " he wrote, "Neither the sentiments which it contains, nor the form of it are mine; but it bears the signature of my name and may deceive those, to whom the Official Forms of your Government are unknown, with the Belief that it was written with my participation." Bengal Letters Received, 22 Sept., 1775, Vol.14, PP.347-348.

Hastings refuted the entire basis of the Majority's complaint, and justified his own as well as that of the Court. The decree of the Judges, he added, "makes no alteration in the rights of the Company, or their Power to enforce those Rights Cumaul O'Din tho' enlarged, is still a legal prisoner and compellable to appear whenever he shall be regularly called upon by the Committee."[1]

The charges of the Majority were refuted also by the Chief Justice in a letter addressed to the Directors on 19 September, 1775. "I am at a loss," he wrote, "to find out the Inconsistency of the Judges in taking Bail to appear before the Committee. Had Bail been taken to appear in the Supreme Court, it would have been drawing the case to themselves, and they might have had some cause of complaint. No Decree has been superseded, for no Decree had been made. The Authority of the Dewannee was never nor is intended to be disputed."[2] The Chief Justice also suggested the basic cause of the trouble, which the Majority had side-tracked by advancing a plea of the Company's revenue interest, with which the Court had never interfered."I shall not attempt," he declared, "to answer the Arguments of the Gentlemen,

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1 Bengal Letters Received, 22 September, 1775, Vol.14,P.357.
2 General Appendix III, No.25 (Touchet's Com.Rep.1781, I.O. Parliamentary Branch, No.9.)

tending to show the Inexpediency and Illegality of drawing the cognisance of Revenue causes to the Supreme Court: For though it is most certain, that the Oppressions which are and may be exercised in that Department, called for the Interference of a Supreme Authority; yet we do not apprehend we have such Authority, no such Attempt has been or will be made by the Court. The Gentlemen do not make the Distinction, which is most obvious, between claiming a Jurisdiction over the original Cause, and preventing their Ministers, under the Colour of legal Proceeding, from being guilty of the most aggravated Injustice. The distinction if attended to, is of itself sufficient to clear away everything that can give the last Alarm on the account of the Interests of the Company: For the Court allowingthe custom and usage of the Collections to be the law of the Country, have only compelled the officers of the Government to act conformable to those usages, and not to make use of the colour and Forms of Law to the Oppression of the People."[1]

In fact, the entire proceedings on the subject of Kamaluddin's case betray an attitude of prejudice on the part of the Council Majority. He was put into confinement without requiring the Security to satisfy the demands of government. The Committee refused to grant bail, and

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1 Ibid. General Appendix, III, No.25.

continued to detain him in contravention with the customary practice of the country in revenue cases. He proceeded to the Supreme Court for relief only when the Board had refused to grant it. There he obtained only a temporary discharge on giving bail for his future appearance.

Kamaluddin, however, was again arrested and put into prison in defiance of the Court's decree. Even then the Court took a lenient view of the situation and did not draw any proceeding for contempt. Justice Chambers only issued a writ of habeas corpus for a second time to compel his appearance before the Court. But this time the case was examined on its merits. A sum of 9,033 rupees admitted by Kamaluddin as due to the Company was decreed in favour of the Calcutta Committee, and the prisoner was ordered to be set at liberty on payment of that sum. "The Court has great Reason to complain of the Behaviour of the Committee" the judgment added, "in imprisoning Cumaul O'Din, after his being delivered to Bail, and the Undertaking of their President; and we think it proper now to acquaint the Gentlemen of the Committee that they will be guilty of a Contempt of the Court, punishable by Fine and Imprisonment, if the Prisoner is again arrested by them, or by their orders, directly or indirectly, on account of the same cause, till such Person or Persons which the Laws and Customs of the

Revenue requires, shall be called upon before the Prisoner shall have been duly prosecuted without Effect."[1]

The Case of Cheytan Singh[2](1775)

Cheytan Singh was a zemindar of Bishnapur under the Provincial Council of Burdwan. In January, 1775, an action of debt was commenced against him in the Supreme Court of Judicature. The plaintiff who was sworn to jurisdiction, and declared the Raja of Bishnapur as subject to the Court's

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1 See General Appendix III, No.29 (Touchet's Com.Rep.1781, I.O.Parliamentary Branch No.9. It may be observed that the Court delivered this judgment on the basis of the opinion delivered on the subject by the Roy Royan, the Canungo and other officers of the Khalse, who were regarded by the Court as proper authorities to be consulted in revenue matters. - See Elijah Impey's letter to the Court of Directors, 23 Nov., 1775 (General Appendix No.26, I.O. Parliamentary Branch No.9).

2 He was the brother of Damondar Singh who had contested his claim to the zemindari of Bishnapur in 1771-72, when the Controlling Council at Murshidabad divided the zemindari into two parts, and put both the claimants in possession. See Chapter IV of this thesis.

Complaints of the nature of Cheyton Singh's case are entered in General Appendix III, No.12. They related to the Court's jurisdiction extending to zemindars, who desired the Company's government in Bengal to see that they were not subjected to it. In all such cases they were advised to plead to jurisdiction. See General Letter, Rev.Dept., 20 March, 1776, Bengal Letters Received, Vol. 15, Paras. 23-24, PP.126-127.

It appears that the trouble for the most part arose from a lack of definition in the various grades of revenue agencies and other public offices. Whatever lines of demarcation had existed under the Mughals became obliterated in the course of several political changes which the country experienced on the decline of the Mughal authority. Conflicts were, therefore, a natural accompaniment of the task of institutional reconstruction by the early administration of the Company.

jurisdiction on the ground of holding an employment in the Revenue Department of the Company, for which he received a certain amount of salary by the year or otherwise.[1] He was consequently summoned through a peon in April to appear before the Court, and plead his cause. Instead of immediately complying with the summons, the Raja sent a message for guidance to the Provincial Council at Burdwan. On 13 April, the Raja and the peon both arrived there. The Sheriff's peon was persuaded to let the Raja go on bail for appearance within a period of twenty days which he accordingly did.[2]

It is interesting to note the grounds on which the Burdwan Council unduly interfered with the regular execution of the Court's procession in favour of their protege. "As the Raja," they observed, "is not only a Person of some rank, but also one of the joint Renters of the Bissenpur (Bishnapur) Province, and is likewise in Arrears to Government to the Amount of 36,000 Rupees, we thought that a compliance with the Warrant would, in a great degree, hurt his credit; and, as he is much involved in debt, the evident consequence of his going to Calcutta, would be a number of claims on him from different quarters. We have, therefore, in our private capacities, satisfied for the present the Sheriff's

1 See General Letter, Rev.Dept., 20 March, 1776, Bengal Letters Received, Vol.15, P.120.
2 Proceedings of the Govr.Genl.and Council in the Rev.Dept. 21 April, 1775, (Genl.Appendix III, No.7, I.O.Parliamentary Branch No.9.)

Officer, in granting him Bail for the Rajah's Appearance in the Space of 20 Days. We hope this step will meet with your Approbation."[1]

The Members of the Burdwan Provincial Council thus delayed the execution of the Court's process, and procured, by illegal means, bail from the Sheriff's office, who had no authority to grant it without the permission or knowledge of the Court. And this they did, as they admitted, in their private capacities to save the credit of a person of rank and position, as they believed the Raja to have been.

The Supreme Court, however, immediately sent a bailiff with powers to seize the person of Cheyton Singh, and bring him to the Presidency for contempt of the Court "in not answering to the summons."[2] The Raja accordingly proceeded in charge of the bailiff to Calcutta, where, on his arrival, he was placed in custody of the Sheriff's office. But he was discharged forthwith on application of the Company's Attorney who had instructions from the Board to defend his case.

What is significant for us to note is the fact that the Council Majority, far from disapproving the irregular conduct of their subordinate Council at Burdwan, accused the Supreme Court of injustice and high-handedness,[3] and, in

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1 From the Chief and Provincial Council at Burdwan to the Governor-General and Council at Fort William, 13 April, 1775, (Genl.Appx.III, No.7, I.O.Parliamentary Branch No. 9.)

2 From the Chief and Prov.Council at Burdwan to the Govr. Genl.and Council, 17 April, 1775, Genl.Appx.No.7.

3 See General Letter, Rev.Dept., 20 March, 1776, Bengal

their attempt to discredit the Judges, stated points which ran counter to the evidence of their own attorney. In the course of a letter of 20 January, 1776, they complained "that the Rajah of Bissenpore having been taken and brought down to Calcutta, by a Capias for Debt, has been seized since his arrival here, and has been suffered to remain a Prisoner in the Common Gaol for some weeks."[1] The Company's Attorney, on the other hand, wrote: "On hearing the Rajah was arrived, and in custody at the Sheriff's Office, I immediately applied to Mr. Farrer (Advocate-General) to consult on the necessary Steps to be taken for affecting his Discharge; and in consequence waited on the Judge, then sitting at the Court House: And on my undertaking that Appearance to the Suit should be entered for him, he was forthwith discharged."[2]

But more interesting than this was their determination to make the Raja's case "a matter on which to try the Jurisdiction of the Court."[3] As a matter of fact, the Raja personally did not require the help of the Company's Attorney who, before his appointment by the Board to defend his case, had represented his plaintiff; and he actually

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Letters Received, Vol.15, Para.13, PP.120-121.

1 General Letter, Rev. Dept., 20 Jan.,1776, (Genl.Appx. III, No.9, I.O.Parliamentary Branch No.9.)

2 Proceedings of the Govr.Genl.and Council in the Rev. Dept., 3 May, 1775, Genl.Appx.III, No.8.

3 Ibid., Genl.Appx.No.8.

refused to accept it, when it was actually offered by the Attorney. It may be observed that the order of the Raja's arrest would not have been issued but for the delay in the execution of the Court's process, which, of course, had occurred at the intercession of the Burdwan Council. It was perhaps in the light of his past experience that he rather chose to engage his own attorney for defence than to rely any more upon the Company supporting his cause.

The Case of Seroopchand (1777)

Seroopchand was a Malzamin (security) responsible for the payment of the Company's revenue from Pargana Duckan Sevagepore under the Provincial Council at Dacca. He acted also as Treasurer to that Council. Earlier his father had served the Company in both these capacities by virtue of an engagement concluded with the Committee of Circuit in 1772.

Ever since the death of his father in 1775 Serropchand discharged the obligations of hisstation. In August, 1777, the Dacca Council made a demand on him for a balance of Rs. 10,000 and 6 Paisa[1], and put him into confinement in default of payment. In a representation made to the said Council, however, he stated that the demand in question had already been remitted by Purling[2] on the basis of a joint

1 One paisa is roughly equivalent to one farthing.
2 He was subsequently succeeded by C.W.Boughton Rous as Chief of the Dacca Provincial Council.

petition made to him by the zemindars expressing their inability to collect the Company's stipulated demands in view of the oppressions and ravages caused by the invasions of the Mugs . He, therefore, desired the Council to call into evidence the zemindars concerned, verify the truth of his statement, and save him from the disgrace of "unjust confinement."[1] But the Dacca Council declined for the moment to go into the details of the accounts disputed by the petitioner. They only released him from confinement, but stationed a peon to attend him, unless he gave "a written declaration that he will pay up the whole Amount if it shall hereafter be decided against him."[2]

While enquiries into his revenue accounts were proceeding, a sum of Rs.66,745 was reported to be lying with him as balance to the Dacca Treasury. Meanwhile Seroopchand approached the Supreme Court for redress against what he regarded as an illegal detention. Consequently, Justice Hyde issued an order to be served on the Chief and Members of the Dacca Provincial Council to show cause, by 30 August, 1777, why a writ of habeas corpus should not be issued to bring the person of Seroopchand before the Court. The Chief and Council were, therefore, obliged to ask him to appear before them on 26 August, and place before them whatever

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1 See Proceedings ofthe Dacca Provincial Council, 13 August, 1777 (General Appendix No.6, I.O.Parliamentary Branch Collection No.9.)
2 Ibid. General Appendix No.6.

grievances he had on the question of dispute. The real object of the Council, however, was to take his deposition and prepare a record of their claim on that basis, so that it might be produced, as it was done, as a plea to to prevent the issue of the writ of Habeas corpus. True, in the course of interrogation Seroopchand admitted the fact of succession to his father's office as malzemain or security and the consequent responsibility to meet the revenue demands of government. But he reiterated his previous grounds of remission being already granted on the representation of the zemindars, in which he personally had no hand. He did not know until the night previous to his arrest, he added, that the cause of his confinement was the alleged balance of ten thousand rupees, which, as he still maintained, was not due from him. As to the balance of treasure in his hands, he accepted the correctness of the amount set against his name. But its payment, he declared, was subject to the adjustment of his personal accounts with the gentlemen of the Decca Council, who individually owed heavy sums of money to him. He contended that one of them, by name Shakespear, owed Rs. 10,000 as principal, excluding an interest of another sum of Rs.1000 . On being questioned, however, Shakespear denied the existence of the transaction altogether, and threatened him, on the contrary, with action in the Supreme Court. In view of

Seroopchand's refusal to meet both the revenue and treasury demands, the Council unanimously resolved to dismiss him from the post of treasurer, and remanded him into confinment till he was able to pay the whole amount[1]. On his request for permission to go every day to his house at Meal-time, the Council refused to grant this liberty, but asked the Nazir to see that his servants and relations should have free access to him at all times.

The relevant point for us to note is that the Dacca Council ordered the dismissal and imprisonment of Seroopchand without ascertaining the correctness or otherwise of his contention. None of the zemindars, who were said to have been responsible for the alleged remission of Rs.10,000 were called into evidence. Of the Members of the Council who were declared to have owed large sums of money to him, only Shakespear was examined, and his statement was accepted on its face value without its being corroborated by any other witness. Seroopchand was a Keeper of the Council's cash by contract. The latter sat in judgment in their own case, and punished the former with dismissal and confinement without even securing the previous assent of the Supreme Council at Fort William. The customary practice in revenue matters was to grant bail which was also denied in this case. Besides, the prisoner was not permitted to go to his house for meals - a disability

1 Proceedings of the Dacca Prov.Council, 26 Aug., 1777, General Appendix, No.6.

to which prisoners were exposed in causes of theft.

The proceedings of the Dacca Council on the subject of this dispute were transmitted to the Company's Attorney at Calcutta to be placed before Justice Hyde to justify the detention of Seroopchand. Far from the Court being satisfied, the attorney himself felt surprised at the irregularity of the Council's proceedings. "I did not choose to show him (Justice Hyde) that Part of the Proceedings," he wrote, "where the Board resolve to confine him for the Balance remaining due to the Company, as Coossanchy (Khajanchi) or Banker, it not being clear to me that they are authorized to do that."[1] He admitted that he could not convince the Judge of the adequacy of his plea, and requested the Secretary to the Supreme Council to order the despatch of any other proceedings which might give a clear insight into the facts of the case. On 30 August, Justice Hyde, therefore, ordered the issue of the writ which, however, was subsequently recalled owing to certain bona fide omission. A second writ was issued on 19 September. The return made on the next day by the Company's advocate covered no fresh ground of justification. He simply "set up a Title of the Governor-General and Council, by themselves and their servants, in all matters concerning the Territorial acquisitions and

1 From Robert Jarrett (Company's Attorney) To Richard Sumner, Secretary to the Govr.Genl.and Council at Fort William, 31 August, 1777, (Genl.Appx.No.6, I.O.Parliamentary Branch Coll.9.)

Revenue, to do whatever the late President and Council, or Select Committee, at the time the late Act of Parliament passed, then did, or at any time heretofore, might have done."[1] Seely, the prisoner's advocate, pleaded to the right by which the late President and Council exercised the arbitrary powers of arrest and imprisonment. To this the government side could give no satisfactory reply, but desired more time which, however, was not granted. The Maulawies of the Court, on the other hand, indicated that a ministerial power of arrest did not exist in the first instance. "The party," they observed, "should be at liberty to be heard against the Demand made, and the Account on both sides should be examined."[2] Justice Le Maistre, who held the Court, appreciated the legality and justice of the opinion delivered by the maulawies, and regarded it as conformable to the repeated commands of the Directors to administer justice strictly and impartially throughout the provinces in the Company's possession. He, therefore, questioned the authority of the Dacca Council to sit in judgment in their own case, and viewed with displeasure the several restraints and disabilities[3] to which the prisoner

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1 See Justice Le Maistre's Argument and Judgment (General Appendix No.9, I.O. Parliamentary Branch Coll.9.)

2 Ibid.

3 "The prisoner was kept in such close and strict confinement that he was not suffered to go out of the prison doors to take his usual meals, without affecting his caste..." The Maulawies of the Court held that it was customary to permit prisoners to go home for their meals at usual times under police guards. See Le Maistre's Argument and Judgment (General Appendix No.9).

had been subjected in the course of his confinement. Seroopchand was, therefore, granted a temporary discharge from his imprisonment subject, of course, to giving bail for future appearance. In so doing the Judge had regard for the interest of the Company, whose claims, if any, might be prejudiced in case his release was unconditional.

It must be said, however, to the discredit of Justice Le Maistre that in the course of his judgment he made certain irresponsible utterances which might have caused apprehension among Members of the government. "But who are the Provincial Chief and Council of Dacca?", he observed, "They are no corporation in the eye of the Law - The Chief and Provincial Council of Dacca is an ideal body- The Man who states a Right to detain in Custody, under the orders of others, must give the Party the Names of the Persons who ordered him, in order that he may see them; and he might as well say, that he was commanded by the King of the Fairies, because the law knows no such Body."[1] At the time of issuing the writ of habeas corpus on 30 August, 1777, Justice Hyde had also made insinuations against the conduct of the Dacca Council. Such utterances often became the cause of suspicion between the conflicting parties, and did more harm than good to the cause of justice.

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1 See Le Maistre's Argument and Judgment (General Appendix 9).

The Case of Ramconto Baboly (1776)

He acted as Malzamin or security for the arrears of revenue from Pargana Shawpore under the Calcutta Committee of Revenue. In March, 1776, he was in confinement of the Court of the Committee. While returning under an escort from the Court, where he had been to adjust his accounts, he was seized by an officer of the Sheriff to produce him before the Supreme Court in a case started against him in that Court. The Council Majority "were of opinion that it was proper case for the Trial of the Company's Rights."[1] The Governor-General, however, proposed an expedient to avoid troubles in all such cases, in which individuals should lodge pretended claims in the Supreme Court on persons detained by orders of the Provincial Council, and have them removed with a view to evade the demands of government. He advised to have suits instituted in the Supreme Court against all such persons in the Company's name for balances due from them, reserving, of course, "the claim which the Company might have to an exclusive jurisdiction over the zemindars and officers of Government."[2] But the Council Majority felt doubtful whether the expedient could possibly answer the intended purpose. They consequently adopted a resolution "that when

1 General Letter, Rev.Dept., 25 Nov., 1776, Bengal Letters Received, Vol.15, Para.19, P.531.
2 General Letter, Rev.Dept., 20 March, 1776, Bengal Letters Received, Vol.15, Para.27, P.128. See also Rev.Consultn. at Fort William of 8 March, 1776.

any person confined for the payment of his rent, is released from the Cutcherry of the Provincial Council by virtue of any writ issued from the Supreme Court of Judicature, Notice should be given to the Sheriff and Gaoler, who might have such debtor in Custody, of the Debt due to Government, which ... will make them liable for the Demand of Government should the Debtor be suffered to escape, or should not be remanded or forthcoming, when called upon by Government to answer the Demand."[1]

The resolution of the Council Majority does not seem to have been put into execution, because the Governor-General subsequently proposed a second solution of the same problem, which was unanimously adopted by the Supreme Council. The Company's standing Counsel was directed "to move the Court that a Rule might be made on the Sheriff that any Prisoner in arrest, by any order of the Dewanny Court, but suffered to go at large under the custody of Peons, who may be arrested by virtue of any order or writ of the Supreme Court, shall not be released without previous notice of the discharge of such prisoner being given by the Sheriff to the President, or Secretary of the Committee, provided that the name of such prisoner

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1 Ibid. Para. 28, PP.128-129.

with the cause of the original arrest, shall have been entered by the President or Secretary of the Committee in the Sheriff's Books, & that in case any person in the custody of the Sheriff in any civil suit is applied for to the Court or any Justice thereof, he may be brought before the Committee, the President, or Secretary, showing such cause as the Court or the Judge thereof shall deem sufficient for the purpose, & that the President shall give such assistance to the Sheriff as shall prevent any rescue or escape in conveying him to and from the Calcutta Committee, the prisoner remaining at all Times in the Custody of the Sheriff or the Keeper of the Common Gaol & Directly on the breaking of the Committee reconveyed to the Prison from which he came." It was further directed by the Council at Fort William "that on any notice in writing under the hand of any Justice of the Court given to the Keeper of the Dewanny Prison or any Person acting for him, or to the President or Secretary of the Committee, stating that the appearance of any person committed to custody of the Keeper of the Dewanny Prison, is necessary for the purpose of appearing or answering to any evidence in any Cause depending in the Court, which any Judge should deem reasonable, the Prisoner should appear according to Requisition

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1 General Letter, Rev.Dept., 25 Nov., 1776, Bengal Letters Received, Paras.20-21, PP.581-633.

provided that such Prisoner remained in the custody of the Keeper of the Dewanny Prison and returned with him or his office to the Dewanny Prison, after having complied with the purpose for which he should be brought before the Court or Justice, and that the Keeper of the Dewanny Prison should accordingly keep a Book in which the Attorney or any Plaintiff in the Supreme Court against any prisoner in the Dewanny Prison might enter the name of such prisoner and Attorney, & that such names having been entered the Keeper of the Dewanny Prison should give previous notice before the enlargment or discharge of such prisoner from his Custody."[1]

The Rule was submitted to the approval of the Supreme Court. The Judges were divided in their opinions on the question of accepting the scheme of compromise in its entirety. But it was finally passed by the casting vote of the Chief Justice, who admitted the rule as an effective means of preventing collusions in revenue matters of government.

The Case of John Stewart (1775)

John Stewart was Secretary to the Governor-General and Council, and held farms under the Calcutta Committee

1 General Letter, Rev Dept., 26 Nov., 1776, Bengal Letters Received, Paras.20-21, PP.831-833.

of Revenue. In October, 1775, he was cashiered by the Supreme Council for an alleged mismanagement of the Company's revenues. He, therefore, brought a damage suit for Rs. 1,800 in the Supreme Court against Auriol, his successor in that office.

The case was significant, because in the course of its proceedings certain developments of constitutional importance brought the Court and the Council to the verge of a crisis which, however, was averted by the exercise of prudence on both sides. On 23 November, 1775, Stewart's attorney desired Bruere (Board's Assistant Secretary) by a letter to produce, in the Court on 28 November, a number of records which he required for the support of his claim. But the Supreme Council resolved by a majority to refuse compliance with the requisition. On 28 November, the Assistant Secretary consequently attended the Court on a subpoena, and expressed his inability to meet the Court's demand in view of the Board's having declined to give him the necessary permission. The Chief Justice interpreted the Board's attitude as "a positive denial of Justice."[1] He observed that the Members, who had voted against complying with the attorney's requisition, were liable to separate actions to damages on the part of the plaintiff. But before proceeding to take any action on the evidence of the Assistant Secretary,

1 From the Govr.Genl.and Council to the Court of Directors, 29 Nov., 1775, General Appendix III, No.18.

the Court ordered their Prothonotary to attend the Governor-General and Council with the following message: "That the Court is given to understand, that the Board refuse granting copies of the Papers mentioned in a notice delivered to Mr. Bruere by Mr. Jackson, as Attorney for Mr. Stewart, and which are required to be produced on the Trial of a Cause now before the Court, between John Stewart, Esq., and James Peter Auriol Esq. - That they cannot go on with the trial of the Cause, without having them produced in Court - That the Court is apprehensive, that this Honourable Board denied procuring these Papers, with the Idea that the Application came from the wrong quarter; and that Notices of this Nature are always delivered by the Attorney - That unless these Papers are produced immediately, the Cause must be put off for want of them, till Tomorrow."[1]

The Prothonotary explained the Court's message as a requisition, which was immediately complied with. The Board ordered extracts to be prepared of only those parts of the papers, which related to the Cause in question. The Chief Justice, on his part, observed that the Court's message was not meant to be a requisition: it was only an intimation to the Governor-General and Council, he added, that they would render themselves liable to action for

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1 General Appendix III, No.18 (I.O.Parliamentary Branch Collection No.9).

damage, if they withheld the necessary documents required by the plaintiff's attorney in his case. The Board, however, felt apprehensive of the Court's attitude, which they interpreted as an act of intervention with the secrecy of their deliberations.

In the course of trial the Court came to know that the Charge on which Stewart was discharged, had not been given in writing, and that proper time had not been allowed for the defence of his conduct. Judgment was, therefore, awarded in favour of Stewart.

The Council Majority seriously resented the judgment of the Court, which they regarded as an act of infringement on the executive powers of government.[1] In their minutes of 21 November, 1775, they indulged in unfounded incriminations, and attributed the state of disorder to the interfering conduct of the Court. "If we dismiss the Judge-Advocate," they added, "he applies to the Supreme Court for a Mandamus[2] to re-instate him in his office. If we dismiss the

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1 See General Letter, Public Department, 20 March, 1776, Bengal Letters Received, Vol.15, Para.20, P.12.

2 A high prerogative writ which issues in the King's name from the High Court of Justice on application to the King's Bench Division to some person or body to compel the performance of a public duty where no other effective means of redress is available.. Osborn: Concise Law Dictionary.

Secretary of our own Board, we see him encouraged to bring an action for his salary against his successor."[1] Hastings declared both the charges of the Majority as incorrect and baseless. The alleged writ of Mandamus, he observed, was never granted by the Court.[2] As for the second insinuation, he believed that Stewart's friends had dissuaded him from bringing any action in the Supreme Court. But when the plaintiff himself was determined to proceed with the case, "it was not in the power of the Court to prevent it." In fact, the object of the Court was not to bring into discussion the powers by which the Supreme Court had dismissed Stewart. "The Court have already declared," wrote Elijah Impey, "That they will not try whether the cause of dismission is good or not. The Court will never permit the power of the Governor-General and Council to dismiss, to be discussed before them; they know the consequences, and will not in any Instance attempt to abridge the authority of the Governor-General and Council over the inferior servants."[3] The main object

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1 Forrest: Selections, etc. Vol.II, P.494. The entire minutes may be referred to Ibid. Vol.II, PP.491-498.

2 Ibid. Selections etc. II, P.494. See also Elijay Impey's refutation to this allegation. "It can hardly be imputed as a crime on the Judges," he wrote, "that an application is made to the Court. Had they (Council Majority) been candid they would have stated, that Mandamus was refused, and on grounds which would ever after prevent application of that nature." General Appendix III, No.28.(I.O. Parliamentary Branch No.9).

3 General Appendix III, No.28.

of the Supreme Court was to know whether the instructions of the Directors inhibited the Governor-General and Council from suspending or dismissing their servants, as they had done, without giving a copy of a charge in Writing, and calling upon them to make their Defence. A judgment was given in favour of the plaintiff, because the mode of his dismissal was irregular and opposed to the Company's instructions transmitted to the Governor-General and Council for their guidance on their appointment under the Regulating Act of 1773.

The Patna Cause (1777)

The Patna Cause forms one of the most interesting expositions of the manner in which justice was administered by the Provincial Council at Patna. The action arose in the Supreme Court from the following circumstances:

Shahbaz Beg was a native of Kabul. He came to India in search of fortune, and rose to a military command under the East India Company. He obtained also an altamgha grant of free lands in Bihar from the Mughal Emperor. He amassed considerable wealth in the course of his military service from which he retired after the battle of Buxar, and settled at Patna. He married one Kaderch Begum, by whom he had no issue. His nearest kin was his brother Alam Beg

who had four sons. He came to visit Patna with his son, by name Bahadur Beg, and after residing there for some time, returned to Kabul, leaving Bahadur to the care of his uncle Shahbaz Beg. The nephew married the sister of his aunt Nadersh Begam, and lived with his uncle with a hope to succeed to his property. In 1776, Shahbaz Beg died.[1] A dispute of inheritance naturally arose between the widow and her nephew. The latter made a petition to the Court of the Provincial Council at Patna. The English translation of that petition reed as follows:

"Mirza Shew Baz; Beg sent for me from Kabool, and said to me, You are my Brother's son. There is no difference between my Brother's son and a son; I make you the Master of my House; You are my Descendant whenever you may be acquainted with everything: Having given everything to your charge, I will go to Cabool. Thus it is known to everybody, and the English Gentleman also knew it, that he made his Heir, and the Representative of himself ... Now the wife of the deceased Khan being incited by diverse deceitful Persons, has secretly carried away the Effects from the House, and keeps them in another Place: I therefore pray for your Honour, That some Hircarras may

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1 According to Bogle, it occurred in November, 1776. The Touchet Com.Rep.accepted this statement. But according to the plaint of Nedersh Begam her husband's death took place on 10 Dec., 1776.

be stationed by Government, that they may not find an opportunity of removing the Effects; and whatever may have been carried away, may be also demanded, and kept in the House; and that an order may be issued to the Cauzee from the Presence to ascertain my Right, and having established my Right may give Information to the Presence, that your Petitioner may obtain his Right."[1]

By a parwana issued under the signature of Simeon Droz, the acting Chief of the Patna Council, the qazi and mufti of the court were directed on 2 January,[2] 1777, to take in presence of the disputants or their vakils, an inventory of all the goods, effects and property left by the deceased; (2) to Collect the money and goods, and lock them up in a safe custody under proper seals, so that no one might be able to embezzle them "until the time of the decision/trial and division"; and (3) to transmit to the council a written report, specifying, "according to ascertained facts and legal justice, how much is to be given; to what person, according to the Furuyez/Coran and the Fetwa/Decrees."[3]

The qazi and mufti accordingly proceeded to the house of the deceased, and after some resistence on the part of the widow executed the orders of the Council. In the

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1 Patna Appendix No.1.
2 The parwana is dated 2 December, 1777 in Bogle's letter to the Governor-General and Council, dated 13 April, 1777. See Patna Appendix No.13. It should be 2 January, 1777, as it occurs in the body of the parwana itself.
3 Patna Appendix No.18.

course of this execution, however, they placed peons on the Begam's house in order to restrict the passage of her men and servants. They appointed Zekeriah,[1] a nephew of the widow, to represent her cause before the law officers. While taking the desired inventory of property, they asked her to move from one room to another until she was finally removed to another part of the house on the declared ground of completing the work committed to their charge by the Council. The qazi and muftis then examined the evidences which the parties produced in support of their respective claims. On 30 January, 1777, they submitted a report containing a fatwa or decree which they desired to be delivered in the case.

This report set forth the grounds of the contention with a summary of depositions taken on both sides. The claims of Bahadur Beg were not supported by any documentary evidence. Nor was any witness examined to corroborate his statement of right to succession. The widow likewise maintained her claim to the entire inheritance, but she based it on three distinct documents alleged to have been executed in her favour in the life-time of her husband. They were (1) a Mehrnama or marriage settlement; (2) a Hibanama or a deed of transfer; and (3) an Ekararaam or a deed of gift or acknowledgment. Of the three documents

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1 He was the son of Shahbaz Beg's sister, and had been brought up in the family since childhood.

the Mehrnama, as the report declared, could not be produced within four-to-five hours from the time it was demanded on the spot by the qazi. As for the remaining two, Bahadur contended that they had been forged on the death of her husband by means of the Seal, which lay still in her possession. The qazi and muftis personally examined only one witness in support of this allegation. The remaining three witnesses, who were adduced by Bahadur's vakil, were not present on the spot. Two of them were said to be attesting officers of repute. The third was an Armenian who was alleged to have heard from one of the witnesses of the widow that her husband had executed no such deed in her favour. The qazi, therefore, arranged to send peons to them with notes of enquiry on the subject of the alleged forgery. The peons brought verbal answers, which essentially differed in their contents. But the law officers gave their verdict, and declared the documents as bearing the marks of being spurious. As everything urged on the part of the widow, they concluded, "seems to want support, and on the other hand, as Bahadur Khan's story appears clear and explicit, we would recommend that, exclusive of the Ultumgaw (Altamgha), which does not compose a part of the inheritance all the Deceased's Property be divided into four shares, whereof three should be given to Bahadur Khan; his father being

the legal Heir of the Deceased, one to Nedereh Begam, the Deceased's Widow."[1]

The entire fatwa or judgment of the qazi and mufti was accepted by the Patna Council, who immediately issued a second perwana, asking them now to execute the division of property on the spot according to their own determination. The altamgha was ordered to be made over to Bahadur who was to allow one-fourth of its produce to the widow for her maintenance. The Council also ordered Zakeriah and four other supporters of the widow to be put into confinement for the alleged charge of forgery, and delivered over to the Faujdari Adalat at Murshidabad to take their trial there.

The process of distribution was accompanied by serious troubles which finally led to an action in the Supreme Court. The widow complained that she was forced to leave the house again in the course of partition. She repaired to a place called the dargah of Shah Azam in the neighbourhood of Patna. She also took away her slave women and the altamgha grant, including the seals of her husband. With the consent of the Patna Council , however, peons and sepoys were stationed on the dargah to restrict the passage of food and necessaries of life for the widow. The object was to starve her into submission. The division of property, on the other hand, was made in the absence of any representative of the widow.

1 See Patna Appendix, No.2.

She, therefore, made an appeal for redress to the Governor-General who called upon the Patna Council to explain their conduct, which by itself brought no relief to the complainant. She then proceeded to the Supreme Court, and brought an action of trespass against Bahadur Beg, Qazi Sadree and the two muftis, by name Barakatullah and Ghulam Muqdoom. The action was for assault and battery, false imprisonment and other personal injuries for which she laid her damage at six hundred thousand rupees.

Bahadur Beg first pleaded to the jurisdiction of the Supreme Court, and subsequently added a plea of not guilty on the ground of having acted as a suitor.[1] The other defendants generally pleaded not guilty, and stated in their notice of justification that they had acted as ministers of a duly-constituted court of justice.[2]

The Court ruled out Bahadur's plea to jurisdiction in view of his being established as security for the payment of the Company's revenues from the pargenas of Gidhaur and Amarboo in Bihar.[3] As for the notice of justification, the defendants contended that the Council at Patna had derived authority from the late President and Council at

1 See Patna Appendix, No.12.
2 Ibid. No.13.
3 Patna Appendix, Nos.8,9 and 10.

Fort William to sit and act as a court of justice, and to hear and determine such suits with powers to enforce their decrees. Their decisions were subject to an appeal only to the Governor-General and Council. The law officers added that suits between Mahomedans were determined according to Mahomedan law, which, in its turn, was decided by reference to the qazi and muftis of the court. On such reference being made to them, their notice of justification concluded, they examined the action or suit, heard the parties or their vakils, and delivered a report according to the Mahomedan law, whereupon the Council gave judgment.[1]

The Court, however, declared the justification of the law officers as inadequate and inconsistent, which it set aside on the ground of Delegatus non potest delegare. As for the justification of Bahadur Beg, it was also ruled out, because it did not cover all the counts in the suit of Nadirah Begam in the Supreme Court.[2] The defendants were thus precluded under the rules of the Court from offering any evidence in defence of their conduct. But they were allowed to adduce it in mitigation of damages, which in turn gave an occasion for the Court to examine the case on its merit. On 3 February, 1779, the Court finally gave

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1 Ibid. No.13.
2 See Appendix, Nos.15, 16 and 17.

a judgment in favour of the widow who was entitled to a damage of 300,000 rupees to be paid by all the defendants with a cost of Rs.9,208-10. They were arrested and brought down to Calcutta to be confined there in the common gaol. The qazi died on the way, but the remaining three were committed to the gaol, and their property seized in the satisfaction of the Court's judgment. They lay in imprisonment till1781, when they were released on the Company's standing as security for the payment of the entire damage. An appeal was made to the King-in-Council in 1784, but it was dismissed in 1789. In the meantime, the widow brought another action against the Chief and two Members of the Provincial Council at Patna. The Supreme Council ordered the defence of the case on the cost of the Company, but the plaintiff succeeded in recovering a damage of 15,000 rupees from them. The Supreme Council had also to provide for compensation for the families of those who had been put into prison.[1]

The significance of this cause lies in the fact that it reveals how far the administration of civil justice in the Provincial Council at Patna conformed to the regulations adopted since 1772. Under the Additional Regulations of

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1 See Bengal Revenue Consultations, 10 Dec., 1779 and 4 February, 1780, Home Miscellaneous Series, Vol.422, PP.966-969 and PP.1203-1213.

12 January, 1774, for instance, the power of summoning the parties and hearing, trying and determining civil suits vested in the Provincial Council or their Superintending Members. The native law officers were to decide only the point of law, not of fact. But the qazi and muftis conducted the whole trial in this case, and submitted a report of their fatwa or decree, which covered the points of both law and fact. The Council accepted their judgment in its entirety, and asked them to execute it accordingly. The Governor-General himself took a serious objection to this irregularity, and declared that the examination of witnesses was entirely foreign to the duty of the native officers of justice, and that it ought to have been done before the Adalat.[1]

In fact, this irregularity did not form an exception. Bahadur Beg's petition distinctly suggested that it was a general practice. The qazi himself was to ascertain the point of right. The task of the Council consisted in simply securing the execution of claims in the light of reports made by the former. Hogle, the Company's Commissioner of law suits, not only admitted the existence of this inconsistency, but justified it on the score of expediency. "That to give the Mussulmans of this Country the full

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1 Patna Appendix, No.7.

advantage of being tried by their laws," he wrote, "it is necessary that the fact as well as the law be referred to their own Doctors, inasmuch as it requires a knowledge of the law to try the fact and to discover the points that are material to the cause, and upon which the laws turns."[1] Evidently, he insufficiently considered whether such proceedings would run counter to the very object of judicial regulations which had been designed to bring civil justice under the direct supervision of European judges.

The Supreme Court, however, declared the proceedings of the law officers as illegal. On the principle of Delegatus non potest delegare, the Chief Justice observed the Patna Council had no authority to transfer the powers which had been delegated to them by the President and Council at Fort William. Like Hastings, the Court pointed out that the qazi and muftis had assumed and exercised powers which did not belong to them. But while Hastings satisfied himself by calling for an explanation, the Court punished them for the transgression of authority.[2]

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1 Touchet's Committee Report, 1781, I.O. Parliamentary Branch Collection No.8, P.10.

2 In the course of their defence the qazi and muftis contended that they were Ministers of a Court of Adalat duly constituted by the Company's government at Fort William. This argument however, did not convince the Court, because it transpired on enquiry that the qazi had been appointed by the Chief Qazi at Murshidabad under the seal of the Mughal Emperor Shah Alam, and that he acted under the authority of the Supreme Council at Fort William who could not dismiss him without the formal assent of

The irregularity of process constituted a second point of objection. On the Complaint being lodged, both the parties ought to have been summoned to represent their cases on oath in the open court. But the Provincial Council did not summon Nadersh Began at all. They ordered the sealing, locking up and sequestering the effects of the deceased person merely on a motion of Bahadur Beg. Thus Nadersh Begum was completely deprived of the benefit of a previous notice of enquiry, otherwise she might have kept all his documents and evidences in readiness for investigation by the law officers. Even on such a vital question as the appointment of a vakil or agent to represent her cause she was suddenly called upon to make her decision on the spot, and Zakerish was appointed to that trust more on the initiative of the qazi and muftis than the widow herself. All this happened in contravention with the judicial regulations which required both the parties to be summoned and heard in the open court regularly assembled for the

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the Chief Qazi or the Nawab. This inconsistency arose from the partial continuance of the forms of double government, in which the law officers of the Nizamat, who likewise served in the Diwani Adalats, received their formal appointments from the Nawab. See Bengal Rev. Consultn., 27 April, 1773, B.M.Additional Mss.29079, f. 5b; also see abstract report from the Patna Council, 22 July, 1776, B.M.Addl.Mss.29077, f.31a. It appears that in spite of the Council's proposal for a separate establishment of law officers in civil courts, no action was taken by superior authorities, because the qazi and muftis, who primarily belonged to the Nizamat, continued to function as such in civil courts as well.

purpose.[1]

In the normal course of procedure an appeal might lie with the Governor-General and Council in their capacity as the Sadar Diwani Adalat, and the appellant might seek redress against the partial decision of a subordinate court. But this superior adalat had already been abolished in November, 1775. Naderah Begam, therefore, approached the Governor-General, but no redress could be rendered available. She finally resorted to the Supreme Court whose enquiries revealed that there was no proof of the existence of the Provincial Adalat at Patna de facto earlier than the year 1777 in which this cause arose, and that the first proceedings bore the date 2 January, 1777.[2]

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1 See Touchet's Committee Report, 1781, I.O.Parliamentary Branch Collection No.9, P.10. Golding, a Member of the Patna Council, admitted that the process accepted by the Council was opposed to the usual practice of the Court. To explain this departure from the normal course he pointed out that the Council regarded the case more as a matter of law than that of fact. It appears that they accepted the correctness of Bahadur's complaint without hearing the other party. See also Letter of the Chief of the Patna Council to Hastings, 7 May, 1777, Patna Appendix No.6. The correctness of the contents of Bahadur Beg's plaint was admitted on the basis of the personal knowledge of the Members of the Patna Council and the Governor-General. The Supreme Court objected to this principle of adjudication and observed that those who administered justice ought to know nothing in a cause by private communication of the parties, or their agents, and that all their knowledge should be derived only from that which appeared fairly and openly in the course of proceedings. Patna Appendix, No.17.

2 See Patna Appendix No.17. The Provincial Adalat at Patna did exist even earlier than 1777. Proceedings of the Patna Diwani Adalat were regularly transmitted to the Sadar Adalat at Calcutta. See B.M.Addl.Ms.29077, f.29a. The practice appears to have ceased about two months before the Sadar Adalat was discontinued in November, 1775.

As for the report itself, it was both incomplete and incongruous. It said nothing about the manner in which the law officers had collected the effects of the deceased and made their inventory. Nor did the report make any reference to Bahadur Beg's complaint of secreting and removing the goods lying in possession of Nadereh Begum. It was completely silent over how the law officers had placed peons on the house of the widow and prevented free ingress and egress the night before the inventory was taken. Nor did it mention how, instead of collecting the effects at once place, they had required the Begum to move from one room to another till she was finally removed to another part of the house. Under the parwana or order issued to the qazi and muftis by the Patna Council, their report ought to have furnished information on all such points of reference, which was obviously omitted.

On the other hand, the law officers took notice of a controversial issue, which was raised by Bahadur Beg in the course of their local investigation, but which formed no part of his original plaint. It related to the forgery of the documents produced by the Begum in support of her claim. This issue engaged their exclusive attention, and finally determined the entire course of their fatwa or decree, although the evidence examined to establish its correctness

was all too vague and inconclusive.[1] Wilson, however, observes that the issue or forgery was immaterial from the legal point of view. The law officers, he adds, "ought to have declared more explicitly that, forgery or no forgery, such documents could not possibly stand in law; and that, if the deceased did really execute them in his lifetime, it must have been because he did not properly know what he was about."[2] In no circumstances, he concludes, could the widow have got, under the Mahomedan law, more than one-fourth. But the fact remains that the officers of justice did stress the point of forgery which undoubtedly constituted the principal basis of their fatwa. And when the widow instituted her case in the Supreme Court, the Chief Justice was naturally guided in his judgment by what they had actually done rather than what they ought to have done in those circumstances. Moreover, the question of forgery may not have been significant from the legal point of view. But it did effect the course of subsequent litigation. Wilson himself admits the complications which arose on account of the hasty action of the Patna Council in arresting Zakeriah and other supporters of the widow,

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1 B.K. Wilson, who has tried to justify the conduct of the law officers, has also observed that their efforts to ascertain the genuineness of the deeds were feeble and inconclusive. See Introduction to the study of Anglo-Muhammadan Law, P.100.

2 Ibid. P.100.

which, of course, they did on the charge of forgery indicated in the body of the said report. The result was that at the time of the distribution of property "there was no one who could be trusted to receive, on her behalf, the share of the realised assets which had been set apart for her."[1] Much of the trouble would have been obviated, if only the qazi and his associates had refrained from stressing the point of forgery as the outstanding fact of their enquiry, which led to the immediate imprisonment of her representatives, and subsequently became a serious cause of her contention in the Supreme Court.

The oppression which accompanied the execution of the decree formed yet another point of contention. When the division of property started, the widow was forced to leave the house. While proceeding to the shrine of Shah Azam, the qazi's peons attempted to search her palanquin for the recovery of the seals and the grant of altumgha, which still lay in her possession. She was rescued from this outrage by a person who stood by her side, and offered himself to forfeit his life rather than that she should undergo that indignity. But as soon as she got into the asylum, it was surrounded by sepoys, who remained there for three months.[2]

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1 H.H. Wilson: Introduction to the Study of Anglo-Mohammadan Laws, PP.103-104.

2 The Chief of the Patna Council admitted the fact of sepoys having been posted with a view to intimidate the widow into giving up the slave women and the necessary papers lying with her. See his letter to the Governor-General, 7 May, 1777, Patna Appendix No.6. None of the defendants in the Supreme Court controverted these acts of

The Governor-General resented the use of these oppressive measures, which he regarded as contrary to the honour of the widow.[1] They were subsequently withdrawn by his orders, but the Supreme Court had to take cognisance of them in awarding a judgment of her favour[2].

The jurisdiction of the Court formed in no sense a less significant issue of interest. The Chief Justice declared that Bahadur Beg as subject to its jurisdiction on the ground of his being employed as a 'Farmer' in the service of the Company. The renters of Bihar took this opportunity to lodge a collective protest against what they regarded as an infringement and loss of their "honour, fortune and credit". "We pleaded our cause ourselves," they argued, "or through their vekils in our own manner, no expense or delay attending the process; ... and if the cause related to the Revenue, the Gentleman (of the Patna Council) presiding was himself acquainted with the affairs, and he gave instant redress by orders the

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irregularities and oppression, admitted by the law officers in the course of executing their decree.

1 From Hastings to the Chief and Council at Patna, 12 January, 1778, Patna Appendix, No.7.

2 "Had our process been ever exercised in a manner similar to this," the Chief Justice observed, "it would have been a fruitful and fair source of clamour against the Court, by those, who feeling their powers cramped by it, and apprehending its Justice, are desirous of getting rid of it." See Patna Appendix No.17.

best adapted to the case in question... The zemindars were not to be called in but in matters of importance, and then not during the season of harvest. But now the contrary of this will happen to us from the English Court."[1] As a matter of fact the zemindars and farmers of revenue exercised great powers of punishment, which often proved oppressive to the tenants.[2] The interference of the Supreme Court was bound to restrict their abuse of authority and influence. Therefore, they regarded this interference as ignominious and contrary to the customary practice of the country.

The Patna Cause thus clearly showed that the administration of justice in the Provincial Council of that place did not conform to the judicial regulations which the government of Warren Hastings had designed to create order out of — the chaos of the earlier administration. Nor was it an easy task to regulate the conduct of the Company's servants who had succeeded to the worst form of despotic traditions providing no examples for their guidance excepting those of interested groups of persons who exploited their ignorance in the name of customs and usages of the country. As for the Judges of the Supreme Court, they never questioned the authority of the Company's Court of Adalat. But they

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1 Patna Appendix No.14.

2 Brutal acts of murder were often committed in the Collections, but they were justified on the so-called manners and customs of the country. See Bengal Letters Received, 31 March, 1773, Vol.II, Para.17, PP.402-403.

definitely wanted to ascertain whether justice was administered in the Adalat conformably to the regulations set up by the Supreme Council. And when it was proved beyond doubt that the law officers had exercised judicial powers without legal authority, the Court punished them for acts of irregularity, which had resulted in the oppression and exclusion of the widow even from the share assigned to her according to their own decision.

Trial of Civil Suits at Murshidabad (1777-1779)

The mode of trial and principle of adjudication in civil suits are clearly revealed in a case that arose in June, 1777 between one Bebun Mohan Dutta and Sheeonaut Shoam. The former instituted a suit in the Provincial Adalat at Murshidabad for the recovery of Rs.250 on account of ready money and jewels. On 3 December, 1778, the Superintendent[1] of the Adalat referred the case to the determination of one of the munsiffs or umpires of that court. The final hearing of the case came on 23 March, 1779, when Panchoo Alias Bowanny Shoam, the father of Sheeonaut, personally appeared to plead the cause of his son, although he was no party to it. The total claim of Rs.250 included a part of Rs.22 on account of wages. In the course of his pleading, which, of course was allowed by the Court, Bowanny, therefore, insisted that the plaintiff's vakil

1 Otto Ives was acting as Superintendent, when the case arose. He had been appointed in 1773 as one of the assistants of the Murshidabad Council, and had since acted as Persian Translator. The name of the Munsiff

should undertake to prove his principal's having been in the service of the defendant, and that in the event of his failure to do so he should give up the whole of his demand. This the plaintiff's vakil refused to do; and the Munsiff agreed with him that his inability to prove a single article could not, with any show of justice, invalidate the rest of his claim. Bowanny then lost his temper, and broke out in the most reprehensible invectives to the Munsiff, whom he declared to have played the part of the plaintiff's vakil. "What do you know of justice," he said to the Munsiff, "I plead after the Calcutta manner."[1] After this he abused the Munsiff in the most insulting manner, and went away from the Court.

On 7 April, 1779, the Superintendent sent a writ of summons with four peons to bring Bowanny to the Court. But the latter disregarded the summons with contempt. When more peons were sent to bring him by force, they were resisted with violence by his sons, Bholanath and Gopinath, together with a great number of people who were armed with sticks to threaten the peons into flight. They, however, seized Gopinath, the younger son of Bowanny, and brought him to the Court. This obliged Bholanath to present himself next morning before the Superintendent who ordered his

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was Ierullah Khan. The case is entered in the Bengal Rev.Consultations of 11 June, 1779. See Home Misc. Series 421, PP.547-586.

1 From the Superintendent or the Adalat to the Chief of the Murshidabad Council, 3 May, 1779, Home Misc.421, P.552.

arrest and sentenced him to twenty days' imprisonment.[1]

As for the main cause in dispute, the defendant refrained from attendance at the Court ever since 23 March, 1779. On the representation of the plaintiff's vakil he was summoned to appear on 14 May, 1779. But the peon who had been asked to serve the process on the defendant reported insults and threats of beating to which he had been exposed in the service of the summons. The Superintendent then awarded a decree in favour of the plaintiff.

The case thus gives a clear insight into the state of civil justice under the Provincial Council at Murshidabad. An ordinary suit of the value of Rs.250/- took about two years of time for its final determination. Both the parties were, no doubt, summoned to represent their case either by themselves or by their vakils, who were required to deliver in a vakalatnama or power of attorney before they could claim to speak on behalf of their parties. They were like ordinary agents who occasionally attended courts, and hardly possessed a fair knowledge of the cause they were called upon to represent. In the midst of their pleading the parties could ask them to retire, and take up the pleading themselves, as Bowanny did.[2] No definite method and rules of evidence were followed by the Court in the

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1 Ibid. Home Miscellaneous Series,421, PP.553-555.
2 See Home Misc.Series, 421, P.558 (Bengal Rev.Consultn. 11 June, 1779).

conduct of the trial. The parties or their vakils could plead their cause by a simultaneous exchange of questions and answers in the manner they liked. This often led to altercations in the open court. But more striking than this was the appearance of Bowanny, the father of the defendant. He was no party to the case. Nor had he been summoned by the Adalat to appear as witness in his son's case. But even then the Munsiff did not object to his inclusion as a pleader of the defendant. He did plead, and tried to force his argument on the court. The non-acceptance of his contention led to a serious and ugly situation, which rendered him liable to punishment for contempt of the court.

But the Munsiff had no powers of arrest. He was a simple umpire to whom petty cause were referred for decision with the consent of both parties. On his representation, therefore, the Superintendent deputed peons to bring Bowanny to the Court. But in his place, they brought his son Gopinath. Next day, his brother Bholanath came to secure his release, but was himself arrested and put into prison for twenty days without even a mockery of trial to justify this punishment. True, the peons had made a report of violence alleged to have been committed by Bholanath and others in resisting the execution of the court's process. But the Superintendent did not scruple to verify the correct-

ness or otherwise of the allegations made by his peons. He was not even asked as to what he had to say in justification of his conduct. After all Bholanath had not been guilty of any contempt of the court. On simple allegations made by peons, and that unverified on oath, he was sentenced to twenty days' imprisonment. And this the Superintendent regarded as an act of clemency shown to him in consideration of his rank and nobility. He would otherwise have been punished in the normal course by flogging.[1]

The case of Gorachand forms another example to illustrate the mode of proceedings and principle of adjudication which operated in the Provincial Adalat at Murshidabad. He brought a suit in 1779 against one Mirza Jellee1 for the recovery of a small sum alleged to have been due upon an adjusted account. But Jellee1, on the other hand, affirmed that a "much larger sum was due to him from Gorachand. Different judges heard the cause in its different stages. Finally, Hosea[2], the Superintending Member of the Murshidabad

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1 See Superintendent's letter to the Chief and Council at Murshidabad, 3 May, 1779, Home Misc.Series, 421, PP.553-55.

2 Rev.Firminger writes he was Chief of the Provincial Council at Murshidabad and head of the Diwani Adalat (See Introduction to the Fifth Report etc. P.CCLVii.) It seems to be contrary to facts. Hosea was appointed Fourth to the Murshidabad Council in 1773 with Samuel Middleton as Chief and Edward Baber as second to the Council. In 1779, Edward Beber acted as Chief and Hosea as one of the ordinary Members, in which capacity he served as Superintendent of the Diwani Adalat by rotation (See General Appendix No.80 to the Touchet's Com.Rep.1781, I.O. Parliamentary Branch No.9). See also Bengal Rev.Consultn. 11 June, 1779, Home Misc., Vol.421, PP.547-886. Baber acted as Chief from Jan., 1775 to Dec.,1779 (See 6th Rep. Sel.Com.of the House of Comm.1782.PP.16-17.I.O.P.B.No.14.).

Council, awarded judgment in favour of Jellcel, the defendant. He was not only discharged from the plaintiff's demand, but the Court required the plaintiff to pay him a much larger sum in satisfaction of a claim which constituted no part of the original plaint. On Jellcel's representation the Court ordered the seizure of the effects and person of Gorachaud in full satisfaction of the claim adjudged by the Superintending Members.

Thus the Court awarded a decree and order for its execution in favour of the defendant in the absence of any suit being formally instituted on his behalf.[1]

The Cossijurah Case (1772)

This case represents a state of chaos in civil justice, which arose from the conflict between the Council and

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1 Gorachaud brought an action in the Supreme Court, but he could not succeed. His advocate laid more stress on the illegality of Rosea's judgment than the merits of the case itself. The Chief Justice, therefore, did not think it within the jurisdiction of the Supreme Court to enquire into the mode and principle of adjudication which operated in the Provincial Adalat at Murshidabad. (See General Appendix No.4, I.O.Parliamentary Branch No. 9).

The Company's advocate-General was fully convinced of the irregularity of Rosea's decision, and had earlier recommended a compromise in the Supreme Court in the face of the Board's oppositions. In the course of his argument in favour of a compromise he had admitted that the Supreme Court had not the most distant design to bring into question the just authority of provincial courts, but that it only desired them to answer the purpose for which they had been instituted. See Opinion of Sir John Dey, 21 March, 1779, General Appendix No.4).

Judges of the Supreme Court. One Cossinaut (Kashinath) applied to the Governor-General and Council in May, 1779 for the recovery of a large sum of money alleged to have been lent to Sunder-Narain, the zemindar of Cossijurah (Kasijora) in the district of Midnapur.[1] The Board decided to refer the plaintiff's account to the defendant in order to invite the latter's objections to it. But Kashinath became dissatisfied with this move, and instituted a civil suit in the Supreme Court on 13 August, 1779. He claimed Rs.133,405 under two bonds said to have been signed by Sundernarain. He also stated in the course of his affidavit that the defendant was subject tothe Court's jurisdiction by reason of his being employed in the collection of the Company's revenue in the Kasijora pargana.

The plaintiff obtained a writ of capias to secure the arrest of Sundernarain. But the latter absconded, and the writ could not be executed. In November, 1779, therefore, Kashinath procured another writ to sequester the lands and effects of the defendant with a view to compel his appearance to the action. This time the Sheriff sent a large body of peons to ensure the execution

1 See Cossijurah Appendix No.2, Touchet's Committee Rep. (1781), I.O.Parliamentary Branch Collection 9).

of the Court's process , because he had reasons to distrust the intention of the government who had been advised by the advocate-general not only to withdraw their support, but to ask the defendant not to "appear, or plead, or do or suffer any act which (might) amount on his part to a recognition of the authority of the Judicature as extending to himself."[1] But on 30 November, 1779, the Governor-General and Council ordered Ahmutty, the Commanding Officer at Midnapur to detach a sufficient force to intercept the Sheriff's officer and his armed peons, and keep them in custody until further orders.[2] On 2 December, he accordingly detached two Companies of troops under Bomford who took them prisoner, and brought them to Calcutta under proper guards. Kashinath then brought an action in the Supreme Court against the Governor General and Members of the Council for having obstructed the satisfaction of his claims on Bundernarain. They first entered appearance, but subsequently asked their Counsel to withdraw it on their behalf, declaring that they would not submit to any process of the Court. In the meantime, North Naylor, the Company's attorney, was called upon to show cause why notice of attachment should not issue against him for having advisedthe Board to oppose the Court's process,

1 See Cossijurah Appendix No.5, I.O.Parliamentary Branch Collection 9).
2 Cossijurah Appendix Nos.6 and 7.

and on his refusal to answer interrogatives he was committed to prison for contempt. A process also issued against Bamford to attach him on a similar charge of contempt. But it was successfully resisted by the use of military force. The controversy between the Council and the Court thus produced a state of deadlock which seriously obstructed the normal course of justice. It came to an end only when Kashinath withdrew his suit on the personal assurance of Warren Hastings to do full justice to his claims.

Whatever may have been the circumstances, the Governor-General and Council could not legally justify their conduct. Under the Charter of Justice they were bound to aid, assist and obey the Court.[1] The Court had also the authority to summon the Governor-General and Members of the Council individually to answer to a cause either by themselves or through their attorney.

The entire basis of the Council's defiant attitude arose from their non-acceptance of the Court's jurisdiction over zemindars. But the Court did not ever claim any such jurisdiction over zemindars simply as zemindars. The Judges only contended "that their characters as zemindars will not exempt them from the jurisdiction of the Court, if they be employed, or be directly or indirectly in the service

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1 See Bengal Rev. Proceedings, 11 Feb., 1780, Home Misc., 422, PP.1226-1227.

of the East India Company, or any other British subject."[1] Several such zemindars had pleaded to its jurisdiction and their plea had generally been sustained. The Raja of Kasijara could appear likewise, and obtain his exemption; and then the situation would not have taken such an ugly turn, as it did, by adopting a course of disregarding its process. This course necessarily implied, as Stephen observed, that every defendant should "judge in his own case, whether he was subject to the jurisdction of the Supreme Court or not, residents of Calcutta only excepted."[2] The acceptance of such implication would have defeated the very purpose for which the Court had been established. Nor could the Judges accept it either under the Regulating Act or the Charter of Justice.

The most significant part of the whole development was that even Warren Hastings, who had usually acted with moderation in all his dealings with the Court, accorded, on this occasion, his approval to the use of military force in

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1 From Sir Elijah Impey to Lord Viscount Weymouth, 12 March, 1780, (Cossijurah Appendix No.25). Earlier in a letter of 12 Nov., 1778, addressed to the Governor-General and Council, Bogle, the Company's Commission of law suits, had already accepted the correctness of this view held by the Court. He clearly stated that the zemindars had pleaded to jurisdiction, and secured their exemption in several suits commenced against them. (See B.M.Addl.Ms. 29073, f.572a). Hastings himself had held such views on this question, and observed that the zemindars must first plead to jurisdiction before they could get exemption (See Hastings to Laurence Sullivan, 21 March, 1776,) (Gleig: Memoirs of Warren Hastings, Vol.II, P.36.)

2 The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol.II, P.264.

resisting the execution of its writ. George Rous, the Company's Counsel in England, attributed the unanimity of the Board in this unhappy development to a defect in the constitution of the Regulating Act. "This violent contention," he wrote, "arose from a defect in the institution which had established two powers perfectly distinct and independent without providing any means to prevent their collisions."[1] It is, no doubt, true. But then several such occasions of dispute had arisen in the past, and had already been settled by constitutional and peaceful means. None of them had been accompanied by violence as the Kasijara case.

As a matter of fact, Warren Hastings had once expressed strong views in favour of the Court and that also on a similar subject of controversy, which subsequently became the cause of crisis in this case. "If every man," he observed, "who declared himself to be no British subject, nor employed by any, was, in virtue of his own declaration, to be exempted from their authority, all men would make the plea. Their right to this exemption must be tried to be known, and they must be compelled to appear, or give bail for their appearance, that it may be tried."[2] The more

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1 B.M.Addl.Ms.29190, f.483b.
2 Hastings to Laurence Sulivan, 21 March, 1776, (Gleig: Memoirs of Warren Hastings, Vol.II, P.36).

constitutional defect of the Regulating Act, therefore, cannot successfully explain the exceptional behaviour of Hastings, who had rarely evinced any feelings of tenderness for zemindars.

It is not unreasonable to think that political considerations occupied his mind and determined his other relations accordingly. Early in 1779 the Bombay army had capitulated before the Marathas. The danger of a Coalition between the Marathas, Mysore and the French was increasingly threatening the security of British interest in the country. Towards the close of 1779, the Nizam, who had been the only ally of the Company in the Deccan, was suspected of having joined the coalition. "At no former period," writes Marshaman, "had the English power been menaced with greater peril, and it required all the fortitude, resources and genius of Hastings to meet the crisis."[1] He naturally regarded the assistance of zemindars and the internal unity of the Council as essential conditions for success against the enemies of the Company. He felt the need of the Council's internal support all the more since Barwell, his constant supporter, had expressed his intention to sail for England. The attitude of Francis, on the other hand, had also grown milder and susceptible to proposals of compromise because of the death of Monson and Clavering who had invariably supported him in his fight

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1 Marshaman: History of India, Vol.I, P.373.

against Hastings. Before his departure in March, 1780, Barwell forged a truce between Francis and Hastings. Kasijara was therefore the result of this truce.[1] Many of the ugly proceedings, however, might have been averted but for the prolonged illness of the Chief Justice for two months.[2]

The foregoing discussions of civil cases, extending over the period 1772-1780, thus disclose a wide margin between the precept and practice of the first judicial plan of 1772. The principal object of that plan was to restore the country courts to the efficacy of their original

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1 Elijah Barwell Impey describes this truce as a "hollow compact" which was "frail and ephemeral." See Memoirs of Sir Elijah Impey, P.170 and P.128 footnote. A subsequent letter of Hastings lends support to Elijah Barwell's view on this question. Speaking of his conduct in the Kasijara case Hastings observed: "This is difficult and tender ground for me, and I own I walk with diffidence and pain upon it. It is a service in which I have been pressed against my will, and I have exerted all my invention to avoid it." (See Gleig: Memoirs, Vol.II, P.247). See also Sir Elijah Impey's letter to Lord Thurlow, 11 Jan., 1780, printed in E.B.Impey's Memoirs of Sir E.Impey, PP.178-185.

2 Hastings had great regard for the friendship of Sir Elijah. He went to his house and felt uneasy for what had happened in the Kasijara case. The Chief Justice wrote in a letter to Lord Thurlow (11 Jan.,1780) that he revered Hastings for many noble qualities and believed him when he declared that he was not left to himself in the Kasijara business.

institution, which, as Hastings believed, might well serve the requirements of his administration. And, to achieve this object the framers of the plan provided for two main safeguards: (1) European judges to preside in the provincial civil courts and(2) a Sadar Diwani Adalat at Calcutta to hear appeals, and preclude arbitrary and partial decisions of lower courts.

As for the Sadar Diwani Adalat, it was set up in March, 1773.[1] But itdid not long continue to function. In May, 1775, the Governor-General and Council raised issues on its jurisdiction which, as they thought, might clash with the local jurisdiction of the Supreme Court at Calcutta. They abolished the Sadar Adalat altogether in November, 1775.[2] Thus no court of appeal existed from that time till it was revived in 1780. The second safeguard remained inoperative for the greater part of this period.

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1 See General Letter, Rev.Dept., 25 March, 1775, Bengal Letters Received, Vol.II, PP.446-447.

2 See Bengal Rev.Letter, 24 Nov., 1775 (Home Misc.,102, P.455); also Bengal Rev.Consultation, 20 Oct., 1775. (Appendix IX to the 1st Rep.Sel.Com.of the House of Commons, 1782).

The issues of jurisdiction were first raised by the the Board in their letter of 23 May, 1775 (See Letter-Book of Sir Elijah Impey, Vol.I, B.M.Addl.Ms.16265, ff.20a-20b.). In a reply of 28 May, the Judges tried to remove their misapprehension. They assured the Board that no decree from their decision would lie in the Supreme Courts. Nor would they remove to the Supreme Court any cause brought by appeal to the Sadar Adalat. The Judges also declared that the ministerial officers of the Adalat might easily execute any decree of their court. (See Letter-Book of Sir Elijah Impey, Vol.I, B.M.Addl.Ms.16265,ff. 22b-23a). Nevertheless, the Board abolished the Sadar Adalat.

And so far as the European judges of the provincial courts were concerned, their primary business was the collection of revenue. Justice formed only a part of their manifold duties. The system of rotation formed a still more serious defect in the constitution of provincial courts of diwani adalat. The Superintending Member of a Provincial Council could hardly acquaint himself with the business of the court before he was replaced by another Member of his kind. Edward Baber, who had worked as Chief of the Murshidabad Council from January, 1775 to December, 1779, openly acknowledged the serious consequences of this drawback. "It frequently happened," he observed, "that their office expired in the middle of a cause, and the successor, who took it up in that stage, was not so conversant in it, and being unacquainted with the circumstances which had passed, the natives often availed themselves of this situation, and endeavoured to perplex and puzzle the new officer as much as possible."[1] The Members of his Council, he added, often complained of the system of justice by rotation.

C.W.Boughton Rous, who held the office of Chief of the Dacca Provincial Council for about three years, shared these views of Baber. He further complained that the multiplicity of business in the Provincial Council could

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1 6th Rep.Sel.Com.of the House of Commons (1782), I.O. Parliamentary Branch Collection No.14, P.17.

hardly give them time to go through the appeals that lay from the decisions of the Provincial Adalat. A more serious point of objection related to the system of the Superintending Member being allowed to sit in the Council at his own judgment of the Adalat. Besides, each Provincial Council was placed at the head of too extensive an area to be administered with ease and efficiency. In the province of Bihar, for instance, there was only one Provincial Council at Patna. This arrangement was definitely prejudicial to the interest of both revenue and justice. Hastings, therefore, gradually alienated districts from each of the six grand divisions, and placed them under separate Collectors till the Provincial Councils were finally abolished in February, 1781.

A lack of professional training constituted yet another serious drawback in the judges of the Provincial Court of Adalat. The Company had provided for no such training. "Men are one day employed in the commercial department," wrote Keith in 1822, "the next day in the diplomatic line, and afterwards find themselves on the Bench."[1] These judgments, therefore, were necessarily contradictory and varied with the whims and caprices of individuals in spite of similarity in the nature and value of causes.

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1 A History of the Rise and Progress of the Judicial or Adalat system, Part I, P.97.

Much of the trouble arose from the inadequacy of the judicial regulations themselves. The plan of 1772 was lacking in the quality of legal perfection. It made no provision for fixed rules of evidence, which might direct the course of trial along regular channels. Nor did it establish adequate rules governing the mode of proceedings and principle of adjudication. One might harp on the simplicity of its process intending justice to be administered on principles of equity and common sense. But as equity could arise only from experience and knowledge of legal practice, most of the European judges of the Company failed to secure the ends of justice. They had neither this requisite knowledge nor the experience of the law they were called upon to administer. In these circumstances, they had to depend upon the resources and honesty of the native law officers whose conduct their office had been designed to control and supervise.[1] Irregularities in the conduct of proceedings and trial of civil suits, therefore, continued in the judicial administration of the Company's courts.

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1 Even one of the Company's most competent servants like C.W.B.Rous, who held the office of President of the Calcutta Committee in 1776, was perplexed by the contradiction of legal opinions delivered in writing by ten Brahmins in a case of inheritance of a Hindu widow against her grandson. They first gave an opinion which entitled the widow to half the share of the disputed estate. But the grandson subsequently obtained, from the same set of Brahmins, a legal verdict, which strengthened his claim to the entire estate, the widow being entitled to a bare maintenance. Rous, therefore, referred the contention to the decision of the Supreme Council, who consulted the Brahmins then engaged in

The analysis of the Patna Cause shows clearly that the hearing and trial of civil suits in Bihar were mostly done by the native officers of justice in the course of their local investigation. This practice was not only contradictory to the principle of delegatus non potest delegare, but it struck at the very design of the judicial regulations which had provided that all civil suits must be heard and tried by the judge of the Adalat in the open court regularly assembled for that purpose. Both the Supreme Court and the Governor-General, therefore, declared such proceedings illegal and unconstitutional.

Yet, John Shore, who acted as President of the Calcutta Committee in March, 1779, justified this irregularity, and even made it a cause of complaint against the Supreme Court who objected to any judgment being passed without regular trials and proceedings in the open court. "Decrees founded on a knowledge of the customs and usages of Hindostan," he grumbled, "may be tried by statutes of English laws; and if the proof of the customs be not clear and positive, which frequently happens, the Superintendent who passes them, or his officer who carries them into execution, may become

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the codification of Hindu laws, and transmitted their final views to Roue for execution and future guidance. (See Bengal Rev.Consultations, 1 Feb., 1774, and 16 March, 1774, B.M.Addl.Ms.29079, ff.23b-25a.

The number of experienced civil servants like Roue was very small. In fact the total number of civil servants on the Bengal Establishment in 1776 was only 160. It increased to 312 in 1783. See Addl.Mss.29238,f.30a.

the sufferers. Even in the daily case of business in the Committee, which relates to the management of the Revenues, we feel too sensibly the truth of these observations. In place of a summary mode of proceedings we are cautious to observe distinctions, rules and forms, lest our proceedings, if hereafter laid before the Supreme Court, should be deemed informal or irregular."[1]

The observations of Shore thus distinctly suggest that the Supreme Court was opposed not to the determination of cases according to local customs and usages, but to the passage of judgments without ascertaining their correctness, so that injustice might not occur, as it often did, on the frivolous plea of customary practices. But his contention was that his Committee should continue to decide cases of disputed property, as they did, simply on the reports of their amin's local investigation. As for the maintenance of regular records of proceedings, the regulations also stressed their importance, and desired compliance. But Shore's complaints indicated that his Committee regarded such formalities as unnecessary burdens, and agreed to execute them merely under the fear of the Court's punishment.[2]

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1 Minutes of John Shore, 15 March, 1779, Home Miscellaneous Series, 421, PP.145-146. John Shore (later Sir John Shore) became President of the Board of Revenue under Lord Cornwallis, and subsequently succeeded the latter as Governor-General in 1795. (D.N.B.).

2 With such mentality obedience to the orders of even government could not be effectively ensured; Compare the dismissal of Holmes, President of Calcutta Committee, and other members in October, 1778. (B.M.Addl.Ms.29073, f.509a).

The lack of a co-ordinating machinery made the situation still worse. With the abolition of the Sader Diwani Adalat in 1775, the provincial courts acted independently without any supreme authority in that department to correlate their functions and reduce their proceedings to a uniform system. The Governor-General and Council, on the other hand, suffered from their own internal dissensions, and could hardly give a consistent guidence to their subordinate councils. The Majority of the Council at Fort William made it almost a maxim "to force the Supreme Court into extremities for the purpose of finding fault with them."[1] Nevertheless, the Judges of that Court extended protection against acts of oppression, and saved the parties from ruin in several instances.

In short, in the midst of the entire conflict between the Council and the Supreme Court there stood out a useful lesson for subsequent guidance. It was clear that the country courts could not yield the same efficiency under the Company's government as they had done under the early Mughal Emperors, unless their constitution was substantially modified and their process of justice radically altered. The reason was plain and simple. The fear of the Mughal Emperor often prevented the miscarriage of justice. The

1 See Hastings to Laurence Sulivan, 21 March, 1776, (Gleig: Memoirs of Warren Hastings, Vol. II, P.36.).

flexibility of process, or the uncertainty of the rules of evidence could not seriously obstruct the normal course of justice. With the Company, however, the situation changed. In the early part of its rule it was difficult to ascertain as to where the supreme authority of government ultimately lay in the country. At any rate, it did not rest in a single person as in the Mughal emperor. It was distributed among a number of persons who were hardly united on any major policy of government. In other words, the element of fear ceased to operate as an effective factor. To secure the ends of justice, therefore, rules of evidence had to be elaborated with precision; the functions of judicial officers had to be specified by fixed rules of conduct; the jurisdiction of courts had to be defined and their working co-ordinated by fixed and uniform rules of procedure; and all such rules or orders governing judicial administration had to be codified for the guidance of judges and rendered available in a language intelligible to them. It is true, these requirements tended to complication, and necessitated provision for professional training. But it could not be avoided. The English government could not minimise evils of individual discretion in a manner different from what was conformable to the genius of their race.

CHAPTER X

REFORMS IN CIVIL JUSTICE 1780-1782

In March, 1780, the Governor General and Council revived the Sadar Diwani Adalat, and on 11 April adopted certain reform measures, which partially met the defects of the existing Provincial Council system.[1]

The outstanding feature of this reform consisted in the separation of justice from revenue. The Provincial Court of Diwani Adalat continued at the centre of each of the grand divisions of Calcutta, Murshidabad, Burdwan, Dinajpur, Dacca and Patna. But the Governor General and Council appointed a covenanted servant of the Company to preside in each of the Provincial Courts of Adalat under

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1 The plan was first recorded in the Revenue Proceedings of 28 March, 1780. The Governor-General and Council adopted it in their consultations of 11 April, 1780. See Colebrooke: Supplement III, pp.14-22. It is printed also in Appendix No.4 of the 1st Rep. from the Sel.Com. of the House of Commons (1782) (I.O.Parliamentary Branch, Collection No.14).

The experience of bitter conflicts between the Council and the Court in 1779 demanded radical measures of reform in the constitution of civil courts. But the Anglo-Maratha War was largely responsible for the detention of progress in the internal administration of the provinces. The energy of the government was mostly directed towards the recovery of the British prestige which had immensely suffered in the unconditional surrender of the Bombay army in January, 1779. It was only in January of 1780 that brighter prospects began to appear once again under the Command of Goddard who brought victory to British arms, which finally resulted in the treaty of Salbai in 1782.

the title of Superintendent of Diwani Adalat. His jurisdiction became independent of the Provincial Council whose function was restricted exclusively to matters bearing immediate relation to public revenues. The earlier system of monthly rotation was abolished, and the tenure of his service was to continue for life, removeable only at his own requisition or on proof of misconduct. But the plan of reforms now required him to take an oath of loyalty and uprightness of conduct before he could be invested with the office of Superintendant.[1]

As for the jurisdiction of the Provincial Diwani Adalat, it now extended to all causes of property, including those of inheritance and succession to zemindaries and talukdaries, which formerly had constituted the special responsibility of the Company's supreme government at Fort William. Nevertheless, persons connected in any way with the collection of the public revenues were still outside the jurisdiction of the Provincial Diwani Adalat. They were immediately responsible to the Provincial Council of their division. The Superintendent could not compel the appearance of zemindars and farmers to any action, except with the written permission of the Provincial Council who had authority to reject such permission and give reasons for

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1 Earlier in 1776, the Govr.Genl. had incorporated these principles of reform in a Bill for the better administration of Justice (See Forrest: Selections, etc. Vol.II, PP. 496-501, and 533-537), but the Bill was not approved by the Company.

their rejection only to the Governor General and Council.[1] Nor could he normally send for even inferior agents of revenue. In case he regarded their presence as indispensable for the immediate execution of justice, he was required to send an officer with a warrant under the public seal and his signature, and record in his judicial proceedings the reasons for issuing such warrant to bring them from the lands of zemindars and farmers of revenue.

The rules of process, arbitration and appointment of amins for local investigations continued as before with little variation. Plaintiffs, however, were now required to file petitions in a more regular form either by themselves or by their vakils duly authorized in writing for the purpose. Each petition had to contain a definite state and value of the case, and it could not be accepted without the signature of the plaintiff or his vakil. No vakil could sign a petition unless his name was duly registered, and he possessed a proper authority for so doing.

The rules governing the maintenance of proper records of proceedings continued as before. The parties, however,

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1 The main object of these reservations was to draw distinct lines of demarcation between revenue and judicial functions of the Company's administration consistently with the interest of the Collections. See letter of the Governor General and Council to the Chief and Committee of Revenue at Calcutta, 11 April, 1780, (Appendix No.4 to the First Rep. from the Sel. Com.of the House of Commons, 1782.)

were now required to pay certain fees for obtaining authenticated copies of such records as they wanted to be exhibited as a piece of evidence in any other Court of Diwani Adalat. Records might be kept in Persian or Bengali, but the orders of the court had necessarily to be given in Persian.

In all suits up to the value of Rs.1,000 the decision of the Provincial Adalat was final. Beyond that value an appeal lay with the Governor-General and Council in the Court of the Sadar Diwani Adalat. All appeals, however, had to be made only within ten days after the decree of the Superintendent. The appellant could, therefore, present it to the Chief and Council of his division, who were required to transmit the same without delay to the Governor-General and Council in their department of the Sadar Diwani Adalat. No appeals, however, could lie from the decision of arbitration unless it was proved to the satisfaction of the court that the arbitrators in question had ever been convicted or that they had been in collusion with the parties and received bribes or consideration for their awards.

The regulations of 11 April, 1780 also specified the amount of fees to be charged by the Diwani Adalat at the commencement of every cause. The Superintendent could appropriate them as a fund to defray the charges of his court. He was finally instructed to be cautious about

the conduct of his servants or petty officers of the court, who often exerted their private influence to obstruct the course of justice.

The administration of justice in the Provincial Diwani Adalat thus became independent of the Provincial Council. But that did not improve the state of justice. A spirit of rivalry for power developed between the two in each division. And, lacking careful co-ordination, they acted in a manner prejudicial to the interest of each other. True, the Governor-General and Council had revived the Sadar Diwani Adalat. But it was regarded as a simple court of appellate jurisdiction, possessing no powers to regulate the conduct and co-ordinate the functions of subordinate courts. Indeed, the new task necessitated a radical alteration in the constitution of that court, without which it was impossible to keep the revenue and judicial authorities of the provincial divisions within the bounds of their respective jurisdiction. The work of changing the constitution of the Sadar Adalat necessarily demanded knowledge and training in the theory and practice of law, which the members of the Council at Fort William did not possess. On 29 September, 1780, the Governor-General therefore proposed the appointment of Sir Elijah

Impey as Judge of the Sadar Diwani Adalat.[1]

There was yet another consideration which guided Warren Hastings in this proposal. He regarded it as an instrument for reconciliation between the Council and the Court, because he feared that contention between the two, added to other troubles, might prove fatal to British interests in the country. "The proposition which I have submitted tothe Board,"he concluded, "may, nor have I a doubt that it will, prove an instrument of conciliation with the Court; and it will preclude the necessity of assuming a jurisdiction over persons exempted by our construction of the Act of Parliament from it; it will facilitate and give vigour to the course of Justice; it will lessen the care of the Board, and add to their leisurefor occupations more urgent and better suited to the genius and principles of Government; nor will it be any accession of power to the Court; where that portion of authority which is proposed to be given only to a single man of the Court and may be revoked whenever the Board shall think proper to resume it."[2]

Sir Eyre Coote accepted the proposition of the Governor-General as a temporary expedient. But Edward Wheler and

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1 Appendix No.3 to the 1st Rep.Sel.Com.of the House of Commons (1782),(I.O.Parliamentary Branch Collection, No.14).

2 See Minute of the Governor-General, 29 September, 1780, Appendix No.3 to the 1st Rep.Sel.Com.of the House of Commons (1782), I.O.Parliamentary Branch Collection No.14.

Philip Francis objected to it on legal and other grounds. On 18 October, 1780, the Board adopted the proposal by the casting vote of the Governor-General, and requested the Chief Justice to take the charge and Superintendence of the Sadar Diwani Adalat.[1] On 19 October, he accepted the offer of the Board. His formal appointment was made on 26 October, when the Board annexed a monthly allowance of five thousand rupees.[2]

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1 See Appendix No.4 to the 1st Rep.Sel.Com.(1782). Also 1st Rep.Sel.Com.(1782), P.14.

2 Mill and Macaulay have denounced the scheme of Warren Hastings, as an attempt to bribe the Chief Justice into submission to the irregularities of the Company's government. In the second volume of his "Story of Nuncomar and the Impeachment of Sir Elijah Impey," Sir J.F.Stephen has already established the incorrectness of their thesis. It is enough for our purpose to observe that they present a view just contrary to the object of the scheme.

As for the allowance itself, Sir Elijah declined to appropriate any part of the salary annexed to his office as judge of the Sadar Diwani Adalat until the pleasure of the Lord Chancellor was known on that point. See Elijah Impey to the Governor-General and Council, 6 July, 1781 (Home Miscellaneous Series, 383, PP.237-238). Morley has regarded the alleged charge of bribery as "an odious supposition" which was "unfounded upon fact". (See Administration of Justice in British India, P.80). Moreover, the contention whether he appropriated the allowance or not is only a point of minor significance. Even if it were a fact, there were precedents to justify it. Both General Clavering and Colonel Monson accepted pay as commanders of the Company's forces. Sir Robert Chambers likewise received additional salary for the post of Judge at Chinsura when that settlement fell into the possession of the Company. The real worth of Sir Elijah lay in his achievements as Judge of the Sadar Diwani Adalat, which still remain incontrovertible. True, he was impeached in 1788, and the issue of the Sadar Diwani Adalat formed one of the charges in that impeachment. But the justice of his cause was so strong that he was finally declared innocent.

Sir Elijah prepared a series of regulations for the conduct of justice in the Provincial Diwani Adalat, which gained the assent of the Board on 3 November, 1780[1]. They were subsequently incorporated, with additions and amendments, in a revised code which the Board adopted on 5 July, 1781. Sir Elijah imparted to the constitutions of the Sadar and Provincial Adalats the quality of legal form and perfection. His regulations distinctly bore the stamp of his legal attainments.

On 6 April, 1781, the Governor-General and Council established another set of regulations.[2] Their object was to promote a more speedy and effectual administration of justice by removing the inconveniences caused by the extensive jurisdiction of the Provincial Courts of Diwani Adalat. They set up eighteen Courts of Muffassil Diwani Adalat, including those already in existence at the seat of each of the six grand divisions. They were as follows:

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1 Colebrooke: Supplement, III, PP.22-27.
2 See Appendix No.8 to the 1st Rep.Sel.Com.(1782). The limits of the territorial jurisdictions of the Courts established under these regulations may be found also in Colebrooke, Supplement, III, PP.28-30.

1. Azmerigani (in Sylhet)
2. Bakarganj
3. Burdwan
4. Bhagalpur
5. Calcutta[1]
6. Chitra (in Rangpur)
7. Dacca
8. Darbhanga
9. Islamabad (Chittagong)
10. Lauriya (in Champeran)
11. Midnapur
12. Murli (in Jessore)
13. Murshidabad
14. Nator (in Rajshahi)
15. Patna
16. Rajmahal (in Birbhum including Panchket and Bishnupur.)
17. Rangpur
18. Tajpur (instead of Dinajpur)

With the exception of Bhagalpur, Chitra, Islamabad and Rangpur, each of these courts was placed in charge of a covenanted servant of the Company. He was now designated as Judge instead of Superintendent, and discharged a purely judicial function. In the remaining four districts, however, conditions were quite different. They were mostly hilly countries, and some of them were situated on the frontiers of the provinces, which necessitated concentration of authority in the hands of a single person responsible for both justice and revenue. The civil courts of these districts, therefore, were held by the same gentlemen as had the temporary charge of revenue. Distinct lines of demarcation, however, were drawn between their judicial

1 In all causes arising within the town of Calcutta, the Supreme Court of Judicature exercised an exclusive jurisdiction. The Diwani Adalat at Calcutta had no powers to cognise any civil suit in which the defendant

and revenue functions. In revenue matters they were subject to the orders of the Committee of Revenue, which had been lately set up at Calcutta on the dissolution of the Provincial Councils under the Revenue Regulations of 20 February, 1781. But so far as justice was concerned, they were entirely independent of that Committee, being subject only to the orders of the Judge of the Sadar Diwani Adalat and the Governor-General and Council. They transmitted copies of judicial proceedings to the Sadar Diwani Adalat, to which appeals lay from their decisions.

The subsidiary regulations of 6 April, 1781 laid down specific rules to secure the immediate execution of the order or process of the Sadar Diwani Adalat. The judge of the Mufassil Diwani Adalat was required to endorse each such order or process transmitted to him for service or execution. In case the party on whom the process was desired to be served, had absconded, the judge of the Mufassil Diwani Adalat had that process stuck up in a conspicuous part of his court; and if the party did not obey the order within the time specified, the Sadar Diwani Adalat proceeded ex parte to determine the cause.

In ordinary circumstances, the judge of the Mufassil Diwani Adalat was authorized to issue a compulsory process for the execution of an order from the Sadar Diwani

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happened to be a resident of that town.

Adalat. But in a cause in which a zemindar or talukdar was involved, no such process could issue in the first instance. It was only when ordinary summons failed to secure his attendance or that of his vakil, that the judge could issue a compulsory process. If it was proved to the satisfaction of the Sadar Diwani Adalat that the zemindar or talukdar had resisted or disobeyed the second process as well, that court could punish him by the forfeiture of his zemindari or talukdari, as the case might be. Such punishment, however, was subject to the assent of the Governor-General and Council who constituted the final authority in determining the mode of punishing a zemindar or talukdar for an act of disobedience to the orders of the Sadar Diwani Adalat.

One of the subsidiary regulations of 6 April, 1781 authorized the Judge of the Sadar Diwani Adalat to prepare a uniform code of rules and regulations, which he did by addition or amendment to those already in existence. The Governor-General and Council accepted this revised code on 6 July, 1781.[1]

The reforms of 6 April, 1781 regarding the constitution of the eighteen Mufassil Diwani Adalats continued to

1 The revised code contained ninety-five articles. I have confined myself to the analysis of the main features of the code rather than its details, which may be referred to Colebrooke: Supplement, III, pp.37-86.

operate. The seats of the Diwani Adalats of Lauriya, Raghunathpur and Azmeriganj, however, were transferred respectively to Mahsi, Rajhat (in Bishnupur) and Sultano.

Every court of Mufassil Diwani Adalat was declared to have full 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 zemindaries or talukdaries. The reforms of 6 July, 1781 annulled all the restrictions which the court had previously to observe in summoning a zemindar or talukdar. The judge of the Mufassil Diwani Adalat was now vested with powers to summon any zemindar or farmer of revenue to appear in person or by a vakil to answer to an action lying in that court. But in no case could he entertain any suit or cause for any matter or thing in any way relating to public revenues.

The court of the Mufassil Diwani Adalat was also authorized to make standing rules of practice for the administration of justice. All such rules and orders, however, required the approval of the Sadar Diwani Adalat and the final assent and ratification of the Governor-General and Council. But once they were ratified and approved, they became applicable, not only to the court which framed them, but to every other court of the Mufassil Diwani Adalat. The object was to establish a uniform system of judicial practice all over

the provinces. The Sadar Diwani Adalat, therefore, transmitted a copy of approved rules and orders to every court of Mufassil Diwani Adalat for its proper information and guidance. The Register of each court had to maintain them in serial orders. Records of every standing rule or order received from the Governor-General and Council or the Sadar Diwani Adalat had similarly to be preserved by every court of the Mufassil Diwani Adalat.

The Sadar Diwani Adalat normally acted as a court of appellate jurisdiction. But in case a court of the Mufassil Diwani Adalat refused or neglected to entertain a cause, the Sadar Diwani Adalat could now take cognizance of it as a court of original jurisdiction, or might as well ask the court of the Mufassil Diwani Adalat, to whose jurisdiction the cause might properlybelong, to entertain and determine it. The Sadar Diwani Adalat became also competent to hear, try and determine any petition or suit which the Governor-General and Council might transmit to it for that purpose.

The Sadar Diwani Adalat was vested with full powers and authority to frame rules of practice and issue standing orders for the administration of justice in the Sadar Diwani Adalat as well as the courts of the Mufassil Diwani Adalat. It could revise, alter or disapprove all the rules of practice and standing orders made from time to time by its

subordinate courts, and transmitted to it for approval. The judges of the courts of the Mufassil Diwani Adalat had to take an oath of loyalty and uprightness of their conduct before the Judge of the Sadar Diwani Adalat before they could be invested with the charge of their office.

The Sadar Diwani Adalat thus ceased to be a simple court of appeal. Its new constitution gave it full powers to regulate the conduct of subordinate courts and co-ordinate the rules of their internal practice.

As for rules governing the process of justice, the reforms of 5 July, 1781, elaborated them for the first time on a refined and complex basis. No judge could now issue any oral order or process in the administration of civil justice. Every bit of judicial transaction was now to be conducted in writing and under the seal and signature of proper authorities. No complainant could file a suit except in the forms and methods prescribed by definite rules for the purpose. While making a rejoinder to the answer submitted by the defendant, the plaintiff could not introduce any change or alteration in the contents of the original plaint. Only supplementary plaints were admissible, and that also in special circumstances. In the course of a trial if the judge happened to declare any evidence as unworthy of acceptance, he had to enter a memorandum in

writing, giving reasons for not admitting the evidence so offered. In short, the judge had now to record grounds for any judicial action adopted in the course of entire proceedings.

The system of keeping records was equally elaborated. Every process or order issued by the court; every complaint, reply or rejoinder made by the parties; every deposition taken in the course of trial had to be duly entered in books set apart for specific purposes. Every court of the Mufassil Diwani Adalat was required to maintain an abstract register, which contained a summary account of daily proceedings in each cause. A copy of this register was to be transmitted to the Sadar Diwani Adalat every month.

These regulations were subsequently translated into Persian and Bengali.[1] The object was to acquaint the general public with the laws by which they were governed.[2]

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1 William Chambers undertook the translation of the regulations into Persian, which he completed in February, 1783. He was paid at the rate of two thousand rupees for sixteen months, being his remuneration for the job. (See Home Misc.332, PP.93-94).

Duncan undertook the Bengali translation of the revised code. He was appointed on 26 March, 1782, and submitted his translation on 13 February, 1783. The allowance paid to him for the job amounted to fifteen thousand rupees.

2 Harington observes that most of the earlier regulations existed in the state of manuscripts; and even if some of them were printed, they were not arranged in a systematic form to serve as a proper guide for the

The revised code of 1781 thus represents what the combined efforts of Hastings and Sir Elijah could achieve in the field of judicial administration. The contribution of this code may be traced principally in three directions:

First, it centralised the administration of civil justice in the Sadar Diwani Adalat responsible immediately to the Governor-General and Council at Fort William. This centralisation was necessary for reducing the entire system of civil justice to a regular and uniform basis, without which it was impossible to supervise and regulate the conduct of inferior courts.

The need for uniformity arose from the experience of even oppressive measures being upheld by their perpetrators on the score of the so-called customary practices of the country. The Mughal Emperors could have done without uniformity, as they did, without justice being allowed to suffer much, because with them the element of fear was predominant, which usually prevented the abuse of authority in their courts of justice. But based as it was on democratic lines, the Company's government could not inspire

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conduct of justice. (See Analysis, Vol.I, P.I.) It should be remembered that Hastings was the first governor who started a work of this kind for the day-to-day reference and guidance in matters of judicial administration. With this end in view a code of Hindu Laws was compiled and translated in 1776 (See N.B.Halhed: A Code of Gentoo Laws). Similarly the Hedaya or a code of Mahomedan Laws was completed in 1778 by Hamilton. I have used the first edition of Halhed's Code of Gentoo Laws, which belongs to the I.O.Library.

the same degree of fear as the Mughals had done. Moreover, the latter had settled in the country, and through direct approach to the people, acquired knowledge of local customs and usages, which the former did not yet possess. The English government therefore sought administrative uniformity to minimise opportunities of corruption arising from the variety of local circumstances.

Secondly, it was necessary and expedient to retain both Hindu and Mahomedan civil laws of property, inheritance and other matters of allied character. In fact, there was no contention on that issue. A code of Hindu laws had already been compiled and translated into English in 1776. A translation of the Hedaya or Code of Mahomedan law had also been completed in 1778. Sir Elijah definitely recognized prudence in administering civil justice according to the laws of the land. But his contribution consisted in devising a better mode of goverain these laws. He was the first pioneer who elaborated the rules of process and evidence, materially altering the earlier principle of adjudication, which imparted to the country courts the form and character of the British judicial system. He laid the foundation for the practice of law to grow into a profession to be undertaken by a distinct class of persons possessing knowledge and training in the law and technique of judicial practice. Complainants and defendants, who often pleaded

their own cause before, now could not conform ordinarily to the prescribed rules of business. They were consequently obliged to engage vakils who, unliketheir predecessors[1], and to represent the cause of their parties in the form and manner specified for the purpose. It became obligatory for them nowto acquire certain professional qualifications before they could be duly registered for permission to practise in the Company's courts.

The complexity of legal practice occasioned the need for the codification of rules and regulations, as well as for a wider publicity and circulation of that code in the language of the common people. Here also Sir Elijah and Hastings were first to have set an example which subsequently was adopted on an extensive scale under Lord Cornwallis.

Thirdly, the strength and freedom of judiciary constituted yet another important contribution of Sir Elijah Impey as Judge of the Sader Diwani Adalat. Hastings, too, wanted the courts of justice to provide against the abuse of every form of authority. But his judicial concept was a bit of the Mughal type, and he desired to supplement the inadequacy of law by the executive interposition of government. The

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1. See Harington: Analysis, Vol.I, P.148; also Dodwell: The Nabobs of Madras, PP.148-163, wherein the writer gives an earlier picture of native lawyers in Madras. Sir Elijah characterised the native vakils as private agents occasionally appointed to represent a cause. Unlike the attornies, they were not conversant with the law; nor did they constantly attend courts. See Patna Appendix No17 to the Touchet's Committee Rep.(1781).

difference, however, was one in their approach rather than in their objective. The revised code of 1781, therefore, not only affected the separation of civil justice from the control of revenue authorities, but declared all the zemindars, talukdars and farmers of revenue as proper objects to the jurisdiction of civil courts. They could compel their appearance now to any action against their conduct. The main object of Sir Elijah was to establish the rule of law which might distribute equal justice to all without any consideration of class distinction.

The Company's ignorance of the constitutional position of zemindars in Bengal as well as the consideration of their financial interest, however, set the clock back for some years to come. The parliamentary Act of 1781 freed the Company's revenue agents from the jurisdiction of the Supreme Court of Judicature. In April, 1782, the Mufassil Diwani Adalats were prohibited "from taking cognizance of the grounds of any demand for, or undue exactions of, revenue, made by any collector or other person whatever, employed in the Collections, officially or hereditarily in the different gradations from the government to the ryot."[1] In their general letter of 30 April, 1782, the Directors ordered the removal of Sir Elijah himself from the post of Sadar Diwani Adalat.[2] On 15 November, 1782, the Governor-

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1 See Colebrooke: Supplement, Vol.III, P.89.
2 Home Miscellaneous Series, 353, P.241-242.

General and Council accordingly resolved to resume the duties of that court. They met in their judicial capacity on 16 November, when Sir Elijah made over the charge of his office to them.[1] Earlier, on 3 May, the House of Commons had decided to recall the Chief Justice to explain his conduct in accepting an office subordinate to the Governor-General and Council whose transactions the Supreme Court had been intended to control. In December, 1783, he left Bengal and reached England in June, 1784.

The Pitt's India Act (1784) granted fresh concessions to zemindars and other landed interests in the country. Section XXXIX of that Statute directed the Company to enquire into the complaints of zemindars, talukdars and other landholders who had reported themselves to have been unjustly deprived of their jurisdictions, rights and privileges. The Directors were asked to redress these grievances, if based upon truth. They finally acquired in 1793 the rights of property over what previously had

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1 Ibid. Vol.353, P.330. On 24 December, 1782, the Governor-General and Council decided to meet on every Wednesday as the Court of the Sadar Diwani Adalat. See Home Miscellaneous Series, 353, PP.334-335.

constituted an office.[1]

But the reaction, which followed the parliamentary Act of 1781, could not change the course of the Company's judicial administration. And the emalgation of the Adalats and the Supreme Court of Judicature by the High Court Act of 1861 proved beyond doubt that both Hastings and Sir Elijah Impey had been right.

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1 A day or two before 13 June, 1786, Hastings submitted a justification of his policy towards the zemindars whom he regarded as intermediaries between government and ryots, possessing no property in land. This is an exceedingly useful document which throws light on the nature of the office of zemindars under the Mughal rulers of India. See B.M.Addl.Ms.29202, f.33a.

Lord Cornwallis, who was the author of this change, admitted that he did it from motives of political interest. He wanted to create a class of landlords who might be attached to the Company from considerations of self-interest, and help them in case of a foreign invasion. See Forrest: Selections from State Papers of the Governor-General of India, Lord Cornwallis, Vol.II, P.74. Baden-Powell has justly characterised the Permanent Settlement (1793) as a measure which covered original acts of illegality and usurpation. See Land Systems of British India, Vol.I, P.522.

CHAPTER XI

THE ADMINISTRATION OF CRIMINAL JUSTICE AND POLICE 1772-1775

The administration of criminal justce and police continued under a single charge of the Nizamat which formed the responsibility of the Nawab's government. In May, 1772, the President and Council at Fort William assumed the direct charge of the Diwani through the agency of their English servants. But the constitution of the Nizamat, as we have seen, remained unaltered for political reasons.

With the dismissal and arrest of Mahomed Reza Khan in April, 1772, the post of Naib Subah was also abolished.[1] According to the original constitution, the duties of his office included "the superintending of the Nabob's education, the management of his household, the regulation of his expenses, the representation of his person, the chief administration of justice, the issuing of all orders and direction of all measures which respect the government and police of the provinces, the conduct of all public negotiations and execution of treaties, in a word, every branch

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1 Hastings effected the arrest of both Mahomed Reza Khan and Shitabroy under the peremptory orders of the Directors communicated to Bengal in their General letter of 28 August, 1771. Mill admits that "there is no proof that their destruction was at any time an object with Mr. Hastings; and their acquittal proves that certainly it was not so to the end." See History of British India, 4th Edn., Vol.III, P.544.

The post of Naib Subah was formally abolished by the Nawab on application being made to him for that purpose by the Company's government at Fort William.

of executive government."[1] For about three months after his arrest and removal to Calcutta no provision existed for the performance of these duties of his office.[2]

In July, 1772, Munni Begam was appointed guardian of the Nawab's person, and the management of his household was transferred to her with Gurudas as Diwan to help her in the conduct of public business. But no substitute was appointed in place of the Niab Subah to carry on the administration of police and criminal justice.[3] On the removal of Mahomed Reza Khan, therefore, the normal course of the Nizamat was suspended "for want of a person properly authorized to confirm the decrees of the several courts of justice and to pass sentence on criminals."[4] Earlier in May, 1772, the Chief and Council

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1 Proceedings of the Committee of Circuit at Kasimbazar, 11 July, 1772, Vol.1-3 (in one), P.42.

2 It is true that by the time Mahomed Reza was arrested the Controlling Council of Revenue at Murshidabad, who took over the charge of the Diwani from him, had come to be a potential factor in the administration of criminal justice as well. Every matter of importance, whether civil or criminal, had to receive their assent before being put into execution. The Committee of Circuit, therefore, may not have felt the necessity of a substitute in place of the Naib Subah. But as every transaction was conducted under his seal and signature, the business of the Nizamat was suspended immediately after his arrest.

3 A similar situation obtained in Bihar on the arrest and dismissal of Shitabroy, who died of a broken spirit soon after he was declared innocent in 1773. Hastings subsequently appointed his son Kalyan Singh who succeeded his father in that office. Khayali Ram and Sadhu Ram of Patna City were appointed to assist him in the discharge of his duties.

4 From the Chief and Council at Murshidabad to the President and Council at Fort William, Secret Dept., 18 May, 1772, (Murshidabad Proceedings, Vol.XI, P.52).

at Murshidabad had requested the Council at Fort William to provide for the emergency caused by the arrest of the Naib Subah.[1] But they were advised temporarily to apply for to the Nawab "to authorize the officers of the (Nizamat) Adalat to affix the seal of the Nizamat to the decrees of the courts of justice."[2] The Council at Murshidabad accordingly decided "that the criminal proceedings which lay for confirmation be delivered to the Maulavies of the Adalat, and that they be directed to examine them and report thereon to the Nabob Mobarek-ul-Dowlah in whose presence the ratification of the sentence shall be passed in the usual form, and the proceedings then returned to the Board to be retransmitted to the districts to be carried into execution."[3]

In August, 1772, the President and Council acopted the first judicial plan which provided for a court of criminal judicature in each district under a Collector.[4] The

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1 Ibid. Vol.XI, P.82.

2 See Murshidabad Proceedings, Vol.XI, P.89 (Letter of the Council at Fort William to the Chief and Council at Murshidabad, 21 May, 1772.)

3 Murshidabad Proceedings, Vol.XI, P.90. This arrangement continued to operate till the superintendence of the Nizamat passed into the hands of Warren Hastings in November, 1773. The only change effected during this interval was that in September, 1772 the Nizamat was transferred to Calcutta; but criminal proceedings continued to be transmitted to Murshidabad for the warrant of the Nawab.

4 The establishment of each Provincial Court of the Faujdari Adalat under a Collector was as follows:

administration of criminal justice was left to the qazi and the mufti of the district, who were assisted by two maularies to expound the law and determine the degree of criminality. The Collector, however, was required to keep an eye on their proceedings, and see that justice was impartially administered according to the evidence examined and proofs exhibited in the course of trial.

A court of criminal judicature or Faujdari Adalat was also established at Calcutta. It was superintended by a Member of the Council at Fort William. The plan also provided for a superior court of criminal judicature at Calcutta to be known as the Sadar Faujdari Adalat.[1] The

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1	Qazi	Rs.	100	per	Mensem.		
1	Mufti	"	50	"	"		
2	Maularies... ...	"	100	"	"	@ Rs.50	each.
2	Muharrirs (Clerks)	"	40	"	"	" 20	"
1	Mirda (Jail Police)	"	7	"	"		
5	Peons	"	20	"	"	" 4	"
4	Deputy qazis....	"	80	"	"	" 20	"
	Paper, ink, etc.	"	5	"	"		

The Committee of Circuit at Kasimbazar approved these charges on 29 August, 1772. See Proceedings of the Com. Cir. at Kasimbazar, Vol.1-3 (in one), P.179. The Calcutta establishment included also a Clerk for Rs.200 p.m., a daroga for Rs.150 p.m., an English writer for Rs.60 p.m., and 20 peons. (See Addl.Ms.B.M.29079,f.4a.)

1 The establishment of this Court, as sanctioned by the Committee of Circuit at Kasimbazar on 29 August, 1772, was as follows:

1	Daroga (Sadarul Haq Khan)	Rs.	1,000	P.M.
1	Chief Qazi (Mahomed Shakir)	"	750	"
1	Head Mufti	"	360	"
3	Maulavies @ Rs.200 each	"	600	"
2	Muharrirs @ " 40 "	"	80	"
	Paper, ink and petty charges	"	5	"

Chief officer of this court was called the Daroga of the Nizamat Adalat, who was appointed on the recommendation of the President and Council, although under the seal of the Nizamat and the signature of the Nawab.[1] He was assisted by the Chief Qazi, the Chief Mufti and three Maulavies. The duty of the President and Council was to supervise their criminal proceedings in the same way as the Collector did in his district.

The plan specified the nature of causes cognizable by the Provincial Court of Faujdari Adalat. Its jurisdiction extended over all causes of murder, robbery, theft, and all other felonies, forgery, perjury, and all sorts of frauds, and misdemeanours, assaults, frays, quarrels, adultery, and every other breach of the peace, or violent invasion of property. The authority of this court extended to corporal punishment, fines, imprisonment, and sentencing to the roads for any length of time, but not to the life of the criminal. In all capital causes the evidence of the defence and the opinion of the court had to be transmitted to the Sadar Nizamat Adalat for final determination.

The Sadar Nizamat Adalat had powers to revise all the proceedings of the Provincial Courts of Faujdari Adalat,

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1 See Calendar of Persian Correspondence, Vol.IV, Nos.III and 113. Such a mode of appointment arose from the policy of double government. The President and Council thus acted "only by the influence and by a secret, not an avowed, control." See Rev.Consultn., 27 April, 1773, (B.M.Addl. Ms.29079, f.5b).

particularly in capital offences in which it signified approval or otherwise of the sentences recommended by inferior courts, and prepared the final sentence for warrant of the Nawab, which was re-transmitted to them for local execution. The Sader Nizamat Adalat also decided finally on all causes punishable by the forfeiture of property.

The practice of composing crimes of serious nature by arbitrary fines was declared illegal. No qazi or his inferior officers could legally accept any fees, dues, or taxes in the form of perquisites, except on pain of dismissal. They were now included in the list of adalat officers to be maintained at the expense of government. They, however, could accept presents or gratifications made with the entire consent of a party on matrimonial or funeral occasions.

The Committee of Circuit provided for exemplary punishment to be inflicted on robbers for atrocities committed by them without any consideration of piety or fear of government. "The dacoits of Bengal," the Committee observed,"are not like the robbers in England - individuals driven to such desperate courses by sudden want. - They are robbers by profession and even by birth. - They are formed into regular communities and their families subsist by the spoils which they bring home to them. - They are all therefore wretches who have placed themselves in a state of declared war with Government, and are therefore wholly excluded from every

benefit of its laws."[1]

The Committee, therefore, laid down "that every such criminal on conviction shall be carried to the village to which he belongs and be there executed for a terror and example to others and for the further prevention of such abominable practices, that the village of which he is an inhabitant shall be fined according to the enormity of the crime and each inhabitant according to his substance, and that the family of the criminal shall become the slaves of the State, and be disposed of for the general benefit and convenience of the people according to the discretion of the Government."[2]

The punishment of the whole family for the fault of a single member was opposed to any rule of law. But the Committee justified it on the score of expediency. "We have many instances," the Committee wrote, "of their meeting death with the greatest insensibility. It loses, therefore, its effects as an example;- But when executed in all the forms and terror of law, in the midst of the neighbours and relations of the criminal; when these are treated as accessories to his guilt, and his family deprived of their liberty, and separated for ever from each other,

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1 Proceedings of the Committee of Circuit at Kasimbazar, 16 August, 1772, Vol.1-3 (in one), P.122.
2 Judicial Regulation XXXV of 21 August, 1772.

every passion which before served as an incentive to guilt, now becomes subservient to the purposes of society, by turning them from a vocation in which all they hold dear besides life becomes forfeited by thier conviction, - At the same time their families, instead of being lost to the community, are made useful members of it, by being adopted into those of the more civilized inhabitants."[1]

The President and Council thus provided rom a plan of criminal administration. But then arose the question of how to execute it. Hastings was fully convinced that none of his reforms could bear any fruit so long as the affairs of the Nizamat was controlled from Murshidabad. The Nizamat Adalat was, therefore, transferred to Calcutta to be there administered under the direct supervision of the President and Council at Fort William. Hastings, no doubt, regarded it as an obvious act of usurpation which he regularised by obtaining the formal sanction of Munni Begam, the guardian of the Nawab's person.[2] But that was the only alternative, which, he believed, could secure the execution of his reforms.

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1 Proceedings of the Committee of Circuit at Kasimbazar, 15 August, 1772, Vol.1-3 (in one), P.123. These recommendations of the Committee of Circuit were adopted by the President and Council in their consultations of 21 August, 1772.

2 Because the Company's letter of 28 August, 1771 had desired the Nizamat to be treated as the sole sphere of the Nawab's sovereignty, not of their government at Fort William. See Hastings to Josias Dupre at Madras, 6 Jan., 1773 (Gleig: Memoirs of Warren Hastings, Vol.I, P.272).

"Had we left them to the Nabob," he observed, "they would have been made the sources of venality and oppression.... It would be useless to enumerate all the evils which would have attended the exercise of a power which could not support itself, nor enforce its decrees, and subsisted only by the sufferesnce of a power which was its rival."[1]

This arrangement operated till November, 1773. The Provincial Courts of FaujdariAdalat transmitted the proceedings of all capital offences to the approval of the Daroga of the Nizamat Adalat, who prepared decrees for the final sentence and warrant of the Nawab at Murshidabad. But before transmitting them to Murshidabad, Hastings personally revisedthese decrees, and affixed his remarks for the consideration of the Nawab.[2]

The transfer of the Nizamat, however, could not appreciably improve the situation. True, it was desirable in the interest of criminal justice, and facilitated the work of supervision. It offered direct opportunities to Hastings to look into the nature of punishment inflicted by the Nizamat Adalat for different classes of capital

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1 Ibid. Q.P.Cit.Vol.I, P.272.

2 See Appendix A to this Chapter. The abstract of trials for capital crimes at Murshidabad and Kishenager was enclosed in a letter of Hastings to Samuel Middleton. (Resident at Murshidabad), 24 May, 1773. (See B.M.Addl. Ms.29079, ff.19a-21a). It reveals not only the nature of punishment inflicted by the Nizamat Adalat for different capital offences, but also the amendments which Hastings desired to be adopted in the administration of criminal justice.

offences. But that was not very helpful. The basic trouble mainly arose from the duality of control and the imperfections of the Mahomedan criminal laws. Under the policy of the Directors there was no option left to Hastings then to entrust the execution of his reforms, as he did, to the Mahomedan officers of justice, who knew no other law than their own, and, from motives of religion and self-interest, would not agree to depart from the earlier line of their conduct.

Hastings admitted his inability to persuade the judges of the Nizamat Adalat to make any exception to their interpretation of the Quranic law.[1] All he could do was to prevail on them to leave the option of punishment to the Nawab himself. "The Maulavies in the Provincial Courts," he later observed, "refuse to pass sentence of death on dacoits unless the robbery committed by them has been attended with murder. They rest their opinion on the express law of the Coran which is the infallible guide of their decisions. The Court of Nizamat under whose review the trials pass, and whose province it is to prepare the Futwas (decrees) for the final sentence and warrant of the Nazim, being equally bound to follow the Mahomedan law, confirm the judgment of the Provincial Court."[2]

1 Hastings to Samuel Middleton, 24 May, 1773, (B.M.Addl. Ms.29079, f.19b).
2 From Hastings to the Council at Fort William from Murshidabad, 10 July, 1773, entered in the Bengal Revenue Consultation, 3 August, 1773, (See B.M.Addl.Ms.29079, ff.13a-18b). Extract from this letter is printed in

In these circumstances, Hastings advised his government from Murshidabad in July, 1773, to adopt the practice of the Mughal rulers and punish the guilty without regard to the Mahomedan law in special circumstances, although he was reluctant to act upon the Mughal principle of adjudication and arbitrary proceedings, which clashed with the British ideal of the rule of law. "I offer it therefore as my opinion," he wrote, "that the punishments[1] decreed by this government against professed and notorious robbers be literally enforced, and where they differ from the sentences of the Adalat that they be superadded to them by an immediate act of government; that every convicted felon, and murderer, not condemned to death by the sentence of the Adawlut, and every criminal who has already been sentenced either to work during life upon the roads, or to suffer perpetual imprisonment, be sold for slaves, or transported as such to the Company's establishment at Marlborough; and that this regulation be carried into execution by the immediate orders of the Board, or by an office instituted for that purpose in virtue of a general order or commission from the Nazim. By this means the government will be released from a heavy expense in erecting prisons, keeping guards in monthly pay, and in the maintenance of accumulating

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Colebrooke: Supplement, Vol. III, pp. 114-119.

1 See Appendix A to this Chapter.

crowds of prisoners. The sale of the convicts will raise a considerable fund, if these disorders continue. If not, the effect will be more beneficial."[1]

Thus Hastings recommended the punishment of crime according to the degree of criminality, not the evidence or proof established openly through the course of trial. The necessity for such a course of action, however, arose from an attempt to secure the benefits of justice within the old framework which had outlived its potentiality, but which he had to maintain at the instance of his employers.

Another serious point of objection arose from the distinction which the Mahomedan judges made between a murder committed with an instrument for shedding blood, such as sword or knife, and death caused by a deliberate act, but without the application of an instrument for shedding blood. In the latter case, the judges composed the loss of life by what was called the price of blood. For instance, a case arose in which a man had held the head of a child under water till it was suffocated to death. He subsequently made a prize of all the clothes and ornaments he found in possession of the child. The Adalat did not agree with Hastings who wanted that if intention of murder

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1 Colebrooke: Supplement, III, P.115. Earlier in this letter to the Council at Fort William (10 July, 1773) Hastings describes the state of disorders caused by the atrocities of dacoits in Bengal. He describes them as a race of outlaws "who live from father to son in a state of warfare against society, plundering and burning villages, and murdering the inhabitants." See Ibid, P.114.

was clearly proved, no distinction should be made with respect to the weapon by which the crime was perpetrated. Nor is there any evidence to show whether Keating's desire to punish this crime by death was ever executed, although the Adalat finally recommended death to be inflicted at the discretion of the Nazim in this case.

A third point of legal controversy arose on the privilege granted by the Mahomedan Law to the sons of the nearest of kin to pardon the murderers of their parents or kinsmen. Hastings regarded it as barbarous and "contrary to the first principle of civil society by which the State acquires an interest in every member who composes it, and a right in his security." He, therefore, advised his government to effect its total abolition. "If the Nazim cannot be influenced," he added, "to abolish totally this savage privilege, which we know is not universally admitted, or the courts of justice to disuse it, I am of opinion that Government should interfere by its own authority to prevent it taking effect, by causing the sentence to be executed without leaving an option in the children or kinsmen to frustrate it by their pardon."[1]

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1 Colebrooke: Supplement, III, P.118.. The President and Council at Fort William did not take any action on these recommendations so long as Warren Hastings was at Murshidabad. They wanted further information from Hastings on the subject of legal controversies before they could adopt any measure to check the abuse. See Bengal Rev.Consultn., 31 August, 1772, (B.M.Add1.Ms. 29079, ff.21b-22b.)

The permission granted by the Adalat to the children or the nearest relation of the person deceased was equally pernicious to public peace and tranquillity. In all such cases there was always a tendency to allow criminals to escape with impunity. The removal of these inequities was thus an essential condition of success in the administration of criminal justice.

Apart from the inequities and imperfections of the Mahomedan criminal law, there was yet another drawback in the administrative arrangement of criminal administration, which delayed the execution of the sentences passed by the Nizamat Adalat at Calcutta. These sentences were required to be transmitted to Murshidabad in order to receive the final warrant of the Nawab, whose incapacity for the exercise of independent judgment often led to the misuse of his authority by those who hung about him.

Hastings, therefore, applied to Munni Begam for the transfer of the Nizamat seal to Calcutta, where it could be used on behalf of the Nawab by the Daroga of the Nizamat Adalat. She accordingly issued a letter of authority in favour of Sadarul Haq Khan[1] to whom the seal of the Nizamat was transferred. He made over the seal to the President and Council at Fort William who authorized him on 23 November, 1773 to use it under the Superintendence of the President, and allowed him an additional remuneration of five hundred

1 Daroga of the Sadar Nizamat Adalat at Calcutta.

rupees per mensem for the discharge of this special trust.

Thus Warren Hastings was now in a position to rectify legal defects and inadequacies by the warrant of the Nazim, which passed under his personal supervision. This arrangement operated till 18 October, 1775, when Hastings resigned this trust, and on account of the weight and multiplicity of his business expressed inability to superintend the administration of the Nizamat. The Governor-General and Council transferred the establishment to Murshidabad, and placed it again in charge of Mahomed Reza Khan who was declared innocent and restored to his former office of Naib Surbah.

Warren Hastings thus personally supervised the administration of criminal justice and police for a period of about two years. But on his own admission, we know that he could not materially alter the state of insecurity in the provinces.[1] The vigour of Regulation XXXV of 21 August, 1772, which had prescribed exemplary punishments to be inflicted on criminals and the members of their family, failed to achieve the object of its institution. "Notwithstanding the tendency of this regulation," the President and Council observed, "we were sorry to find after a considerable length of experience that it had not been

1 See Minutes of Warren Hastings on the establishment of Faujdars, 19 April, 1774 (Colebrook: Supplement, III, P.120.

productive of the good effects we expected from it, but that on the contrary the evil which we were so solicitous by this means of eradicating was practically gaining ground both in the number of the dacoits and the daringness of their attempt."[1]

Warren Hastings gave four reasons to explain his failure to maintain law and order.[2] First, the abolition of the establishment of Faujdars, who maintained the link between the districts and the centre and supplied intelligence of local disorders, increased the confidence of dacoits whom it was difficult to suppress for want of timely information about their movements. Secondly, the resumption of Chakaran lands, assigned to thanadars and other persons employed in the defence of the country, deprived them of their means of livelihood, and turned them into dacoits themselves. Thirdly, the farming system of land revenue replaced many ofthe hereditary zemindars by farmers, and removed all that claim, "which the public by immemorial usage before possessed to the restitution of all damages and losses sustained by robbers, on the zemindars of the country." The farmers could still be held accountable; but whatever they would be required to pay on their account towards the compensation of losses would have to be brought

1 From President and Council to the Court of Directors, 18 October, 1774, Bengal Letters Received, Vol.13, PP.165-166.
2 See Colebrooke: Supplement, III, PP.121-122.

to their balances, and would thus fall ultimately upon the Government. Lastly, the Mahomedan judges of the Adalat required two positive eye-witnesses in every capital case to ensure the conviction of an offender. It was difficult normally to fulfil this requirement, because the robbers generally carried out their designs at night or under disguise. Moreover, the ryots, who were the principal sufferers, dared not complain against them for fear of being punished with death by these dacoits for every information given against them.

Hastings, therefore, proposed a summary mode of proceedings to be pursued in causes in which the identity of robbers had been ascertained beyond doubt. The object was to bring them to condign punishment even in the absence of specific charges to establish their guilt. But he was conscious of the great risk in adopting such practice, as it was repugnant to the equity and tenderness of British constitution and conception of justice. He therefore desired to use this mode as a temporary expedient to meet the exigencies of his situation. "A rigid observance of the letter of the law," he wrote, "is a blessing in a well-regulated state; but in a government loose as that of Bengal is, and must be for some years to come, an extra-ordinary and exemplary coercion must be employed to

eradicate these evils, which the law cannot reach."[1]

The establishment of Faujdars constituted the main part of his proposals. His plan contained provision for the establishment of the following Faujdari thanas:

1. Calcutta	8. Sherpur
2. Thana Hewa	9. Attia
3. Hugli	10. Rajnagar
4. Cutwa	11. Bakergarj
5. Jilishorepur	12. Mirzanagar
6. Murshidabad	13. Ichacanda
7. Godagari	14. Birbhum

The duties of Faujdars were specified. They were to protect the inhabitants, detect and apprehend robbers within the extent of their districts, and transmit information to the Presidency on all matters of public peace and tranquillity. The zemindars and farmers of their districts were required to assist them with their land servants in the maintenance of law and order. The territorial jurisdiction of each faujdari thana was specified. But in the apprehension of dacoits a Faujdar could send his officers even beyond the limits of his district.

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1 Minutes of Warren Hastings on the establishment of Faujdars, 19 April, 1774, (Colebrooke: Supplement, III, P.122).

In a report of 8 June, 1775, the Chief and Council at Patna complained that murders and robberies were not punished with severity owing to the difficulty in bringing the proofs required by the qazis according to Mahomedan law which required at least two eye-witnesses to establish their guilt. See B.M.Addl.Ms.29077, f.29a. This clearly shows that Hastings' amendments to the Mahomedan Criminal

As for the Chakaran lands, the Board resolved to separate them from the rent-roll and apply them to their original purpose. For the purpose of trial, only three faujdari thanas were established at Mirzanagar, Cutwa and Ichamanda.

The reason for the partial execution of his plan was mainly financial. Even the establishment of the three faujdari thanas became possible, when Hastings asserted that it would not equal the loss to which the cultivation and revenue of the provinces were liable from the continuance of the state of lawlessness. "I am assured," he added, "that many villages, especially in Jessore and Mahmudshahi, pay a regular malguzari (rent) to the Chiefs of the dacoits, from which if they can be freed, the ryots will certainly be better enabled to pay their rents to the Government, independently of the improvements which their lands may be expected to receive from a state of quiet and security."[1]

Nowhere was the effect of such financial policy felt more acutely than in the administration of criminal justice. For instance, although the judicial regulations of 21 August, 1772 included the officers of the Adalat in the list of government servants, and provided for the payment of their

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law were not put into practice in the distant parts of the provinces.

1 Colebrooke: Supplement, III, P.125.

salaries from government revenues, they were scarcely paid with regularity. Many of them remained unpaid for several months together. They quitted their stations and went either to Murshidabad or Calcutta in search of their salaries. Consequently, the administration of justice used to be suspended during their absence from the districts. The Chief of Dinajpur, for example, informed the Governor-General early in June,1775 that the officers of the Faujdari Adalat there had left their stations without any information whatsoever. Hastings immediately forwarded this complaint to Sadarul Haq Khan, the Daroga of the Nizamat Adalat, for necessary action. The latter desired all of them to be dismissed and replaced entirely by a new set with a view to inspire fear in others who acted likewise in other districts. They were dismissed accordingly. But it took time to appoint another set of qualified persons to fill up the vacancies caused by their removal. The administration of criminal justice in Dinajpur thus remained suspended for about four months till September, when the new set of officers proceeded to that station.[1]

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1 See Hastings' Letter to Harwood at Dinajpur, 15 September, 1775, (B.M.Addl.Ms.29115, f.11a). See also his letter to Barton, Collector of Bhagalpur, 15 Sept., 1775 (B.M. Addl.Ms.29115, f.11b) in which Hastings demanded enquiry as to why the officers of the Faujdari Adalat at Bhagalpur were in "large arrears of pay," and asked him to provide for the immediate payment of their salaries.

An officer of the Nizamat had not been paid consecutively for nine months. See Calendar of Persian Correspondence, Vol.V, No.341.

The administration of law and order along the frontiers and hilly parts of the provinces was yet a more difficult problem of Hastings' government. We shall examine this question in the next chapter. It is enough for our purpose to note here that they consumed most part of the Company's military resources, and even then the security of life and property in these regions continued to be an exception rather than a general rule.

But before passing any judgment on Hastings' work of supervision we must take into consideration two more factors over which he had no control: (1) the terrible famine of 1769-70, and (2) his constitutional limitation. The former paralysed the machinery of administration, destroyed in many places about one-half of the whole population, and turned a large number of peaceful peasants into roving marauders.[1] Hastings personally admitted the impossibility of recovering the loss by any means within four-to-five years.[2]

As for the latter, it arose from the Company's policy of continuing the independence of the Nizamat. He could not adopt any strong measure of reform lest it should be misconstrued as an act of infringement of the Nawab's authority. The opposition of the Council Majority and the

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1 See Captain James Browne, Collector of the Jungalterry Districts, to Hastings, 14 February, 1778, B.M.Addl. Ms.29210, ff.162a-163a.

2 See from Hastings to the Court of Directors, 28 Feb.,1775, B.M.Addl.Ms.29136, Para.37, ff.70a-70b.

wavering support of authorities in England were factors which he could not afford to disregard. They were always ready to use any opportunity to discredit his public conduct.[1] Although the Nizamat worked under his personal supervision for about two years, the general policy pursued was, therefore, one of non-interference in the details of that department. The scope of his supervision did not extend beyond keeping an eye on how justice was administered in the Nizamat Adalat. The Provincial Courts of Faujdari Adalat did not have even this restriction since the recall of Collectors from their districts in 1774. The task of reformation thus ultimately fell to those who themselves needed it. But the impact of his endeavour left an impression which guided the course of subsequent reforms.

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1 See Letters of Laurence Sulivan to Hastings, 3 Jan., 1776 and 1 Feb., 1776, B.M.Addl.Mss.29137, ff.1a-1b, and 58a-58b). L. Sulivan observes that if there was anything to poise the scale of his opposition, it was the merit of his immense services.

APPENDIX A

Abstract of Trials for Capital Crimes at Murshidabad and Krsihnagar.[1]
(B.M.Addl.Ms.29079, ff.20a-21a)

Names of Prisoners	Crimes	Sentence of the Nizamat Adalat (Murshidabad)	Remarks
Agroocha Juttoo Duboe Cudma Mya Shawker Ally Muzaffar Ally Munsa Dhunna	Decoyting[2]	Acquitted Death to be inflicted by the first cutting of the hand and foot or without that punishment or by the sword.	Not entered in the Register. The family of the criminals ought to be enquired after and deprived of their liberty agreeable to the 35th Article of the Judicial Regulations.
Bannoo	Ditto	To be punished with 30 strokes and confined.	As the crime is clearly proved although attended with circumstances of extermination, confinement ought to be perpetual.
Rumma Cant Manjee	Ditto	None	Neither accused nor formerly tried, by the confession of Bannoo Rumma is charged with the commission of robbery & murder and of instigating the other to be about him in both

1 Enclosed in Hastings' Letter to Samuel Middleton, Resident at Murshidabad, 24 May, 1773. The Remarks recorded by Hastings are significant in so far as they reveal the principle of adjudication followed by the Nizamat Adalat, and the nature of reforms which the English government desired to introduce.

2 It occurs as such in the Ms.

Names of Prisoners	Crimes	Sentence of the Nizamet Adalat (Murshidabad)	Remarks
			these crimes. This charge is confirme by the evidence of the prisoner himself when he declares that the confession of Bennoo is true, notwithstanding he appears thus to be the principal in these crimes he escapes because he has not acknowledged in express terms that he is guilty, he ought to undergo a formal trial.
Ramzanny, Bonga	Murder	Decat[1]	For killing the slave woman of Khooner. Death ought to be inflicted for this crime.
Ramna	Murder	Decat at the option of the Nazim.	The prisoner has confessed that he murdered the daughter of Kewal an infant of 7 years of age, holding her under water till she died and afterwards stealing the ornament she wore, As the intention of murder is clearly marked by the manner of the deceased's death and by the subsequent robbery the punishment ought to be death.

1 Death.

Name of Prisoners	Crimes	Sentence of the Nizamat Adalat (Murshidabad)	Remarks
Roober Jemautdar of Booduparrah	Decoyting	Stripes or Imprisonment	Tried for stealing 12 cows (in company with 15 persons), value from 2 to 1 Rupee each, and in the opinion of the court when the amount received by each accomplice is under 10 derhems it is not reckoned decoyting. However, as the degree and nature of the crime depend on the intention and first design of the criminal rather than on the issue of it the criminal ought to have been sentenced to death as a decoyt (deceit) not to a lighter punishment for petty larceny, as it is adjudged by the Mussulmen law. Since it is proved that he went with a band of robbers to a village with the design of plundering it though unsuccessful and unattended with the bloody consequence, which often accompany such enterprises, he was no less a decoyt than if he had met with opposition and had murdered half the inhabitants or had come away with a richer booty, nevertheless as the sentence extends no further than to imprisonment, it ought to be perpetual, as the man will hardly change his way of life by having so little by it.

Names of Prisoners	Crimes	Sentence of the Nizamat Adalat (Murshidabad)	Remarks
Khaen Mahomed of M.M.Sletch Cawn's Bazar	Murder	Deest	For beating his slave girl so that she died, but as it does not appear that there was any intention of murder & Mahometan law as well as ours admits of moderate correction to a slave or even to a hired servant, the prisoner ought to be acquitted or forgiven.
		(Krishnagar)	
Beejee wife of Nimaj	Adultery and an attempt to cut her husband's throat	Rajum or stoning to death.	
Kedwah	Adultery with the former	Rajum, if married or to receive 100 lashes.	
Yacoob	Murder	Deest	As he struck a man whom he found in his apartment in the night he does not appear to be guilty.
Horanee Mochee	Ditto	Ditto	Merits death.
Member with 3 others	Ditto	Ditto R. a. p. 3338 5 4	He confesses the crime and merits death.
Panchoo	Present when the body was taken away.	Stripes	Just.

Names of Prisoners	Crimes	Sentence of the Nizamat Adalat (Krishnagar) Krishnagar	Remarks
Looche Pike Rajah Kayt Gocul do Doorga Gwalla Herria Pyke Dulwa Pyke Chaund do Ganga Mooche Khazzer Dhunnoo Ramnut Mooche & 2 others	Decoyting and murder	To have the right hand and left foot cut off and then to be put to death.	Just.
Meegha and Remnant	Privy to the murder and shared in the booty.	Stripes and Imprisonment.	

CHAPTER XII

THE ADMINISTRATION OF CRIMINAL JUSTICE AND POLICE (contd.)

1775-1781

Restoration of Mahomed Reza Khan - In October, 1775, Mahomed Reza Khan was restored to his former office of Naib Suban. Two factors combined together to bring about his restoration. First, Warren Hastings, who had been entrusted with the superintendence of the Nizamat since 23 November, 1773, performed this duty till 14 July, 1775, when he expressed his determination to resign that trust on account of the weight and multiplicity of his business. Secondly, in the absence of any satisfactory evidence to establish the guilt of Mahomed Reza Khan, the Governor-General and Council had already declared him innocent, and recommended his acquittal to the Directors who endorsed their decision and ordered his restoration to the office of Naib Suban[1]. The Council Majority took advantage of these developments. They accepted this resignation of Hastings on 18 October, 1775, and recommended to the Nawab the re-appointment of Mahomed Reza Khan with powers to transact the political affairs of the Sircar, conduct the affairs of the Nizamat, and superintend the administration of criminal justice and police

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1 See Despatches to Bengal, 3 March, 1775, Vol.7, Paras. 39-46, PP.413-426.

throughout the provinces. They accordingly ordered the removal of the Sadar Nizamat Adalat from Calcutta to Murshidabad.[1]

The task of Mahomed Reza Khan was then to drew out a better and more effectual plan for the administration of police and criminal justice. He had for his guidance the Judicial Regulations of August, 1772. He could also use the plan for the establishment of faujdari thanas, which Hastings had framed in April, 1774. But he was not bound to follow them in entirety. The Governor-General and Council had no objection, if he used his powers of discretion to confirm such of them as he approved, and propose any alterations or amendments which, in his judgment, might tend to improve the state of law and order. In all his recommendations, however, the Board desired him to observe the greatest economy.[2]

Before proceeding to acquaint the Governor-General and Council with the main contents of his plan, Mahomed Reza Khan transmitted to them certain proposals, the acceptance of which he regarded as an essential condition for the success of his administration. In the first place, he desired their

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1 See Forrest: Selections, etc. Vol.II, P.436. Gurudas was appointed Roy Ryan in place of Raja Rajballabh who was dismissed by the Council Majority in spite of a strong note of dissent from the Governor-General.

2 From the Governor-General and Council to Mahomed Reza Khan, 9 November, 1775, Colebrooke: Supplement, Vol.III, P.127.

assurance of support and co-operation in times of emergency. Secondly, he wanted them to issue orders to every zemindar and farmer of credit to send a vakil to be stationed at Murshidabad, so that he might be called upon to explain the conduct of his principal and represent his grievances, if any, to the Naib Subah. Thirdly, he requested the Board to transmit instructions to the Chiefs of the Provincial Councils to assist the Faujdars in apprehending criminals, and comply with whatever advice he might give them on the subject of the Faujdars and officers of the Adalat. Fourthly, he desired an order to be issued to all the Mufassil Faujdari Adalats requiring them to furnish him an account of their respective establishments and the officers serving under them. Lastly, he pointed out that in order to command the respect and obedience of his subordinates he alone should be allowed to pay their monthly salaries.

In their reply of 6 December, 1775, the Governor General and Council expressed their general agreement with the points raised in the body of his proposals. They, however, did not agree to his proposal, requiring the zemindars and farmers of revenue to have their vakils stationed at Murshidabad. They refused to accept it on the ground of its being an expensive proposition. But they assured him that measures to enforce the obedience of zemindars would not be lacking.

Mahomed Reza Khan's Plan

The Courts of Fouidari Adalat - Mahomed Reza Khan's plan of criminal administration was adopted in January, 1776, and continued to operate till April, 1781[1]. It provided for twenty-three criminal courts, one in each of the following places:

1. Burdwan	12. Hijili
2. Bhagalpur	13. Hugli
3. Bhiteria	14. Jessore
4. Bhushna	15. Kalighat
5. Bishnupur	16. Krishnagar
6. Birbhum	17. Midnapur
7. Carrakpur	18. Murshidabad
8. Chitpur	19. Patna
9. Chittagong	20. Purnea
10. Dacca	21. Rajmahal
11. Dinajpur	22. Rangpur
	23. Sylhet

1 See Bengal Revenue Proceedings, 24 Jan., 1776 (Home Misc. 353, Appendix. I). The Governor-General approved the plan in their letter of 22 Feb., 1776 (See Calendar of Persian Correspondence, Vol.V, No.74). See also Home Misc.352, P.50. His plan dealing with the Courts of Adalat remained in force till 31 July, 1782. The Regulations of 5 July, 1782, which reduced the number of criminal courts to eighteen, came into operation on 1 August, 1782. But the part, dealing with the police administration, was first revised by the General Regulations of 6 April, 1781.

From a comparison of the establishment charges and the number of servants provided for each of the twenty-three courts of Faujdari Adalat it appears that the one at Murshidabad enjoyed a much superior position because of its location at the headquarters of the Nizamat administration. The monthly charges and servants permitted for this Court were as follows:[1]

1	Daroga	Rs.	400
1	Naib	"	50
1	Qazi	"	200
4	Naibs	"	60
1	Mufti	"	75
1	Maulavi	"	150
1	Munshi	"	40
4	Peshcars and Muharrirs	"	85
1	Vakil	"	30
1	Tubbab (Jail Doctor)	"	12
1	Mullah Korani	"	10
1	Curry Wallah (Lock-up Keeper?)	"	4
180	Mirds, Naibs and Peons	"	782
198	Carried over	"	1868

1 The total monthly expenditure under the previous establishment amounted to Rs.2852 on a total number of servants being 230, including 206 Mirds, Naibs and peons, 2 Maulavies and 2 Courcands. See Home Misc. 353, P.196.

188	Carried over	Rs.	1868
	1 Defterband (Office Peon)	"	5
	1 Frash (sweeper?)	"	4
	1 Tazyanaberdar (whipholder)	"	5
	1 Gourcan (Grave-digger)	"	8
	1 Jallad (executioner)	"	8
	Paper, ink, &cs.	"	10
203		Rs.	1908.

The monthly establishment of the Chitpur Faujdari Adalat amounted to Rs.832-11-0 with 69 servants. Patna and Dacca were sanctioned Rs.740 with 40 servants in each. The criminal court at Burdwan had a monthly expenditure of Rs. 420 with 18 servants. The Adalat at Kelighat was allotted only Rs.361 for 25 Servants. The rest of the Faujdari Adalats had each a monthly establishment of Rs. 386 with 18 servants. The total monthly sum of Rs.386 was distributed in the following manner :

1 Darogá	Rs.	75
3 Qazi 1 and Mufts 4	"	125
1 Mufti	"	50
1 Maulavi	"	40
3 Munshies	"	60
6 Peons, including one Mirda or Jail peon	"	25
1 Mullah Korani	"	8
Paper, with &cs.	"	5
Total	"	388

The constitution of the Sadar Nizamat Adalat remained unaltered except that it now passed under the superintendence of the Naib Subah who, unlike Warren Hastings, could directly exercise his powers over his subordinates. Sadarul Haq Khan continued to preside over this court as Daroga. He was attended with the Chief Qazi, the Chief Mufti, three Maulavies, one Munshi and a Serishtadar. Mahomed Reza Khan, however, reduced the daroga's monthly salary from one thousand to nine hundred rupees, and stopped altogether his additional remuneration of five hundred rupees per mensem which had been granted to him for affixing the seal of the Nizamat on behalf of the Nawab. The point was that the Daroga could no longer use this seal, which was entrusted to the Naib Subah himself.

As for other matters of criminal justice, Mahomed Reza Khan assured the Governor-General and Council that he would be guided by their judicial reforms of August, 1778.[1] The main feature of his judicial scheme, therefore, consisted in the reduction of the establishment charges of both the Sadar and Mufassil Courts of Faujdari Adalat. In all other respects it corresponded with the system which had been operating since the establishment of the Provincial Councils in 1773.

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1 Home Misc.353, PP.186-192.

The Plan for the Administration of Police - The police organisation of Mahomed Reza Khan was an extension of the Faujdari System proposed by Warren Hastings in April, 1774. The principal object of the Naib Subah was to make this system more extensive. The proposed Faujdari thanas of Hastings had been confined tothe province of Bengal, and that also to the countries lying chiefly between Calcutta and Murshidabad. Other parts like the districts of Chittagong, Rangpur, Midnapur, Purnea, Rajmahal and the several parganas of Dacca, which were constantly infested with dacoits, were still outside the boundaries of those thanas. Besides, no provision had been made so far for the province of Bihar.

The Naib Subah, therefore,provided for a Faujdari thana at the chief town of every large district with a certain number of chowkies or inferior stations to be added to those districts which covered too extensive an area to be easily managed by a single thana at the centre. Even then a Faujdari thana of Mahomed Reza Khan extended ordinarily over a distance of about sixty-to-seventy kos[1]. The reason was mainly financial. He had instructions from the Governor-General and Council to observe the greatest economy in the pursuit of reform.

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1 One Kos is equivalent to about two miles.

It should be observed, however, that besides the Faujdari thanas there were those controlled by zemindars within the bounds of their respective zemindaries. They were known as zemindari thanas, each of which was under a thanadar appointed by his zemindar. They were subject to the superintendence of the Naib Subah under this plan

The total number of thanas established was limited to twenty-six, while that of chowkies was fixed at twenty-four. Provision was made for a minimum number of thirty-four persons to be stationed at each thana under a Faujdar, of whom twenty were sepoys, and the remaining fourteen consisted of the Faujdar and his subordinate staff, including a Naib, a Jamadar, Peshcar, Muharrirs, and peons.

The following table shows the names of the Faujdari thanas and chowkies, with the number of servants and monthly establishments annexed to each for the apprehension of criminals:

Thanas, Chowkies, and Chauteras	No. Thanas	No. Chowkies	No Chauteras	No. Posts	No. Servants	Establishment Rs. P.M.
Murshidabad and its dependencies	1	2	18	...	496	2233
Calcutta and its dependencies	1	3	...	...	109	1132
Mirzanagar and its dependencies	1	1	...	...	69	704
Pendol extending over Chuckles of Bhu ua and Mahmudshahi	1	1	...	...	89	704
Katwa	1	1	...	...	89	704
Purnea	1	4	...	...	134	1146
Azimabad (Patna) in the Bihar Prov.	1	8	...	...	234	2802
	7	20	18	...	1150	9030

Thanas, Chowkies, and Chauteras	No. Thanas	No. Chowkies	No. Chauteras	No. Boats	No. Servants	Establishment Rs. P.M.
B/f	7	20	18	...	1150	9030
Hijili	1	...	...	...	34	490
Midnapur	1	...	...	....	34	490
Burdwan	1	...	...	...	34	490
Bishnupur	1	...	...	...	34	490
Hugli	1	...	...	...	34	490
Thaori in Birbhum	1	...	...	...	34	490
Jilishorepur	1	...	...	...	34	490
Godagari	1	...	...	...	34	490
Rajmahal	1	...	...	...	34	490
Bhagalpur at Kalgeon	1	...	...	...	34	490
Sultangauj-Jehangirai	1	...	...	...	34	490
Dinajpur	1	...	...	...	34	490
Rangpur at Fatahpur	1	...	...	...	34	490
Ghoraghat	1	...	...	...	34	490
Chaplah dependent on Bhiteree	1	...	...	...	34	490
Chittagong	1	...	...	...	34	490
Jahangirnagar-Dacca	1	4	...	32	158	2348
For the defence of the River at Saffiganjon the borders of Jehangirnagar to the borders of Purnea	2	...	...	16	62	826
Carried forward	26	24	18	48	1914	18138

Thanas, Chowkies, and Chauteras	No. Thanas	No. Chowkies	No. Chauteras	No. Boats	No. Servants	Establishment Rs.P.M.
B/f.	26	24	13	48	1914	19138
Central office of the whole Faujdari thanas at Murshidabad to take accounts of the Faujdars)	...	...	...	...	18	485
TOTAL:	26	24	13	48	1932	19623

Over and above this normal distribution of police forces, the plan of the Naib Subah contained provisions for additional troops to be supplied by the Company's government to meet special requirements. For this purpose all the Faujdari thanas were classified under two heads: those comparatively free from robbers and murderers and those infested by them. The Provincial Councils of the districts, included in the former classification were directed to assist their Faujdars with the Company's additional sepoys under conditions of emergency, for which an application was to be made by a Faujdar. The thanas classified under this head were as follows:

1. Azimabad
2. Burdwan
3. Bhagalpur
4. Bishnupur
5. Chittagong
6. Dinajpur
7. Jehangira
8. Jilliahorepur
9. Midnapur
10. Murshidabad
11. Rajmahal
12. Rangpur
13. Shaori in Birbhum

To the rest of the districts was allotted a standing contingent of the Company's additional troops, whose strength varied according to the exigencies of each thana, as shown below:

	Addl.Sepoys
1. Calcutta and dependent Pergana	40
2. Chapla dependent on Bhiterda	30
3. Chorsghat	30
4. Godagari	20
5. Hijili	20
6. Hughli	20
7. Jahangirnagar	30
8. Katwa	50
9. Kustia	20
10. Mirganagar	30
11. Pandol dependent on Bhushna and Mahmudshahi	30
12. Purnea	40
13. Sandes	15
Total number of addl.Sepoys	425

The province of Bihar had only one Faujdari thana, which was established at Patna. The plan, therefore, provided for eight chowkies which were distributed throughout the province in the following manner :

Districts	No. Chowkies
Sarkar Seran	1
" Champaran	1
" Tirhut	1
" Hajipur	1
" Shahabad	1
" Rohtas	1
" Bihar	1
" Monghyr	1
Total:	8

Of the 234 servants provided for the Faujdari thana at Azimabad, 34 remained at the Sadar, and 25 at each of the eight chowkies subordinate to it. The establishment charges for each chowking amounted to Rs.214/- per month.

The entire police organisation was controlled from a central Faujdari office which was situated at Murshidabad under the superintendence of the Naib Subah. Its monthly establishment of Rs.485 was distributed as follows:

1 Serishtadar	Rs.	300
1 Peshcar	"	50
1 Munshi	"	30
2 Muharrirs	"	30
11 Mirds and Peons	"	47
1 Farash	"	4
1 Daftarband	"	4
Paper, ink, etc.	"	20 Total Rs.485

The Faujdar - The Faujdar of Mahomed Reza Khan was essentially the chief police officer of the district placed under his charge. The main object of his establishment was to maintain law and order, apprehend criminals, and bring them to the punishment of the Faujdari Adalat of his district. In a serious cause of crime his duty was to make a local investigation and prepare a surat-i-hal or report to be submitted to the Faujdari Adalat, who tried the case and sent tothe Naib Subah a copy of proceedings with recommendations for the final approval and sentence of the Nizamat. In the execution of his duties the Faujdar exercised certain executive powers, which partially imparted to his office the form and character of Magistracy.

The zemindars and farmers of revenue were enjoined to conform to his orders, and assist him in the discharge of his responsibilities with all their resources. But in the event of neglect or disobedience of his orders, he could exercise no executive authority over them. His business was only to report their conduct immediately to the Chief and Council of his division who had instructions from their superior authorities to assist him in times of emergency. But if no useful purpose was served, he was to report the matter finally to the Naib Subah who also lacked executive powers to enforce obedience on the zemindars.[1] All that he

1 Calendar of Persian Correspondence, Vol.V, Nos.238 and 422.

could do was to make a report of their conduct to the Governor General and Council who alone could exercise the authority necessary to reduce them to subjection.

Before his appointment to a district the Faujdar was supplied with a copy of instructions under the signature of the Naib Subah.[1] They were designed to regulate the mode of his conduct, and define the scope of his functions. It appears that he was the Superintement not only of the police, but also of the prisons of his district. A prison was attached to each Faujdari thana and the court of Faujdari Adalat. The faujdari prison was intended for the temporary stay of a prisoner. Soon after the Faujdar made his report to the Daroga of the Adalat, the prisoner was transferred to the prison attached to that Court. The administration of both the classes of prison, however, vested in the Faujdar. He had to maintain a regular account of prisoners for the review and supervision of the Adalat. No definite fund was allocated, however, for the maintenance of prisons or the sustenance of prisoners. It formed a part of the Faujdari establishment, and was often met as contingent expenditure.[2]

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1 See Appendix A to this Chapter.

2 Mahomed Reza Khan wrote to the Board in justification of his moderate estimate for the Faujdari establishment: "The estimate I have made of the salaries and expenses will not admit of a reduction. Moreover, there will be a number of contingent expenses according to the respective wants of the different tannas and districts, such as that of sustenance &c. for prisoners, the erecting and repairing the cutcherries for the Adawlats -

Mahomed Reza Khan continued to superintend the establishment of Foujdars till April, 1781, except for a short period of about twenty months during which Nawab Mubarakuddaula assumed personally the administration of the Nizamat with the approval of the Governor-General and Council. In March, 1778, he took over the charge from Mahomed Reza Khan whom he dismissed from his office of Naib Subah. Gurudas and Sadarul Haq Khan were appointed respectively his Diwan and Naib. The latter acted as the Daroga of the Nizamat Adalat and Superintended the administration of criminal justice and police.

But the incapacity of the Nawab was soon established beyond doubt. His court became a centre of intrigue, jealousy and suspicion which obstructed the entire course of justice.[1] The Court of Directors, on the other hand, disapproved these changes in the internal administration of the Nizamat. Meanwhile, Sadarul Haq Khan died,[2] which occasioned the immediate restoration of Mahomed Reza Khan to the office of Naib Subah in November, 1779.

Foujedarry Courts etc." - Home Misc. 353, P.175.

1 Hastings to Mubarakuddaula, 10 October, 1778, Calendar of Persian Correspondence, Vol.V, No.1132, Ibid. Vol. V, No.1133.

2 Calendar of Persian Correspondence, Vol.V, Nos.1650 and 1820.

The Plan in Practice (1776-1781)

Principle of Punishment - The amendments, which Hastings had desired to be introduced in the Mahomedan criminal law in 1772 remained for the most part in the form of proposals even though he personally superintended criminal justice for about two years. He could not succeed in bringing Mahomedan judges to agree to any modification of the Quranic law. Nevertheless, his efforts were not in vain. His endeavours shook their minds for the first time, and produced a reaction which, although negative in the beginning, prepared them for later psychological adjustment.

The restoration of Mahomed Reza Khan in 1775, however, put the clock back temporarily. Far from undertaking to carry out Hasting's proposed amendments, he would not even admit their propriety through considerations of religion. In fact, no legal reforms on the British model could be effected so long as the responsibility of implementing them rested constitutionally in the officers of the Nawab's government who regarded the task as an act of sacrilege. Crimes, therefore, continued to be punished according to the strict interpretation of the Mahomedan law.

For instance, in a criminal case of 1778, in which a Mahomedan servant was alleged to have been put to death by his Armenian master, the Moulavies of the Faujdari Court

at Hugli declared the accused guilty, and called upon him to pay three thousand rupees as bloodmoney to the heirs of the deceased. His failure to satisfy the judgment of the Court was punished by imprisonment, which ultimately resulted in his death. In full satisfaction of his claim the heirs of the deceased then took possession of his house and other effects.[1]

In spite of the confession of guilt by the accused, the criminal court at Bhagalpur punished the murderer of the wife of one Domari Das by a simple sentence of imprisonment.

An act of robbery by itself was not punishable by death unless it was accompanied by murder. In December, 1773, the Company's troops arrested a large number of professional decoits and put them into prison at Rangpur. The Collector of the district desired their ringleaders to be punished by death, but was not sure about the attitude of the Faujdari Adalat there. All that the Governor-General and Council did in this case was to ask their Collector to lay before the court all the evidence necessary to establish the criminality of the prisoners. But in spite of all that if the sentence of the Adalat did not extend to their lives, they should not be released without

1 See Calendar of Persian Correspondence, Vol.V, No.1543, Ibid. Vol.V.No.213.

the permission of the Board.[1]

In serious cases of murder, the nearest kin of the deceased was allowed to determine the amount of the composition money, or to remit the sentence of the law, and pardon the criminal altogether. The rule of law laid down for such cases was to consider, not the intention, but the mode or the instrument used in depriving life by the act of a second person. To commit suicide constituted no crime. No capital punishment was inflicted for a murder committed by strangling, drowning, poisoning, or with weapons like ordinary sticks. In the course of his minute of 1 December, 1790, Lord Cornwallis deplored the continuance of such inequities of law, and recommended their abrogation to promote the due and impartial administration of justice.[2] By way of justifying his proposal he quoted the case of a Brahmin[3] who had wantonly killed his wife, and although confessing and convicted of the crime, he was pardoned by hisrelations.

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1 See Rangpur District Records, Vol.II, No.445, P.297.
2 See Harington: Analysis, Vol.I, P.308-310.
3 Brahmins were exempted from capital punishment by the code of Hindu laws. See N.B.Halhed: A Code of Gentoo Laws, P.320. "There is no crime in the world so great," the code observes, "as that of murdering a Brahmin, wherefore the Magistrate shall not desire the death of a Brahmin, nor shall he ever cut off his limbs." Section 23 of Regulation 16 of 1795 also exempted Brahmins in Benares from capital punishment. This privilege was rescinded under certain reservations by Section 16 of Reg.17 of 1817.

Cornwallis recommendations, therefore, were incorporated in the judicial regulations of 3 December, 1790, which deterred the relations of the deceased from pardoning the offender, substituted hard labour, fine or imprisonment for the amputation of limbs, and finally provided that the intention, not the mode or instrument, should be the rule of law governing the punishment of criminal offences.

Trial and Adjudication - In the trial and adjudication of causes the judges of inferior courts enjoyed a wide range of discretionary authority. Neither the judicial regulations of 1772, nor Mahomed Reza Khan's plan of 1776 had specified any rules of procedure or time limit for the prosecution of crimes in these courts. They tried all capital offences, and transmitted reports of proceedings with their judgment in each case to the Sadar Nizamat Adalat for its final sentence. The latter court did not normally verify the correctness of such reports by actually trying these cases. It was guided usually by the decisions of subordinate judges who enjoyed wide opportunities of shaping in their own way the course of proceedings and the nature of their decisions.

In a minute of 1 December, 1790, Lord Cornwallis referred to the abuse of this discretion by Mahomedan judges, and attributed this abuse to want of supervision

by the Company's English servants. "The prisoners whose cases are referred for the final sentence of the Nizamat Adawlut at Moorshedabad," he observes, "are not tried by that court; but in the subordinate criminal courts of the districts in which they are apprehended. From the time of their commitment by the magistrate,[1] they remain in the custody of the 'Daroghah' or judge of the criminal court, with whom it rests to determine when they shall be tried; what witnesses shall be summoned; to what points they shall be examined; and in what manner their evidences shall be taken down; and as these courts are mostly situated at a great distance from the place of residence of the Nabob Mohammad Reza Khan, and the English magistrates upon the spot are prohibited from interfering with their proceedings, it is in the power of the officers with little probability of detection, to frame proceedings, which, when transmitted to the Naib Nazim, must inevitably procure the acquittal of the prisoner, or by protracting his trial, to oblige the prosecutors to abandon the prosecution, or agree to a compromise."[2]

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1 The English magistrate who supplanted the native Faujdars under the General Regulations of 6 April, 1781. We shall examine his functions in the next chapters. It is enough for us to note here that he was essentially the chief police officer of the district as his predecessor, the Faujdar, had been. He had no authority to interfere with the judicial business of the Faujdari Adalat.

2 Harington: Analysis, Vol.I, P.310.

In these circumstances, justice depended on the mercy of individuals rather than the strength of the judicial system. In 1779, for instance, one Damari Das petitioned the Governor-General in order to obtain redress for the loss of his wife in 1772. His plaint revealed that he had joined the English army in 1770 at Monghyr, leaving behind his wife and a five years old son in his house at Sultanganj in the district of Bhagalpur. During his absence of two years, he declared, the Brahmin landlord of his village, by name Fakirchand, developed an illicit connection with his wife, which resulted in her pregnancy. To hide his infamy he administered poison in the form of medicine in order to cause abortion. But the poison did not act. He, therefore, engaged two persons, by name Murali and Balchand, who, as the complainant added, took her along with the child to a jungle under the pretence of their being conducted to him (Damari). Murali killed the woman on the way, and cut the throat of the child while sleeping by the side of the mother. This happened in May, 1772. Fakirchand and his agents, Murali and Balchand, were subsequently arrested and put into prison. The case was tried under the supervision of Barton the Collector of Bhagalpur. The accused, confessing their guilt, were sentenced to imprisonment. After a period of six months, however, Barton was transferred from

Bhagalpur, and soon after this transfer one Debi Singh, the Naib of Samuel Middleton, Resident at Murshidabad, released Fakirchand. Damari then represented this fact of his release to Middleton, and Fakirchand was consequently arrested again. But he took no judicial action against the illegal conduct of his Naib, who repeated it again and released all the three prisoners the moment Middleton was removed to Calcutta.[1]

The Governor-General and Council had no direct contact with what transpired in the courts of Faujdari Adalat. The sources of their information were chiefly two: (1) the Chiefs of the Provincial Councils or the Collectors of alienated districts, and (2) direct petitions of appeal from individual complainants. The usual process followed in either case was to forward every matter of complaint to the Naib Nazim for enquiry and necessary action. The case of Damari Das was likewise forwarded to Sadarul Haq Khan who then acted as the Naib of the Nawab, and Daroga of the Nizamat Adalat. But there is nothing to suggest that he obtained redress for the loss he had sustained.

The case of Damari Das was also significant from another point of view. It clearly suggested the absence of any effective machinery of coercion for enforcing the decree of a court. An almost similar case occurred at

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1 See Calender of Persian Correspondence, Vol.V, No.1495.

the Faujdari Adalat at Hugli in which the court gave its decision in 1779 after seven years; and even then its decree remained unexecuted.[1]

Want of Authority in the Nizamat - The trouble of Mahomed Reza Khan arose fundamentally from a lack of adequate authority in the Nizamat. He was placed at the head of that department with the entire responsibility of law and order. He accordingly drew out a plan for the maintenance of public peace and tranquillity. But he did not possess the means to fulfil his obligations. His Faujdar, unlike that of the early Mughals, had no command over the military forces of the district. Nor did he enjoy a substantial measure of executive authority. Mahomed Reza Khan's restoration of the old structure was meaningless without the concomitant powers and means to support it.

Far from assisting the execution of judicial decrees, the Faujdars could hardly shield themselves against the attacks of those in the actual power and influence of the Company. In September, 1777, for instance, trouble arose between Shakarullah, the Faujdar of Tirhut, and one Imam Bakhsh, the Company's agent for saltpetre. The Faujdar had settled a log of wood with one of the officers of the Nizamat. But hearing that a man of Imam Bakhsh was chopping

1 Ibid. Vol.V, No.1819.

the wood with the assistance of a peon, he sent for them and informed them of the transaction. The woodcutter remained with the Faujdar, but the peon went away and informed his master Imam Bakhsh. Accompanied by four to five hundred armed men, Imam Bakhsh proceeded to the court of the Faujdar, pillaged it, robbed the treasury, dragged him out, beat him severely and took him to his house in an unconscious state. All the prisoners took this opportunity and escaped from the jail. Some people of the locality then intervened, got the Faujdar back and brought him to his home.[1]

Mahomed Reza Khan had no powers to punish even an ordinary agent of the Company as Imam Bakhsh. He, therefore, made a report to the Company's government at Fort William. But no legal proceeding was drawn against the latter, for even such a serious act of violence and defiance of public authority. In a reply of 15 October, 1777, the Naib Subah was simply informed that measures had been taken to put a stop to the repetition of such instances in future.[2]

Earlier in August, 1776, the Naib Subah had lodged complaints against the abuse and insults to which the Faujdars of Rangpur and Bhagalpur had been exposed by the Company's English servants there. It seemed that even the ordinary peons of the English officers had the temerity

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1 Calendar of Persian Correspondence, Vol.V, No.665.
2 Ibid, Vol.V, No.692.

to abuse a Faujdar and forcibly take him to their masters[1].

In September, 1777, one Jagannath, the Peshcar of the Faujdar of Jehangirnagar (Dacca) was seriously assaulted at the instance of Peat[2] who then acted as under-sheriff of the Supreme Court of Judicature. He raided the house of the Faujdar who was then holding his court there, and injured several members of his family. The immediate consequence of this outrage upon the authority of the Nizamat was a total suspension of criminal justice in the district of Dacca, because the Faujdar refused to apprehend criminals and bring them to the punishment of the Faujdari Adalat.[3]

As for the Nawab himself, he was no better than a nonentity. His position was publicly exposed in a civil suit that arose in November, 1775, in the Supreme Court of Judicature against two of his servants, by name Taji Roy and Mingun Lal, who were resident in the town of Calcutta at the time of the action. On their failure to appear, the Supreme Court issued a warrant of arrest.[4] They, however, sought the protection of Nawab Mubarakuddaula who,

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1 Calendar of Persian Correspondence, Vo.V, Nos.255 and 266.
2 He had been a clerk to Justice Hyde. He was then made Attorney, Proctor, Master-Extraordinary in Chancery and under-sheriff.
3 See Dacca Appendix to the Touchet's Committee Report, 1781 (I.O.Parliamentary Branch Collection 9).
4 See Consultations of the Secret Dept., 4 Jan., 1776, B.M. Addl.Ms.29071, ff.43a-44a. See also General Letter, Secret Dept., 15 Jan., 1776, Bengal Letters Received, Vol. 14, pp.393-394; also Calendar of Persian Correspondence, Vol.V, No.22.

in his turn, requested the intercession of the Governor-General and Council. Hastings desired the defendants to answer the charge, and plead to jurisdiction if they so liked. The Council Majority, however, used the occasion to make out a case against the Supreme Court, and advised the Nawab, inspite of Hastings' opposition, that they did not believe his servants to be subject to the Court's jurisdiction.[1]

But that could not prevent the Nawab's servants from being arrested. The point was that the Supreme Court did no recognize his sovereignty, which in fact did not exist. "The Act of Parliament," declared Justice Hyde, "does not consider Mubarakuddaula as a sovereign prince. The jurisdiction of this Court extends over all his dominions." The

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1 See Secret Consultations, 8 January, 1776, (B.M.Addl.Mss. 29171, ff.67a-68a). "I object to the answer which it is proposed to be sent to the Nawab," said Hastings, "because although it does not in direct terms advise the Nabob to oppose the execution of the warrant, the expression seems so near to that meaning that I am convinced that the Nabob will so construe it, nor can it easily admit of any other construction. The Nabob has no power but what he derives by permission from this Government, and I declare I shall consider every attempt of his to oppose the authority of the Court, if permitted by this Board, as the act of the Board." Ibid. ff.67b-68a.

Francis curiously believed that British Sovereignty could be reconciled to the existing form and rights of the Nawab's government. He, therefore, desired the continuance of Clive's system of double government. (See Francis to Lord Clive, 21 May, 1775, Francis Mss, I.O.Mss.Eur.E.13, ff.237-241). But his was a thoroughly impractical proposition. It was absurd to think of reforms so long as power and responsibility vested in two distinct entities.

remarks of Justice LeMaistre went deeper still. "With regard to this phantom, this man of straw Mubarekuddaula," he observed, "it is an insult on the understanding of the Court to have made the question of sovereignty." The Chief Justice also suggested that it was a mere name. "The agents of the East India Company," he added, "cannot by making the Nebob the instrument, do indirectly what they would not assume to do directly."[1]

True, the main object of the Supreme Court was to see that the Nawab's nominal sovereignty was not used as a shield to cover acts of oppression and injustice. The Judges, who justly regarded the state of insecurity as a product of illegal exertion of the powers of a double government, unanimously declared that "neither the East India Company, nor their servants ... can by interposing the name of the Nebob screen any criminal from the justice of the Court."[2] But the fact was established beyond doubt that the head of the Nizamat lived at the sufferance of the Company's government.

Such a system of administration might have some justification on political grounds, because the object of the Directors was to use the Nawab as a shield to protect their

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1 General Letter, Secret Dept., 15 January, 1776, Bengal Letters Received, Vol.14, Paras.28-31, PP.598-599.
2 Ibid. Vol.14, Para.32, P.5991

interests against external aggression[1]. But in the interest of law and order it certainly had no justification whatsoever. The duality of control produced a state of chaos and brought the work of the Nizamat to a standstill. Hastings admitted that the state of insecurity had arisen from the want of authority in the person appointed to conduct the affairs of the Faujdari Adalat.[2] But he could not change the policy of his masters.

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1 Compare the case of Samson, an agent of the French Factory at Mohanpur in the district of Midnapur (1775). The agent assaulted a ryot of the locality. But when summoned to appear before the Faujdari Adalat at Midnapur, he declined to obey the Court's process. The Governor-General and Council asked the Nawab to issue an order to the French to evacuate the factory altogether, which he accordingly did. On his behalf the Company's forces arrested Samson and compelled his obedience to the Nizamat. Their motive in all these transactions was to suppress the revival of the French influence in the country rather than to strengthen the powers of the Nizamat. See General Letter, Secret Department, 20 March, 1776, Bengal Letters Received, Vol.15, Paras.25-27, PP.91-93; Postcript Letter, 26 March, 1776 (Secret Dept.) Bengal Letters Received, Vol.15, P.100; General Letter, Public Dept., 9 April, 1776, B.L.R. Vol.15, PP.141-142; Calendar of Persian Correspondence, Vol.IV, Nos.2009 and 2067; Ibid. Vol.V, No.76.

2 Calendar of Persian Correspondence, Vol.V, Nos.1132 and 1133.

Inadequacy of Police Forces - The inadequacy of police forces formed another serious limitation of the Naib Subah. For financial reasons, the total number of faujdari thanas was limited to twenty-six only, excluding twenty-four smaller police stations. Each such thana normally covered an area of about a hundred and twenty - to - hundred and forty miles. Each contained a total number of thirty-four persons, of whom twenty were sepoys, the rest constituting the subordinate staff of the Faujdar. There was only one Faujdari thana at Patna for the entire province of Bihar, although before the establishment of Mahomed Reza Khan's plan the Chief and Provincial Council at Patna had recommended the institution of at least ten of them[1].

The administration of law and order was bound to suffer for want of proper means of protection. The Naib Subah was fully sensible of the inability of his Faujdars to preserve the peace of their districts with such small contingent of police forces at the disposal of each, particularly when the decoits moved in bands of three-to-four hundred armed men, plundering the ryots and setting fire to their houses.[2]

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1 From Chief and Council at Patna to the Governor-General and Council at Fort William, 8 June, 1775, B.M.Addl.Ms. 29077, f.29a.

2 See Calendar of Persian Correspondence, Vol.V, Nos.288, 270 and 422. See also Purling, Collector of Rangpur, to the Govr.Genl. and Council, 28 March, 1778 (Rangpur Dist. Rec.I, P.34, No.38); Henry Ramus, Collector of Ramgarh to the Govr.Genl.and Council, 31 Dec., 1777 (Bengal Rev.Consultn., 13 Jan., 1778, B.M.Addl.Ms.29078, ff.9a-10a and f.12a-12b).

Yet far more difficult was the problem of keeping law and order in the frontier and hilly parts of the provinces. Large bodies of Sanyasis or roving bands of dacoits traversed the northern, north-west and western frontiers of Bengal, and Bihar, plundering the people and levying contributions on the villages. They moved in hundreds, and possessed horses, camels, elephants and all kinds of arms and weapons of war. They inflicted oppressions and scourges, "not only on the ryots, but even on the zemindars and their officers, whom they carried off and confined until their demands (were) complied with."[1] Some of them had settled down to normal life in hermitages which they fortified against attacks. The Company's government had given them assurance in 1773 that they would not suffer any molestation, if they adapted themselves to peaceful cultivation or any other useful employment.[2] But here they pursued the trade of money lending and forcibly imprisoned ryots on the pretence of realising dues from them without any reference whatsoever to the established courts of justice.[3] They combined money lending with deceity, and helped those of their class, who were engaged in pillage and plunder.

1 Rangpur Dis.Rec.I, P.30. See also Hastings to Colebrooke, and Josias Dupre, Feb-March, 1773 (Gleig: Vol.I, P.282); Hastings to John Purling, 31 March, 1775, Ibid. Vol.II,P. 267. Hunter: The Annals of Rural Bengal, 3d.Edn.PP.70-82; Bankimchandra: Anandmath translated by N.C.Sengupta, Appendix II, PP.vi-vii; Price: History of Midnapore, PP. 117-23.

2 See Proceedings of the Council of Rev.at Patna, 24 May,1773. Press List of Ancient Documents, etc.Series II, Vol.I,P.347.

3 Hastings to Mahomed Reza Khan, 16 April 1776, Calendar of Persian Correspondence, Vol.V, No.117.

The Mugs[1] of the Arakan regions, on the other hand, menaced the security of life and property in Chittagong and almost all the southern districts of the Dacca Division. They regularly carried away the ryots and plundered their property. In December, 1776, the Chief of Chittagong proposed a plan of maintaining armed boats to guard the Southern rivers against their incursions. The Governor-General and Council approved this plan, and ordered their authorities at Dacca and Chittagong to work in complete collaboration.[2]

Nonetheless, in February, 1777, the Mugs carried off, from the most southern parts of Bengal, about eighteen hundred men, women and children. They were taken to their king who chose one-fourth of the total number, which included handicraftsmen and the most useful persons. He returned the rest to the captors who conducted them by ropes about their necks to a market where they sold them for twenty-to-seventy rupees each according to their strength and ability.

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1 An interesting account of their life, government and institution is available in a report of Islamabad (Chittagong) dated June, 1777. See B.M.Addl.Ms.29210 beginning with f.81a.

Their form of government was despotic. Their raja exercised absolute authority over his subjects. He was the sole judge in all causes, criminal or civil. The parties were brought before him, whom he heard what they had to say, and he immediately delivered his judgment. Criminals were punished by flogging, beheading, dismembering and impaling. The Sovereignty of their King was neither hereditary nor elective, but it was held by whosoever was able and willing to take it.

2 Secret Consultn., 30 Dec., 1776, Add.Mss.29071,f.763a-765a.

The usual practice with the Mugs was to secrete most of the silver and gold which they looted in the course of their expeditions. The reason was that their king generally exacted the lion's share; and to that end when they made a rich prize they put all the prisoners to death.

The hilly parts of the country, lying between Bengal and Bihar, were ravaged by the mountaineers themselves. The districts, which were affected by their scourges, included Ramgarh, Gidhaur, Birbhum, Manbhum, Singbhum, parts of Bhagalpur and Rajmahal. They were known as Jungleterry Districts which consisted of a cluster of hills surrounded by flat countries below.[1]

Before the establishment of the Company's influence in Bengal the peace of the country was preserved by means of a compact between the zemindars and the chiefs of the hill tribes. Every inhabited village on a hill had a chief called Mangi, who was, to all intents and purposes, a feudal lord over his ryots, constituting his soldiery and paying implicit obedience to his orders. He and his family shared one half of the entire booty seized by his ryots who distributed the remaining half among themselves. The mangi was also entitled to one-sixteenth of the total agricultural produce of his village.

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who neither hereditery nor elective, but it was held by whosoever was able and willing to take it.

1 The main source of my information on the subject of law and order in the Jungleterry districts is derived from a detailed account furnished by Captain James Browne in

The hills of every tappa[1] were under the command of a Chief Mangi to whom the mangis of seperate hills paid homage. He was bound by a mocheika or compact to the zeminder of his tappa, and possessed jagir for the support of his family. He regarded himself responsible for the maintenance of law and order, and brought robbers and theives to the justice of the established courts. His men were appointed to the chowkies or inferior police stations lying between the hills and the plain country. They guarded the ghats or passes, and prevented the hill people from proceeding through them to the plains. Once a year the Chief Mangi brought along with him all his subordinate mangis to the zeminder and renewed his allegiance to government. The subordinate mangis took a similar oath of loyalty to their chief. They/feasted together on this occasion, received their usual robe of Honour from the zeminder on behalf of government, and then returned to their hills. This mode was pursued in keeping the peace of these hilly parts of the provinces.

But the internal revolutions in the government of Bengal, which followed in the wake of Plassey, produced a state of administrative instability, and loosened the compact which had kept together the disruptive elements in the

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a letter of 15 February, 1778, addressed to the Governor General and Council. This account covers all the essential aspects of administrative difficulties experienced by James Browne, who then held the charge of these districts. (See B.M.Add.Ms.29210,ff.100a-166b.

1 A revenue sub-division equivalent to a pargana.

life of the hill people. They soon started plundering the plains. The zemindari Chowkies, however, kept things within certain bounds for sometimes. But most of them were swept away by the famine of 1769-70, which left the field open for the mountaineers to pillage the country without any intermission.

In the course of his long report of 15 February, 1778, Captain James Browne, who was then in charge of the Jungleterry districts, described how the said famine turned even peaceful peasants into professional dacoits. He pointed out that on the failure of crops in the low lands, a considerable number of the inhabitants fled to the hills, where hardy grains, requiring little water for growth, could be available in plenty. They remained with the hill people till the famine was over, and grains became cheap in the low country to which they then returned. "But having forfeited their respective castes by this communiaction with the hill people," wrote Browne, "they were held in so abominable a light that no person could trust or employ them; this necessity, and perhaps some influence from the example of the hill people, soon made them robbers; and being well-acquainted with the low country they were more dangerous than the hill people by far."[1]

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1 See B.M.Addl.Ms.29210, f.162b.

James Browne admitted the inadequacy of police forces to meet the requirements of a lawless society which existed in the hills during this period. To compensate for that deficiency he introduced certain measures of reform, which were designed to restore the old machinery of protection. He persuaded the mangis to agree on their own conditions to discharge the obligations of their original institution. But instead of entering into agreements with their zamindars, they were now required to enter into compact directly with the Company's government, because most of the zamindars had resisted the introduction of the British rule, and their conduct was still an object of suspicion to the English. Browne, however, recommended the reduction of their tributes to such a sum as they voluntarily agreed to pay. They were bound by a sacred oath of fidelity which was to be renewed annually. But to ensure the continuity of allegiance, each zamindar had to send one of his sons or nearest relatives to be stationed with the commanding officer of the Division. Moreover, provision was made for the grant of jagir or rent-free land to the Company's such retired sepoys as agreed to settle on the plains lying between the hills. His object was to develop a kind of militia intended to guard those districts against the ravage of dacoits. But his reforms could not bear fruits so soon, and the state of insecurity, therefore continued as before.

The Role of Zamindars - The police organisation of Mahomed Reza Khan was an imitation of the Mughal pattern which comprised the Faujdar and the zemindar as the principal organs of law and order. Under the early Mughal rulers of India, the former represented the might of the empire in the district, while the latter acted as an ancillary instrument of peace, which formed a part of the duties annexed to the tenure of his zemindari. Theoretically, both of them existed in the same relationship under the plan of Mahomed Reza Khan as well. True, in revenue matters a farmer or zemindar was responsible to the Company's government. But in matters of police and criminal justice, which still constituted the province of the Nawab's government in principle, he was regarded as subservient to the Faujdar whom he was expected to assist with all his resources in the preservation of peace and tranquillity.

In practice, however, this relationship had long ceased to operate. 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 throughoutthe provinces. The zemindars, therefore, took unfair 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[1].

Lieutenant Brenan, who was Officer Commanding at Dinajpur in 1787, referred to the outrages of the zemindars who constituted a regular source of menace to the security of life and property. "I did not imagine," he observed, "that it was a matter of any importance to know that the principal zemindars in most parts of these districts, and I believe, in most parts of the country too, I may venture to add, have always a banditti ready to let loose on such of their unfortunate neighbours as have any property worth seizing on; and in accomplishing which even the lives of the unfortunate sufferers are seldom spared. The zemindars commit these outrages in the most perfect security as there is no reward offered to detect them ; and from the nature of the dependence of dacoits on them, it

1 From Mahomeda Reza Khan to the Governor-General, 11 Dec., 1775, Calendar of Persian Correspondence, Vol.V, No.422. The Naib Subah quoted instances to prove the complicity of zemindars with the lawless elements of the country. One of them referred to a thanadar being seized by dacoits of Basudeopur in the district of Midnapur. In spite of great uproar and tumult arising from the incident, the zemindars did not bestir themselves in the least. No trace could be had as to what the dacoits did with the thanadar.

cannot be effected without bribery."[1] In many places, they defied the authority of the Company, and regarded themselves as independent within the extent of their zemindaries.[2]

Thus the office of the zemindar ran counter for the most part to the very design of that institution. Mahomed Reza Khan had wisely proposed in his plan to require every principal zemindar to have one of his representatives stationed at Murshidabad, so that he might act as security for his good conduct. This scheme might have imposed certain restrictions on the movements of zemindars, as it did when Captain James Browne applied the same principle to some of the zemindars of the Jungleterry districts in 1776.[3]

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1 Rangpur District Records, Vol.I, P.38. See also Richard Goodlad, Collector of Rangpur, to MacDowall, Collector of Dinajpur, 16 June, 1783 (Rangpur Dist.Rec.Vol.IV, PP.161-62, Nos.218-219). The zemindar resisted the process of the Faujdari Adalat in a murder case, and got the court peons put into confinement.

2 Henry Ramus, Collector of Ramgarh, to the Governor-General and Council, 31 Dec., 1777, entered in the Bengal Rev. Consultations, 13 Jan., 1778, B.M.Addl.Ms.29073, ff.9a-10a; Abstract Report of the Prov.Council at Dinajpur, 26 June, 1775, B.M.Addl.Ms.29077, f.25a. Abstract Report of the Prov.Council at Patna, 27 July, 1775 and 12 Oct., 1775, B.M.Addl.Ms.29077, ff.28a and 29b. Fateh Sahi, who consistently resisted the authority of the Company, was the zemindar of Hussepur in the district of Saran. See Press List of Ancient Documents, etc. Series II, Vol.I, PP.39,77,170, 222, 283, 323-24, 372,376. Most of the zemindars of Bihar joined the rebellion of Cheyt Singh against the English in 1781. See J.Reginald Rand: Early English Administration of Bihar (1781-1785), 2d. Ed.(1894), Chapter III.

3 Addl.Ms.29077, f.36b.

But it was rejected on financial grounds, in the case of Mehemed Reza Khan. In the event of disobedience, therefore, all that he could do was to make a report of their deeds to the Governor-General and Council who then instructed their local authorities for necessary action. Responsibility without power or means to discharge obligations was thus the most serious drawback of his place which was bound to fail, as it did, owing to the non-cooperation and continued hostility of zamindars.

APPENDIX A

INSTRUMENT OF INSTRUCTIONS ISSUED TO THE FAUJDAR BY MAHOMED REZA KHAN[1] (1776)

English Translation

To The Magnanimous

As the office of Foujedar of the Tannah of ---- has been conferred upon you it is required that you apply to the Duties of the Said Office with Uprightness, Integrity and Fidelity, and use your utmost endeavors to secure the Peace and Tranquillity of the District under your charge, making use of the utmost assiduity and vigilance in the apprehension of thieves, night Murderers, and Highway Men, and that you send a Sourat haul[2] thereof to the officers of the Foujedarry Adawlut of that District, who having examined and scrutinised it will transmit a Sourat haul to the Presence: after which it will be examined by the officers of the Sudder Adawlut, and Sentence passed on the Prisoners signed by the Presence will be returned which they will carry into Execution. And all disturbers of the Peace and bad Members of Society, who commence Quarrels and Contests with each other. You are to prevent from the practice of villainy, put a stop to their Quarrels and cause Punishment (to) be Inflicted on them. You will write to

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1 The Board approved these instructions. See Calender of Persian Correspondence, Vol.V, No.74. I have retained the old spellings of words, as they occur in the Ms.
2 A report of affairs.

the Zemindars, Talookdars, and Farmers that they cause the Tannahdars, Chowkeydars & Picars of the Zemindarry, both land servants and such as receive wages, to attend you and relinquish to you the right of confirming and dismissing them that in the defence of the Mahals dependent on the said Farmers, the Protection of the Riots who pay Revenue, the Apprehension of Thieves and Highwaymen, they may conform themselves to your Orders by exerting their utmost vigilance and assiduity without a Hair's breadth deviation, neglect or inattention. Should it at any time happen that any Zemindar, Farmer or their Officers refuse to comply with your instructions, give information thereof to the Chief of the Provincial Council of the District who will apply a remedy thereto; an order to this effect has been issued by the Supreme Council which the Gentlemen of the District will undoubtedly obey: If no remedy is applied, give inteligence thereof to the Presence; and if the Pykars and other officers of the Zemindarry Tannehs are guilty of carelessness, and neglect, you are to repremand, and bring them to condign punishment.

"In Consequence of the Orders of the Supreme Council, the Provincial Council will take Muchalcas from the Zemindar, Talookders and Farmers, that they will be vigilant in the Protection and defence of the Riots who pay Revenue

and in the apprehension of Thieves, Highway Men and other Villains, and that they will not deviate in the least from from your Orders and that they will give the earliest information to you of the Place of residence of any Thief or Highway Man, of the Place, where any Robbery or Murder had been committed, of any Body of Highway or Banditti which may be assembled together, in their neighbourhood. And that they will join with and heartily support you in every measure to eradicate and destroy them, and to put a stop to all disturbances and commotions. Should the property of Merchants, Traders or Riots who pay Revenue, be stolen or plundered, you are to exert yourself so effectually, that the Thief or Highway-Man be produced with the goods, so stolen or plundered, that the property may be restored to the right owner, and the offender punished on the spot where the offence was committed as an Example to deter others from the like crimes, and to give confidence to the Ryotts, Husbandmen, Travellers, Wayfarers, Traders, and Merchants against the apprehension of these Gangs of Villains, and entirely to root out of the Districts under your charge, every instance of Robbery and Murder.

"Should any instance of Robbery or Murder occurs, and it appear that it happened through the neglect of the Tannadars and officers of the Zemindars, you are to make them responsible.

"If any Person is apprehended on the accusation of another for Murder, Theft or Highway Robbery, let him be examined in the Presence of the Officers of the Canongoe, Zemindars, Farmers, and the Inhabitants of the Place, and a Sourat haul prepared and sent to the officers of the Adawlut. After they have examined into the matter, every-one who is declared innocent by the decree of the Adawlut, you are to release without delay.[1]

"If any Person is taken up for stealing rice out of a field, a Goat, Buffalo, or Fruit, having examined minutely into the affair, let a punishment be inflicted on him proportionable to his offence & release him, & let an account of such Prisoners, specifying the date of their apprehensions and release be kept and transmitted to the officers of the Adawlut of the District.

"You are to take the greatest care that the Ryotts who pay Revenue and Inhabitents of the District under you suffer no kind of oppression or Vexation, either from yourself or your Officers or from the Pykars and other of the Zemindar's people, and neither you nor your officers are to cover or take a single Daum or Derm from any Person

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1 "If they are found guilty, a surat haul is to be transmitted to the Presence, and the stolen Goods of the Prisoners which may be seized are not to be released by the Mofassil Adawlut without an order for that purpose from the Nizamat Sudder Adawlut, but that they are to send a List of such Goods to the Sudder Adawlut and are afterwards to act as they shall receive Orders from the Nizamat Sudder Adawlut. If they receive orders to

whether in specie or Goods, either with or without the consent; who shall presume to do so will find the consequences very bad to him.

"Whatever goods are taken from the Thieves or Highway-Men, you are to send a list of, to the Officers of the Adawlut without delay. Afterwards you are to obey whatever Orders may be issued concerning them.

"If a Thief or Highway-Man escapes from your District into another, give intelligence thereof to the Foujedar of such district, that he may apprehend and send him to you, or that you may join your mutual endeavors toapprehend him. Whenever you stand in need or assistance require it from the neighbouring Foujedar, and if any one requires assistence from you, afford it to him.

"Know for certain that you are appointed Solely for the protection of the Country and for the Tranquillity and Security of the Ryotts. You are required to pursue every measure which may tend to promote the happiness of the Ryotts, and to avoid everything which may give him vexation: You are not in any manner to interfere in the business of the Revenue, or make any attempt for that purpose.

"If any Zemindar protects a Murderer, Highway-Man or Robbers by his influence or neglects to apprehend him, you

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confiscate them for the Government, they are to sell them and carry the amount to the Jumma." Home Misc. 353, PP.190-191.

are to write to him. If he does not pay regard to your remonstrances give intelligence thereof to the Provincial Council, and write also to the Presence, and a remedy will be applied. If any of your own People are guilty of neglect, punish them, and if they deserve to be dismissed, give information to the Presence. You are not to dismiss them without an order from the Presence.

"You are to obey every Order which is sent to you, and regarding yourself responsible for the performance of all the above directions, comply literally with them, be assured that you will be called to a severe account."[1]

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1 Home Misc. 353, PP.175-186.

CHAPTER XIII

REFORMS IN CRIMINAL ADMINISTRATION 1781-1782

Abolition of the Establishment of Faujdars - On 6 April, 1781, the Governor-General and Council abolished the establishment of Faujdars and thanadars, who had failed to answer the purpose of their institution. The Nawab was asked to recall them altogether, which he did accordingly. The Faujdar of Hugli, however, retained his post at the pleasure of the Company's government till July, 1782, when it was completely abolished.

In place of the Faujdars, the judges of civil courts were now vested with powers to apprehend criminals within the bounds of their respective jurisdiction. The scope of their additional function was restricted exclusively to police duties. Powers to try or punish any person did not vest in them: nor could they detain any criminal without the order of the court of Faujdari Adalat. Their duty was to commit criminals immediately on their apprehension to the Daroga of the nearest Faujdari Adalat, and submit to him written charges on which they had been apprehended.

The power of apprehending criminals vested in the zemindars as well. In this capacity, they and the judges of civil courts possessed, both jointly and separately,

a concurrent jurisdiction. But such jurisdiction was by no means to exclude the Darogas of the Faujdari Adalat from the exercise of their magisterial authority in the apprehension, trial and punishment of any person subject to the jurisdiction of their courts. Their powers remained unaltered. They continued to function as before, and submit their proceedings to the confirmation of the Naib Subah, whose office was retained, although restricted to the supervision of criminal courts. The zemindars and the judges of civil courts were in duty bound to assist one another, and help the Darogas of criminal courts on their requisition to that effect.

Centralisation of Control - The second important feature of the reforms of 6 April, 1781, was the centralisation of control under the Governor-General and Council at Fort William. A separate department was created at the seat of the Presidency with the object of receiving the reports and periodical returns of criminal administration throughout the provinces.

Each judge of civil courts and every zemindar, vested with powers to arrest criminals, were now required to transmit to the Governor-General, on the first day of every month, separate reports of persons apprehended and committed for trial to the Daroga of the Faujdari Adalat, together with the attested copies of charges laid against each

prisoner. The courts of Faujdari Adalat, on the other hand, had to submit their own monthly reports, containing separate lists of all persons committed to them in the course of every month, and certifying by what authority each of them was apprehended. They were also directed to transmit similar lists of all persons discharged within the same period together with attested copies of sentences or orders passed by the Nazim in the course of the same month.

A covenanted servant of the Company was appointed to the immediate charge of this department under the title of Remembrancer of Criminal Courts. It was his business to receive reports from all the three different channels. The duty of his office was to keep such reports duly arranged with their necessary translations and abstracts for a ready reference to the comparative view of the state of criminal justice in the different districts. The salary and establishment annexed to his office were as follows:

Remembrancer (including Salaries, house rent and contingencies	Rs.	1,000 p.m.
His Assistant	"	100 " "
One Maulavi	"	100 " "
One Munshi or Copyist	"	30 " "
Total	Rs.	1,230 " "

The reforms of 6 April, 1781 thus separated the police function of the Nizamat, and placed it in charge of the Company's covenanted servants whose primary duty was the administration of civil justice in the courts of Diwani Adalat. In their additional capacity they were designated as Magistrate[1], and exercised a certain measure of executive authority in the discharge of their new obligations, as the Faujdars did before. The judicial and most of the executive powers of magistracy, however, vested still in the Daroghs of criminal courts, who continued to form part of the Nizamat under the immediate control of Mahomed Reza Khan.

The separation of police from criminal justice, however, was fraught with evident risks of a divided control, and gave rise to a central machinery of supervision to avert those risks. The main task of the office of Remembrancer was to co-ordinate the functions of the Judges and the Zemindars with those of the courts of Faujdari Adalat, lest they should begin to work at cross purposes.

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1 The use of the word Magistrate at this period should not be confused with the modern functions of magistracy, including the exercise of both judicial and executive authority. Under the reforms of 6 April, 1781, the English Magistrates succeeded only to the police functions of the Faujdars.

Reduction and Re-distribution of Criminal Courts - In July, 1782, the Governor-General and Council reduced the number of criminal courts from twenty-three to eighteen, and re-distributed them according to the convenience of the English magistrates[1]. The object of Warren Hastings was to reduce the expenses of administration, the necessity of which arose from the continued and costly wars with the Marathas and Mysore. With a view to expedite the course of criminal justice, each of the eighteen courts of Faujdari Adalat was fixed in the neighbourhood of civil courts as follows:[2]

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1 The reforms, which were adopted by the Board in their Revenue Consultations of 5 July, 1782, had been proposed first by Warren Hastings in the course of his minutes of 29 June, 1781 in the Faujdari department. They were put into operation from 1 August, 1782. See Home Miscellaneous Series, Vol.353, PP.295-323.

2 Nos.3-12,14 and 18 were continued as under Mahomed Reza Khan No.1. was removed from Sylhet, No.2 from Bhushna, No.13 from Bishnupur, No.15 from Dinajpur, and No.16 from Purnea. The Court at Lauriya or Mehsi was created anew.

The monthly allowance sanctioned to each court amounted to four hundred and ninety-five rupees, and was distributed as follows:

1 Daroga	Rs.100	1 Mullah	Rs. 10
1 Qazi	" 65	1 Tabbob	" 20
1 Naib Qazi ...	" 35	1 Brahmin... ...	" 10
2 Munshies ...	" 60	1 Tazianaberdar.	" 4
2 Muharrirs ...	" 40	1 Jallad	" 4
1 Mirda for jail	" 25	1 Gurcan	" 4
30 Barkandazes or		1 Frash	" 4
Civil Guards	" 90	Miscellaneous.	" 14

The constitution of the Sadar Nizamat Adalat remained unaltered. Its monthly establishment amounted to twenty-nine hundred and nine rupees.

In Bengal

1. Azmerigunj
2. Bakarganj
3. Bhagalpur
4. Burdwan
5. Chitpur
6. Chitra
7. Dacca
8. Islamabad
9. Midnapur
10. Murli
11. Murshidabad
12. Nator
13. Raghunathpur or Rajhat
14. Rangpur
15. Tajpur

In Bihar

16. Darbhanga
17. Lauriya or Mehsi
18. Patna

New Magisterial Establishments - With the exception of Bhagalpur, the reforms of 6 July, 1782 provided for a separate magisterial establishment intended for assisting the magistrate in the discharge of his police duties. Each such establishment consisted of a Nazir, a jail officer, a few Muharrirs and a certain number of Barkandazes or civil guards and watchmen, who were employed in the preservation or law and order. The number of Barkandaza varied between twenty-five to a hundred and fifty according to local requirements. In the case of Bhagalpur, the militia sepoys and hill archers of the place were to serve the purpose. A separate establishment was attached to each of the other seventeen magistrates.

The contingent of police guards and watchmen was confined ordinarily to the headquarters of a magistrate except when it became necessary to detach them on specific occasions. But they were to return to their headquarters immediately after the service required from them was performed. If a magistrate regarded his proposed establishment as inadequate, he might call upon the zemindars to erect and maintain a requisite number of thanas or outposts at their own costs. Under special circumstances, he could also requisition the services of the Company's troops assigned to his jurisdiction[1]. But he had to make application in writing to the commanding officer for the purpose. The sepoys to be so commissioned were required, however, to come back to their station soon after the accomplishment of the object desired.

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1 The military commands assigned to the jurisdiction of magistrates were as follows:

Officer Commanding	Magisterial Jurisdiction
a) The Chief of Dacca or the Collector of Sylhet.	Dacca, Amsriganj, Bakarganj, and Chitra.
b) Bhagalpur	Bhagalpur.
c) Burdwan	Burdwan
d) Governor-General	Calcutta, Midnapur and Hurli
e) Chittagong	Islamabad (Chittagong)
f) Murshidabad	Murshidabad
g) Rangpur	Rangpur
h) Patna	Patna, Darbhanga and Mahsi.

The officers commanding for Hatar, Raghunathpur or Rajhat and Tajpur are not referred to in the Rev.Consultn. of 5 July, 1782.

The allowance assigned to each of the seperate establishments of magistrates was as follows:

Establishments	Allowance P.M. in Rs.	Establishments	Allowance P.M. in Rs.
1. Azmerigunj	810	9. Lauriya(or Mehsi)	475
2. Bakerganj	810	10. Midnapur	475
3. Burdwan	250	11. Murli	810
4. Calcutta	610	12. Murshidabad	250
5. Chitra	240	13. Nator	475
6. Dacca	250	14. Patna	250
7. Darbhanga	475	15. Raghunathpur or Rajhat	475
8. Islamabad	250	16. Rangpur	250
		17. Tajpur	475

Thus, sations forming the headquarters of military establishments were granted a small allowance of two hundred and fifty rupees each per mensem, excepting Calcutta which was an exception possibly on account of its being the seat of the Presidency. Those with a monthly allowance of eight hundred and ten rupees maintained the maximum number of a hundred and fifty Barkandazes, these stations having a monthly allowance of four hundred and seventy-five rupees had eighty Barkandazes in their establishments. The number of Barkandazes for Calcutta was a hundred.

Provisions were made for additional allowances for a Kotwali establishment in each of the towns of Murshidabad, Dacca and Patna, as shown below:

For Murshidabad:	1 Kotwal	Rs. 45	P.M.
	80 Barkandazes ...	" 340	"
	30 Pasbans or Watchmen	" 105	"
	10 Domes (Scavangers)	" 35	"
	Total:	Rs.525	P.M.
For Dacca:	1 Kotwal	Rs. 45	"
	60 Barkandazes ...	" 240	"
	30 Pasbans	" 105	"
	10 Domes	" 35	"
	Total:	Rs.425	P.M.

The establishment of the Patna Kotwali was similar to that at Dacca. The Kotwal continued to be a police and municiapl officer of the town as before.

Instructions to Zemindars - The zemindars, who were vested with a concurrent police jurisdiction with the judges of civil courts, were informed of their dyty by means of a general proclamation issued by the Governor-General in July, 1782. The text of that proclamation read as follows:

"Whereas the peace of the provinces has been greatly disturbed through the negligence or connivance of the zemindars, it is hereby ordered and proclaimed that all zemindars, chowdries, talookdars, and other proprietors of land do conformable to the original and fundamental tenure on which they all held their zemindaries or

other portions of landed property, take effectual care that no robberies, burglaries, or murders, be committedwithin their districts, and that they do their utmost to bring all offenders to justice, that they do erect thanahs in such places as shall be pointed out to them by the magistrate and be answerable for the good behaviour of the thanahdars and other officers appointed thereto and for their punctual obedience of all orders issued to them from the magistrates, and it is hereby declared that if any robbery be committed, the zemindars to whose district the robbers appertain or in whose district the robbery shall be committed according to the circumstances of the case shall be made to refund the amount. But if any zemindar shall either commit or connive at any murder, robbery or other breach of the peace, and it be proved against him, he shall be punished with death. And if any zemindar shall refuse or neglect to obey anyorders issued under the authority of government, he shall be punished as the nature of the case and the degree of the crime shall require."[1]

The reforms of 1781-82 thus did not go far to remove the defects of the earlier administration. It is true that Faujdars were supplanted by the Company's covenanted

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1 This text of the proclamation was approved by the Governor General and Council in their Revenue Consultations of 5 July, 1782. See Home Miscellaneous Series, Vol.353, PP. 315-316. See also Rangpur District Records, Vol.II, No.352, P.251.

servants who could discharge the obligation of their office with increased confidence and authority. It is also true that the office of Remembrancer was a step forward and designed to keep the Company's government at Fort William duly informed about the general state of law and order in the different parts of the provinces. But they touched only the fringe of the whole problem of reform. The constitution of the courts of criminal justice remained completely unaltered. The inequities of the Mahomedan criminal law therefore continued to operate as before. There was no alteration in the mode of proceedings, trial or adjudication of criminal offences. The Company's government still regarded criminal administration as outside the proper sphere of their responsibility. The task of policing the provinces was entrusted to non-official agencies like zemindars or farmers of land revenue, who often acted as a veritable source of oppression rather than an instrument of protection.

The English Magistrates took over the office of Faujdars without any accession to additional authority. They had no powers to interfere in the judicial proceedings of criminal courts. Nor could they try to punish any person for breach of the peace. Their ignorance of local dialects and customs of the people added tremendously to their handicaps, which were partially responsible for delay in prosecution.

On the other hand, the Chiefs and Collectors of separate districts had their own limitations. The extent of their executive authority was not commensurate with the responsibility of their post. In February, 1783, for instance, there broke out a serious peasant revolt in the district of Rangpur on account of the oppressive and exorbitant demands of zamindars. The insurrection, which had started on a small scale in the beginning, soon spread over a wide area, and affected the adjacent districts of Dinajpur and Purnea and eastern parts of Bihar. The rebels tried to set up a parallel government, and appointed from among themselves a Nawab, a Diwan and other officers intended to carry on a separate administration. The Collector of Rangpur regarded this movement as "the most formidable that ever happened in Bengal," but was helpless in the beginning for want of adequate authority to suppress it. It was only when the peasants had murdered several officers of the collection and obliged others to fly for their lives that he ordered the commanding officer to open fire and quell the disturbance before it was too late.

But all the same, his action was not legally supportable. He, therefore, furnished a lengthy explanation of his conduct, and justified the use of arms

as an act of emergency which could not admit of obtaining the previous permission of government[1]. Nonetheless, the Committee of Revenue at Calcutta appointed a special commission to enquire into the circumstances of the insurrection with powers to restore law and order, independently of the Collector. On 12 August, 1783, the Governor-General and Councils imposed a number of restrictions on the use of military force in ordinary circumstances and sanctioned it only in emergency[2].

In these circumstances, no regulations could be enforced on zemindars with any prospect of success. The Collector of Rangpur, for instance, had definite information that the peasant revolt of his district had been engendered by two of the principal zemindars[3]. But he

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1 See Richard Goodlad to the Committee of Revenue at Calcutta, March, 1783, Rangpur District Records, Vol.IV, No.204, PP.151-153. See also Ibid, Vol.IV, Nos.178, 180, 187 and 188, which give a detailed account of the Rangpur peasant rebellion.

2 See Circular Letter of the Committee of Revenue at Calcutta to the Collector of Rangpur, 25 August, 1783, Rangpur District Records, Vol.III, PP.67-72, Nos.105-108.

3 See Richard Goodlad, Collector of Rangpur, to the Committee of Revenue at Calcutta, 2 March, 1783, Rangpur Dist.Rec. Vol.IV, P.144, No.193.

could not bring them to the punishment of law, because he had no powers to arrest them. In August, 1783, the Collectors of separate districts, no doubt, were authorised to apprehend zemindars on suspicion, but it was doubtful whether this authority was exercised with any measure of success, particularly when Pitt's India Act of 1784 shortly ordered enquiries into their complaints with an assurance to restore them to the rights and privileges which they claimed as accessory to the tenure of their land[1].

As for the Members of the Supreme Council at Fort William, they had functioned for the greater part of Hastings' government as a debating society rather than a Council of action. Philip Francis, who led the Majority against the Governor-General, unequivocally admitted that the delay of business and want of determination arose from the unhappy division in the Council. "We debate and examine," he added, "but rarely decide."[2]

The head of government lacked power and means equal to his responsibilities. "The meanest drudge, who owes his subsistance to daily labour," Hastings wrote to Lord North, "enjoys a condition of happiness compared to mine,

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1 Rangpur Dist.Rec., Vol.III, PP.70-71, No.108.

2 Private Letter of Philip Francis to William Harwood, Chief of Dinajpur, 10 May, 1775, I.O.Mss.Eur.E.14, P.20. The points of contention between Hastings and Francis were both personal and public. See Hastings letter to the Court of Directors, 3 Dec., 1774, (Bengal Letters Received, Vol.12, PP.247-280). See also S. Weitzman: Warren Hastings and Philip Francis, Chapters II and III. The conflict between the two ended in a duel in August, 1780, which adversely affected the interests of administration.

while I am doomed to share the responsibility of measures which I disapprove, and to be an idle spectator of the ruin which I cannot avert."[1] In a subsequent letter of 13 August, 1784, addressed to his wife from Lucknow, he expressed much deeper feeling of helplessness, which accounted for his failure to achieve what he strove for. "I am thwarted," he wrote, "in everything that I undertake, by the Members of the Council, who do nothing themselves to compensate for -nat they disable me from performing. A labour has been exacted from me which required that I should possess all the powers of my station, and I am peremptorily and absolutely interdicted the use of any one of them. In default, I am reduced to the necessity of employing the weight of my private character and popular interest with the hazard of losing both in the attempt by the failure of it."[2]

The wavering support of the home government was yet another handicap for Warren Hastings, which obstructed the progress of reforms during his regime. The hostile report of the Council Majority, were by themselves sufficient to alienate the Directors support of Hastings.

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1 Hastings to Lord North, March, 1775, quoted in Lyall: Warren Hastings, P.72. See also Hastings to the Court of Directors, 3 Dec., 1774, Bengal Letters Received, Vol.13, PP.199-202.

2 Sydney C.Grier: Letters of Warren Hastings to his wife, P.292. See also Proceedings, Secret Department, 3 April, 1775, Forrest: Selections, etc. Vol.II, PP.337-342, wherein Hastings deals with the state of his helplessness, and justifies his action in having dissolved the Council when on 13 March, 1775, the Council Majority intended to bring in Nandkumar and [illegible] to try

The antagonistic interests of political parties in England prejudiced his reputation all the more. He was the nominee of parliament, but still a servant of the Company. It was indeed a terrible task to reconcile the conflicts of their interests, which seriously affected the general administration of Bengal.

And, above all, the financial policy of the Company was chiefly responsible for the inadequacy of proper means of protection. The average annual expenditure over criminal justice and police during 1776-1781 amounted to 5,95,125. rupees or £74,390.13.6d, which was further reduced in 1782 to 2,50,488 rupees or £31,311[1]. In fact, this policy led to the shocking neglect of criminal administration as a whole. The Company shirked direct responsibility of this department, and entrusted the execution of reforms to those whose interest lay in their failure.

These defects were removed by the government of Lord Cornwallis who, for the first time, assumed for the Company the direct responsibility of law and order. In 1790, he completely abolished the native control over this department, and transferred the Sadar Nizamat Adalat to Calcutta, where it was placed directly in the charge of the Governor-General and Council. He also felt the impracticability of enforcing the police obligation of zemindars who, far from preserving the peace of the country, promoted acts of

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ask him to lay before the Board his accusations against Hastings.

1 See Home Miscellaneous Series, Vol.382,pp.75-76

violence in collusion with the perpetrators of crime. Cornwallis deprived them of their entire responsibility of policing the country, and entrusted it to the native servants of government to be called darogas. They were appointed by the European Magistrates who were now vested with both executive and judicial powers of criminal administration.

Hastings, however, had already laid the foundations for all that Cornwallis accomplished. True, they differed from each other in their mental make-up. Hastings was slightly influenced by a touch of Mughal despotism, and sometimes recommended, under the force of circumstances, methods which clashed with the British principles of justice and rule of law. Cornwallis, on the other hand, was inspired pre-eminently by a respect for law, which guided him in all his judicial reforms. The difference, however, was one of the mode rather than the principle of administration. Professor Penson is, therefore, justified when she writes 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 now clearly stated, and the strength of the home government was used to enforce them."[1]

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1 Cambridge History of India, Vol.V, PP.436-437.

CHAPTER XIV

CRIMINAL ADMINISTRATION IN CALCUTTA 1772-1782

(A) POLICE

On the acquisition of the three villages of Sutanat, Govindpur and Calcutta in 1698, the Company's Chief Merchant then administered police and criminal justice under the title of Zemindar. With the increase of population, the policing of the town of Calcutta was entrusted to a Kotwal, who was both a police and municipal officer of the town. He submitted his reports to the Company's Zemindar to whom he was responsible for public health and security.

In obedience to the Director's orders of 3 March, 1758, a European Guard was appointed to control and supervise the police administration of Calcutta[1]. He was to be assisted by an ensign to patrol constantly from ten at night to five in the morning. The situation of the town, however, did not improve because of the inadequacy of the police and municipal arrangements to meet the problems created by the growing population. Besides, for want of proper control over the market and the private buildings of the Settlement, the prices of food and rents of houses rose exorbitantly high.[2]

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1 See J.Long: Selections from the Unpublished Records of Government, P.128, No.306.

2 See letter of the President and Council to the Court of Directors, 8 September, 1766, (Verelst: View, etc., Appendix, P.33.)

When Hastings became Governor in 1772, he found Calcutta virtually without effective means of protection. Murders and robberies were daily committed, and it was well-nigh impossible for the country court to stop crimes which were fast increasing[1]. His task was thus to build an efficient system of police administration without adding much to the Company's financial burden.

In November, 1772, the President and Council at Fort William provided for a large contingent of police force, which included thirty-three thanadars with thirty-three naibs or assistants and seven hundred pikemen[2]. The entire contingent was placed under the immediate control of a European servant of the Company to be known as the Superintendent of Police.

In June, 1773, Warren Hastings proposed an improved plan which was adopted by the authority of the Company's Government and the concurrence of the inhabitants of Calcutta.[3]

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1 See Bengal Letters Received, Public Department, 21 Nov., 1777, Vol.16, Para.28, P.749.

2 Addl.Mss.29079, f.11b. The pay of the servants employed in the patrol and guard of the town amounted to 3462 Arcot Rupees. This amount was distributed as follows:

33 Thanadars @ 8 rupees p.m.	...	264
33 Naibs " 6 " "	...	198
700 Pikes " 4 " "	...	2800
Oil for the Chowkies	...	50
1 Tom-tom	...	4
1 (?) Jamadar	...	16
4 Harkaras	...	16
2 Sircars	...	24
1 Writer	...	50
1 Jamadar with 8 peons	...	40
Total Arcot Rupees		3462

3 See Revenue Consultations at Fort William, 29 June, 1773, Addl.Mss.29079, ff.9b-10b.

The whole town was divided into a number of wards, and to each ward was appointed a proportionate number of pikemen. A jamadar was placed over every ten pikemen, and a thanadar over the command of the whole ward. The entire contingent of the police force of every such division or ward, including the Jamadar and the thanadar, was placed under the control and authority of a Kotwal appointed with the general approval of the people from among the most substantial householders of the division. The Kotwal was authorised to act as a superintendent of the police of his ward, to make payments to the thanadar and the pikes, and defray such other charges as were required for the safety and convenience of the division. To meet his disbursements he was vested with authority to levy assessment on the inhabitants of the Town conformably, of course, with "the usage of the country, the laws of their religion or castes or their voluntary consent."[1] In the exercise of his financial powers, however, the Kotwal was required to obtain the previous concurrence of the principal householders of his division. Besides, he had to keep a regular account of the receipts and disbursements and make it public at the beginning of every month for the information and satisfaction of the inhabitants as well as the government.

The Kotwal was required also to maintain an account of

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1 Ibid. f.10a.

all the householders and families residing in his division, and report daily on strangers coming into his division either as occasional sojourners or with the purpose of residing there. The pikemen, whose duty it was to patrol the streets at night and apprehend criminals, committed to the custody of the Kotwal all those whom they arrested in the course of their patrol. The Kotwal, in his turn, could either release the prisoners or make over them to the Daroga or the Magistrate of the criminal court.

At the head of all the divisions was placed a civil servant of the Company with powers to regulate the conduct of the Kotwals and receive all the reports and accounts from them. He communicated to them the orders of the Government, and saw that they were duly carried into execution.

Hastings thus organised the town police of Calcutta on the pattern previously adopted by Mughal rulers in their towns.[1]

Charles Stafford Playdell[2] was appointed Superintendent of Police for the whole town. He was responsible as much for the sanitation and public health of the Settlement as for the maintenance of peace and tranquillity in it. The fund necessary for the maintenance of this Department was raised voluntarily with the consent of the inhabitants who agreed to

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1 See Chapter III.

2 Arrived in India in 1744. Resident at Ballasore in 1759, when he married the daughter of J.Z.Holwell. Collector of Calcutta in 1764-65. Returned to England in 1769. Came back to Bengal in 1771. Appointed Superintendent of Police in 1773. Dismissed in 1775. Reappointed Superintendent of

pay contribution in proportion to the extent and value of their holdings. These contributions subsequently grew into compulsory municipal rates and chawkidari taxes. For the sake of economy they were collected in the beginning by the same machinery as was responsible for the Collection of land revenue[1].

On 17 May, 1774, the President and Council at Fort William established further regulations to improve the state of police administration in Calcutta[2]. Their main object was to relieve the local Faujdari Adalat of some part of its judicial burden to the Superintendent of Police. The scope of the judicial authority so transferred was restricted to the causes of the Europeans against their native servants - causes which had become so numerous that they seriously obstructed the normal course of justice in other cases.

In a subsequent despatch, the President and Council explained the circumstances, which had necessitated such a course of action. "The establishment hitherto formed for the police of the town of Calcutta," they wrote, "having been found insufficient to remedy all the disorders incident to so populous a city and the Faujdari Adalat being greatly impeded in the proper exercise of its functions by the continual

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Police for Calcutta in 1778. Continued in this office till he died on 27 May, 1779.

1 See Home Misc. Vol.212, P.294.

2 The regulations are printed in Firminger's 'Introduction to the Fifth Report from the Select Committee of the House of Commons, Vol.I, PP.CCXXXIX-CCXIii.

appeals which are made to it by the European inhabitants in complaints against their servants by which crimes of the most atrocious nature often remain for months unexamined and the jails crowded with prisoners, we took this subject under our consideration in the month of May last and resolved upon certain regulations calculated to ease the Faujdari Adalat in the cognisance of complaints of masters against their servants and to introduce better order in the police of the settlement by vesting a degree of authority in such matters to the Superintendent of the Police."[1]

The reforms of 17 May, 1774 made the following changes in the criminal administration of Calcutta:

1. The Faujdari Adalat ceased to take cognisance of the complaints of Christian inhabitants against their hired servants or slaves.
2. The Superintendent of Police was appointed Deputy to the Zemindar[2] with powers to deal with such cases subject, of course, to the final orders of the Zemindar on disputable and important matters.
3. Europeans were required to have their servants enrolled with the Superintendent of Police by paying an anna or a penny for the registration of each, and preference

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1 President and Council at Fort William to the Court of Directors, 18 October, 1774, (Bengal Letters Received, Vol.13, Para.21, P.168.)

2 According to the judicial regulations of 21 August, 1772, a Member of the Council at Fort William presided in the Faujdari Adalat under the previous designation of Zemindar.

was given to the hearing of complaints against only those who happened to be duly registered.

4. Complaints of the hired servants against their masters were not cognizable by the Superintendent of Police. Such complaints were received as usual by the Faujdari Adalat, who tried them according to the law of England.

5. The Superintendent continued to be in charge of the peace and security of the Settlement.

6. Provision was made for an office to register the slaves of Europeans in order to enable the Superintendent to discriminate their causes from other crimes and misdemeanors cognizable by the Faujdari Adalat.

7. The wages of servants were fixed between two to fifteen rupees for different grades of service.

8. No servant was permitted to quit his master or mistress after having once accepted an advance of wages. Violation of the rule became punishable with stripes and imprisonment till he was able to pay back the sum advanced to him.

9. No person was allowed forcibly to detain or sell any slave without a regular deed being attested by the qazi of the place of transaction.

10. It was provided that from the first day of July, 1774, no person should be allowed to buy or sell any slave who was not such already by a former legal purchase.

The qazi, granting a deed of authority for the sale of a slave after that date, could do so at the risk of dismissal from his employment.

The last two regulations were designed to stop the savage commerce of slavery, by which children were taken out of the country on Dutch and French vessels, in the process many of them being destroyed by clandestine attempts to secrete them from the notice of the magistrate. The President and Council at Fort William, therefore, proposed to strike at the root of the evil and decided to abolish slavery altogether. Both the regulations, however, remained for the most part inoperative. The Company's authorities in Dacca and other places contended that according to thecustoms of the country property in slaves could justly be acquired by purchase. The Council thus made exceptions of the rule in places, where slaves were regarded as a just property by purchase already made before the proposed prohibition.[1]

The reforms of May, 1774, had hardly operated for a year when a set-back ensued in June, 1775. Charles Stafford Playdell was dismissed by the Council Majority, and Alexander Macrabie, the brother-in-law of Philip Francis, was appointed in his place. The choice of the Majority was not guided by any principle of justice or the interest of the people.

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1 See Bengal Letters Received, 18 October, 1774, Vol.13, Para.22-25, PP.169-171; see also Home Misc.353, PP.406-410.

Playdell had served the Company in various capacities since his arrival in 1744. He possessed the advantage of experience, which he had brought to bear upon the administration of police in Calcutta. His knowledge of the Indian languages, local customs andhabits of the people had contributed to the success of his administration. Macrabie on the other hand, possessed none of these qualifications. He was a person of hardly eight months standing in the country, possessing no experience to entitle him to such preference. His office thus virtually became a sinecure maintained at the cost of the people's voluntary contributions[1].

Macrabie, however, died in November, 1775, and the Majority then conferred the post upon one John Mills whose arbitrary proceedings soon became a subject of controversy between the Council and the Supreme Court.

In consequence of several complaints preferred to the Court against John Mills for arbitrary imprisonment and corporal punishment on the inhabitants of Calcutta, the Judges made enquiries unto the state of police administration, anddiscovered glaring acts of oppression and abuse of authority on the partof that Superintendent of Police. "We found a large group of miserable objects confined by the orders of Mr. Mills," they observed, "some were simply so, some under sentence from him to beat sulky, others (who formed the greatest part) loaded with irons, & condemned for

1 See Home Misc.212, P.295.

limited time to work on the public roads - all these several persons were committed without any written warrant, a bare verbal message delivered by a common peon to the person officiating as gaoler there; of the causes of the commitment of some and the duration of their imprisonment, the gaoler was totally ignorant; of some no memorandum was kept by Mr. Mills or any other person, and such account of their crimes and commitments can only be procured as the recollection of Mr. Mills and his officers could afford; others neither Mr. Mills nor his officers had any recollection. Besides the person found in the gaol it appeared on the written proceedings that many others had been imprisoned and sentenced to the roads for times which had expired, some committed for times not yet expired were not to be found in the gaol; some had been released by Mr. Mills on accountof illness. One so released expired within a few days after his enlargment, and no enquiry has been made into the cause of his illness or death."[1]

The judicial enquiry of the Supreme Court further revealed that the Superintendent had assumed authority quite foreign to the design of his institution. "Crimes of the highest nature," the Judges added, "have been enquired into and decided without any reference to the civil magistrate, and there are instances of punishments inflicted for

1 The Chief Justice and Judges to the Governor-General and Council at Fort William, May, 1777,)Letter-Book of Sir Elijah Impey, Vol. II, Addl.Mss.16266, ff.76-76b).

carryingbefore a Judge of this Court criminals who had been ordered to be carried before Mr. Mills... For the same offences we find different sentences pronounced; accessories severely punished, and principal felons suffered to escape with impunity, criminal sentences even to working on the roads carried into execution for mere civil offences, and crimes compounded and judged upon as civil injuries."[1]

From the examination of Mills and his books it appeared that "no witnesses were examined on oath; that flogging was used to extort confession, that many of the severest punishments were inflicted without examination, without proof, on public fame, hearsay or on written messages, and some even without the charge of any crime being exhibited against them.."[2]

The Supreme Court, therefore, discharged all such prisoners against whom no persons, either public or private, appeared as prosecutors before the Judges. Besides John Mills and his principal servants were warned against the usurpation of judicial powers, and forced to give undertaking for good behaviour.

These developments were largely responsible for reforms in the Calcutta police adopted jointly by the Council and the Supreme Court in July, 1778[3]. These reforms provided

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1 Ibid. Addl.Mss.16266, ff.76b-77a.
2. Ibid.
3 The plan of reform was drawn at the instance of Warren Hastings, and the Council adopted it in their General Consultations of 29 June, 1778. It was published and registered in the Supreme Court of Judicature on 4 July, 1778. See Home Misc.145, PP.299-358.

for the post of a Superintendent of Police on a monthly salary of twelve hundred rupees[1]. Charles Stafford Playdell was appointed to this post with the consent of the Judges of the Supreme Court[2]. He was assisted by a Deputy Superintendent of Police on a monthly salary of four hundred rupees.

The Superintendent was empowered to appoint a Naib, thirty-one thanadars, thirty-four naib-thanadars, two Jamadars and a minimum of seven hundred pikemen for guarding the town against acts of murder, theft and robbery. The allocation of their duties and the formation of rules for their conduct were both entrusted to him. In the execution of his responsibility he could fine, imprison, whip or strike his subordinates for neglect or refusal to perform their duties.

The inferior and subordinate officers of police were required to execute an agreement, binding themselves to produce the thieves and robbers or the goods stolen or plundered by them. They could keep criminals under confinement until they were made over to the Superintendent for necessary action. The latter, in his turn, examined the culprits and their witnesses, and finally submitted reports of his investigation to one of His Majesty's Justices of

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1 Over and above this sum, he was allowed a monthly contingent expenditure of 200 rupees which included prisoners' allowance @ two rupees per month for fifty prisoners. See Home Misc. Series, Vol.353, PP.156-157. A monthly allowance of 150 rupees was also sanctioned for the rent of his office. See Home Misc.Vol.353, P.159.

2 Hastings to Justice Le Maistre, 10 October, 1777, Addl. Mss.29199, f.27b.

the Peace for his determination in all cases of serious and capital crimes. Petty complaints, however, were decided by the Superintendent himself who had powers to impose a maximum fine of two hundred rupees. In the event of failure to pay fines within the time specified, he could punish the convict by imprisonment, whipping or striking with slippers in some public place or drumming round the town. He was required, however, to submit copies of all such judicial proceedings to the Governor-General and Council for their perusal and supervision. Any transgression of authority or wilful neglect of duty on his part rendered him liable to punishment according to the degree of his offence. But no steps could be taken against him unless he was legally convicted by at least two of the Justices of Peace, one of them being the Governor-General or any member of the Council, and the other the Chief Justice of any of the Judges of the Supreme Court of Judicature. Similar rules of conduct applied to the Deputy Superintendent of Police as well.

Rules governing the control of the market were also established. The merchants and traders of the town dealing in valuable articles like jewels, gold, and silver, were subjected to various restrictions. The principal object in the control of the market was to detect the sale and purchase of stolen goods. Shopkeepers were required to make correct entries of their articles of trade, either sold or purchased.

Every thanaDar was required to maintain proper registers containing particulars of shopkeepers within the extent of his jurisdiction. These registers were subject to periodical inspection by the Superintendent of Police or any of the Justices of the Peace. Violation of the rules governing the transaction of precious commodities became punishable as a criminal offence.

In short, the officeof the Superintendent of the Calcutta Police was organised on the pattern of the Mughal institution of Kotwal embodying both police and municipal responsibilities. Unlike the Kotwal, however, the Superintendent was vested with a certain measure of judicial authority in petty matters of dispute. But in the exercise of that authority he was subject to the control and supervision of both the Council and the Supreme Court of Judicature.

In June, 1780, the Governor-General and Council adopted another set of police reforms for Calcutta[1]. These reforms were drawn at the instance of Warren Hastings, and designed to supplement those already established in 1778. "I have attended to these regulations with great care," Hastings observed, "and I will beg leave to recommend them to the attention and concurrence of the Board, and I think when they have passed that, no further regulations will be wanting to perfect the police of the town, excepting for the

1 General Consultations, 26 June, 1780, Home Misc.156, PP. 445-505. The regulationswere registered and published by the Supreme Court on 26 October, 1780.

restricting the sale of spirituous liquors which I had attempted but found so replete with difficulty and objections that I rather chose to postpone the further consideration of it."[1]

The reforms of 1780 were intended to achieve the following objects:

1. To reconstruct and widen the roads, lanes and passages of the town, which then existed in a ruinous state.
2. To improve the system of drainage and sanitation of the Settlement, which was necessary for the preservation of public health.
3. To check frauds arising from a lack of proper system of registration and mutation of lands, houses and estates.
4. To provide against the outbreak of communal riots and disturbances, which often arose annually on the occasion of the Mahomedan festival of Muharram.[2].
5. To stop the frequency of dreadful fires which broke out on account of the inflammable materials of which most of the houses of the town were constructed.

The execution of the reforms was entrusted to a body of thirteen Commissioners chosen from among the British

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1 Ibid. P.446.

2 In some of his letters, the Collector of Sylhet pointed out that communal riots in his district often proceeded from the violent insistence of the Muslims upon every place of Hindu worship being closed during the course of Muharram. See The Sylhet District Records, Vol.I, PP. 123-132. His letters were addressed to the Council at Fort William, and related to the period ranging from 14 Dec., 1782 to 17 Feb., 1783.

subjects of the Settlement by the Governor-General and Council who were also to fill up any vacancy caused by the death, dismissal or resignation of any of the said Commissioners. Definite rules of business were laid down for the guidance of their conduct. The Commissioners were required to decide every issue by majority of votes. They were authorised to appoint their clerks, treasurers and other officers necessary for the execution of their responsibilities.

The duty of the Commissioners was to assess the annual rent or value of every holding in the town, and transmit a report of their assessment to the Governor-General and Council for perusal and approbation. Cases of over-assessment or otherwise could be revised in the light of fresh enquiries made at the instance of the Governor-General and Council, who, on the basis of final enquiries, levied annual rates, not exceeding an anna on every rupee of the annual rent or value of holdings.

Separate collectors were appointed with powers to realise these rates or taxes. They could put into confinement all such persons as refused or neglected to pay their dues within the time specified, unless they showed satisfactory reasons in writing to explain their failure to meet these demands. The Commissioners tried and determined all such cases of defaulters.

A surveyor was appointed to make a complete survey of the town, and name its various wards and divisions to facilitate their distinct location. His duty was also to number every holding and mark it with distinct figures placed or painted on wood over the door or some other conspicuous part of the house. Names and marks to distinguish roads and streets were similarly fixed at the end or corner of each of them.

The Surveyor submitted to the Commissioners a complete report of the existing state of roads, drains and sewers together with estimates for repair and new proposals for additions intended to improve the drainage, transport and sanitation of the town. The Commissioners, in their turn, transmitted his proposals, together with their recommendations, to the Governor-General and Council for approval. On the acceptance of these recommendations, the Surveyor carried them into effect.

The Surveyor appointed an adequate number of scavengers to sweep the roads and remove the filth and rubbish of the town. To throw dirt or filth on public roads were prohibited by regulations. Their violation became punishable by fines, to a maximum limit of fifty rupees. No fine, however, could be inflicted without trial and conviction by at least two of the Commissioners. In the interest of public health, the burning or making of bricks and lime was also prohibited within a distance of at least two miles from

the town of Calcutta.

The Surveyor was also responsible for the registration and mutation of lands, and premises within the bounds of the Settlement. Specific rules were laid down for the guidance of his conduct in this respect. He had to maintain separate books and registers for that purpose. The inhabitants of the Settlement were required to have their holdings duly registered with the Surveyor.

The Commissioners were empowered to increase the breadth of roads and streets to the extent of forty feet, except in the case of the capital street leading from the Dog Bazar Bridge to the Esplanade, which was made sixty feet in breadth. In the acquisition of lands and houses necessary for reconstructing and building roads, the Commissioners were given extensive authority to negotiate with owners and settle their prices with the help of juries. Lands and houses were thus acquired by compulsion, and used for the purposes of widening the roads and streets of Calcutta.

Special provisions for constables were made to suppress the annual outbreak of communal riots on the occasion of the Muslim festival of Muharram. These provisions were distinct and separate from the normal arrangement of the town police under the Superintendent, and were administered under the control and supervision of the Commissioners.

It was ordained under the authority of the Governor-General and Council that no pageant or procession of any kind whatsoever should advance, in the course of Muharram, to the road leading from the Bag Bazar Bridge near Chitpur to Chowringhee. And, to prevent the entry of any such pageant or procession beyond the limits prescribed, the Commissioners were required to post constables along these limits in the course of that holiday, and reinforce these constables, if necessary, by a guard of sepoys appointed by the Governor-General and Council. The violation of this ordinance became punishable by fines ranging from five hundred to one thousand, or by hard labour for a space not more than six nor less than one month.[1]

To prevent the frequency of the outbreak of fires, the inhabitants of the Settlement were directed not to build or construct their houses or sheds with mats, straw, grass or other combustible materials. They were also informed that after 1 March, 1782, no such houses or sheds made of such combustible materials would be suffered to remain within certain bounds of the Settlement. The Surveyor was thus empowered by warrant under his seal and signature to pull down and destroy after that date, all such dwellings, shops or houses as were made of combustible materials.

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1 General Consultations, 26 June, 1780, Home Misc.156, pp.484-485.

On the representations[1] of both the European and Indian inhabitants of the town, however, the Governor General and Council amended some of their regulations on 23 November, 1730. These amendments were as follows:

1. "That the Assessment shall be made by the Commissioners with the approbation of the Governor-General and Council.
2. "That the vacancies of Commissioners shall be filled up by the Governor-General and Council, within one month after notice being given by the Commissioners, and that if the Governor-General and Council shall not fill up such vacancies within that time, the power of nominating to such vacancies shall be given to the Commissioners exclusively.
3. "That the power of Imprisonment given to the Surveyor and other offices to be appointed by the Bye-Law shall be taken from them and vested in the Commissioners.
4. "That an appeal shall be given to the Supreme Court to persons aggrieved by the Acts done by the Commissioners or by any persons acting under their authority. That a convenient place shall be allotted for thatched golas (warehouses) to deposit grain in. That the Commissioners shall have full power of disposing of the money without the contract of the Governor-General and that the Governor-General and Council shall have the power to issue orders for the payment of any monies on any account.

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1 Entered in the Consultations of the Governor -

5."That no other corporal punishment than Imprisonment shall be inflicted for non-payment of fine."[1]

The amendments thus increased the powers of the Commissioners, and retained certain old warehouses in the town, which would otherwise have been demolished in the normal course.

The reforms of 1780 thus separated municipal functions from the jurisdiction of the Superintendent of Police, and placed them in a body of Commissioners responsible for the Governor-General and Council. The Commissioners, however, were regarded as a part of the police establishment of the settlement, and they discharged certain special police duties in that capacity. Hastings, therefore, characterised these reforms as supplementary to those of 1778, which continued to operate by the end of his administration.

General and Council, 23 Nov., 1780, Home.Misc.,156, PP.507-538.

1 Home Misc.156, PP.539-540.

(B) CRIMINAL JUSTICE[1]

Law Administered - The administration of criminal justice in Calcutta was conducted according to the law of England. In fact, the Mughal rulers of India had extended this privilege to all British factories who enjoyed freedom in the exercise of their own law within the extent of their boundaries. This autonomy applied, in principle, to European merchants and servants of the Company: the Indiansettlers within the bounds of these factories were subject to the law of the land, and amenable to the jurisdiction of the Mughal officers of justice. In practice, however, the latter also received the protection of British law against interference from outside, and the Mughal governors often connived to avoid conflicts of jurisdiction.

In 1726, the royal charter of justice extended the application of English law alike to the European and Indian inhabitants of the Calcutta Settlement, and the King's Courts, established at Fort William under that charter in 1728, exercised jurisdiction over both the classes of people. The Charter of 1753 only modified the use of this law in relation to Indians; it was not to apply to them except with the consent of parties concerned. In practice, however, they

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1 I have illustrated criminal justice by quoting only one case, because the India Office Records containing judicial proceedings and other necessary information on this subject, are still away and inaccessible to the use of students.

carried their case willingly to the English Courts for decision, and crimes were usually punished according to English law. An account of trials, published as parliamentary papers in 1788, revealed that forty-nine cases had been tried before the Court of Quarter Sessions from 27 August, 1762 to 27 November, 1768. The total number of persons involved was sixty-two. Most of them were Indians. Of the total number twenty-one were sentenced to death, including nine Indians in one case[1].

The Supreme Court of Judicature, established at Fort William under the royal charter of justice in 1774, superseded the English Courts of justice instituted under earlier charters. The Regulating Act, providing for the Supreme Court, was silent, no doubt, as to the law to be administered; but the fact that English law was to operate within the bounds of the Settlement and its dependencies was implicit by the very nature and practice of the earlier charters of justice. In the trial and adjudication of Criminal causes, therefore, that law continued to be administered in the town of Calcutta.

Trial and Adjudication - For the trial and adjudication of Criminal Causes, the Regulating Act (1773) empowered the Judges of the Supreme Court to frame their own rules of business.[2] These rules were not to be repugnant to the

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1 The cases are printed in a tabular form in Firminger: Introduction to the Fifth Report (1812) etc. Vol.I, pp. XCi-XCiii.

2 Printed in General Appendix II to the Touchet's Com. Report of 1781, I.O.Records Department, Parliamentary Branch Collection No.9.

legal practice of Courts in England. Therefore, the Act specifically provided that all offences cognizable by the Supreme Court were to be tried by a jury[1] of British subjects resident in the town of Calcutta. A trial by jury consisted of the operation of "calling and swearing the jury, of a speech by the Counsel for the plaintiff, the examination, cross-examination and re-examination of his witnesses: a speech by the Counsel for the Defendant followed by the examination, cross-examination and re-examination of his witnesses, and summing up of their evidence by him: the reply or speech by the plaintiff's counsel: the summing up of the

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1 From Latin Jurare, to swear. "A body of sworn men summoned to decide questions of fact in a judicial proceeding. The Jury in origin was 'a body of neighbours summoned by some public officer to give upon oath a true answer to some question' (Maitland). 'The Jury is the principal criterion of truth in the law of England' (Blackstone). They originally testified to and decided issues of fact of their own knowledge. With the introduction of sworn witnesses the Jury became exclusively the judges of fact." P.G.Osborn: A Concise Law Dictionary for Students and Practitioners, 2d.Edn., PP.173-174.

Some writers believe that jury trial was not foreign to India, and that it could be traced to what is known as panchayat or jirga of the ancient village community. See Galloway: Observations on the law and Constitutions of India, etc., P.208; John Miller: On the Administration of Justice in the British Colonies in the East Indies, PP. 124-130. Their comparison, however, is far from being justified. The jury and the panchayat differ fundamentally in origin and character. The former took its rise from the royal inquest which was a mode of obtaining, through the royal authority, information required by the king or his government. It was in reality a royal prerogative used for exacting its dues and serving its interests. See Harold Potter: A Short Outline of English Legal History, 4th Edn. (1945), PP.110-111. The village panchayat or jirga, on the other hand, was a people's institution. It arose from below, and served local needs, including the

whole case by the Judge of the jury: and, lastly, the jury's verdict."

The manner in which the Supreme Court at Fort William heard, tried and determined criminal causes, may be illustrated by the important case of Maharaja Nandkumar. It arose on 6 May, 1775, when one Mohan Prasad, the executor of an Indian banker, by name Bulaki Das, brought a charge of forgery against Nandkumar, an old and influential Brahmin, whose career had been one of intrigues and aspiring for personal gains.

In 1756, Nankumar was governor of Hugli under Nawab Sirajuddaula. In 1757, he played an active part in the overthrow of his master, and supported the cause of Mir Jafar, who raised him to the position of Naib at Murshidabad. In the course of Vansittart's government (1760-1764), Warren Hastings for the first time detected his correspondence designed to betray the English Company, and placed it before the Governor and Council at Fort William, who became suspicious of Nandkumar's conduct, and desired his correspondence to be referred to Clive on the latter's arrival as Governor in 1765. In 1765,

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administration of justice and the policing of the village. The elements of kinship and co-proprietorship of land, held by the village community, supplied the bond of cohesion which kept together the members of the panchayat. See Henry Maine: Ancient Law, PP.153-157; John Matthai: Village Govt. in British India, Chap.VII, P.165; Sir Alex.Edward Miller: Trial by Jury. Its origin and History (1893), PP.3-4; B.H.Baden-Powell: The Indian Village Community (1896), PP.25, 441.

Nandkumar was thus divested of his great position and influence. At the instance of Clive, Mahomed Reza Khan, who held the post of Naib at Dacca, was appointed Naib Nazim at Murshidabad.

In August, 1771, however, the conduct of Mahomed Reza Khan was suspected by the Directors who ordered him to be dismissed from his office. To counteract his influence, they directed Warren Hastings to use Nandkumar, his opponent, and bring him to Calcutta to take his trial there. In 1772, Hastings carried out the orders of his employers: he appointed Gurudas, Nandkumar's son, to the post of Diwan of the Nawab's household, and held out to the Maharaja an ostensible appearance of trust and confidence. In his attempt to discredit Mahomed Reza Khan, Nandkumar spared no pains to collect and forge evidence to establish the guilt of his adversary. His ambition was to become Naib Subah - a post which he had long coveted. Hastings, however, fully alive to all his manoevres, abolished the post of Naib Subah altogether, and Nandkumar's ambition remained unaccomplished. To feed fat his ancient grudge, he brought several charges of bribery and corruption against the Governor-General in March, 1775, when he found willing supporters in the Council Majority.

The charge of forgery against Nandkumar, which arose in the Supreme Court in May, 1775, related to a bond or deed claimed as an acknowledgementof debt from Bulaki Das, the banker, who was said to have executed it in 1765. The

translation of this document, which was allegedto have been forged by Nandkumar, reads as follows:

"I who am Balmukee Doss.

"As a pearl necklace, a twisted Kulgah, a twisted serpeche (i.e.turban ornaments) and four rings, two of which were of rubies and two of diamonds, were deposited by Rogonaut-Roy Gaoo on account of Maharajah Nundocomar Bahadur, in the month of Asser in the Bengal year 1165 (1758) with me in my house at Moorshedabad, that the same might be sold; at the time of the defeat of the army of the Nabob Meer Mahomed Cossim Cawn, the money and effects of the house, together with the aforesaid jewels were plundered and carried away. In the year 1172 Bengal style (1765) when I arrived in Calcutta, the aforesaid Maharajah demanded the before-mentioned deposit of jewels. I could not produce the deposit when demanded, and on account of the bad state of my affairs was unable to pay the value thereof. I therefore promise and give it in writing that when I receive back the sum of two lakhs of rupees and a little above, which is in the Company's cash at Dacca, according to the method of reckoning of the Company, I have agreed and settled, the sum of forty-eight thousand and twenty-one sicca rupees is the principal of the amount of the said deposit of jewels which is justly due by me, and over and above that a premium of four annas upon every rupee. Upon the payment of the aforesaid sum from the

Company's cash I will pay that sum without excuse and evasion to the said Maharajah. I have for the above reasons given these words in the form of a bond under my signature, that when it is necessary it may be carried into execution.

"Written on the seventh day of the month Bhadoon in the Bengal year 1172 (20th August, 1765).

"It is witnessed -
"Mahab Roy
Sciaubut, the Vakeel of
Seat-Balaukee Doss.
Abdehoo-Commaul Mahomed."[1]

Alabd (this word literally slave denotes that the bond was sealed by Balaukee.)
Balaukee Doss.

In his life-time, Bulaki Das had regarded Nandkumar as a great benefactor and patron of his family, and before his death in 1769, committed his wife and daughter to the care and protection of the accused.[2] Moreover, Bulaki Das had always looked up to his patron for help in the recovery of a large sum of money from the Company in the form of loan. On his death, however, Nandkumar's attitude was said to have completely changed. In 1770, the President and Council at Fort William ordered the payment of the banker's entire dues in the name of his executors; but the money first came into the possession of Nandkumar, who assumed to himself the merit of this restoration, and appropriated, with the consent of

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1 Quoted in Busteed: Echoes from the Old Calcutta, PP.76-77.
2 See Home Misc.212, PP.273-274. Beveridge: The Trial of Maharaja Nandkumar, P.31.

the executors, a sum of twenty-five thousand rupees for the supposed piece of service[1]. Not satisfied with the amount of this gratuity, the Complainant stated, he proceeded to forge a document from motives of defrauding the family of the deceased banker of a huge sum of money. This document subsequently became the object of his trial in the Supreme Court of Judicature.

When Mohan Prasad brought the charge of forgery on 6 May, 1775, La Maistre and Hyde acted as magistrate in their capacity of Justices of the peace for the town of Calcutta. They heard the case, and examined evidence on the part of the Crown till late about ten o'clock at night. Satisfied with the nature of evidence produced in support of commitment, they ordered the Sheriff and Keeper of His Majesty's prison at Calcutta to keep Nandkumar in safe custody until he should be discharged by due course of law.[2] As magistrate, the Judges were thus committed to an opinion about the prisoner's guilt which subsequently formed a subject of adjudication by them at the assizes. It was, however, a legal flaw, which the Judges could not help.

On the Judge's orders for commitment, the accused raised an important issue on the basis of religion, and declared

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1 Home Misc. 212, P.374.

2 It may be observed that Nandkumar, along with Joseph Fowke and others, had already been committed to prison in April, 1775 under a charge of conspiracy against the Governor-General and Richard Barwell, a Member of the Supreme Council. The Supreme Court delivered its judgment in July, 1775. Fowke was fined, but judgment about Nandkumar was reserved on account of his being already sued for forgery.

that his confinement in the common gaol was bound to result in the loss of his caste. The Chief Justice made immediate enquiries into this matter and sought the views of four leading pandits or Brahmin lawyers, who observed that it was no easy matter to lose one's caste. True, when a Brahmin was confined, washed, ate or drank in a house in which a Muslim or others had lived, they added, his caste was sure to be hurt, particularly when he was confined for crimes proved on him. But their shastras or scriptures, they concluded, had provided for remedial penance for purification, which included fasting and giving money by way of charity to the Brahmins[1]. In the light of their opinion, Nandkumar had therefore to remain confined in the common gaol. He was allowed, however, to live in the apartments which were previously occupied by the keeper of the gaol.

The trial of Nandkumar began on 8 June, 1775 before the Chief Justice and the three puisne Judges. Of the twelve gentlemen, who constituted the jury, two were Eurasians, the rest being all Europeans long resident in the town of Calcutta. The Counsel for the Crown was one Durham who was a poor match to Farrer, the Counsel for defence. Moreover, the Judges being new and unacquainted with the language of the province, the trial was conducted with the help of an interpreter

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1 See Impey's letters to the Governor-General and Council, 9 and 15 May, 1775 (General Appendix III. Reference No.22, Touchet's Committee Report, (1781), I.O.Records Dept., Parliamentary Branch Collection No.8.) A translation of the opinion of the pandits, is quoted by Busteed in Echoes from Old Calcutta, P.71.)

admitted finally with the consent of the prisoner's Counsel.[1]

The prisoner was put into the dock, and arraigned as an ordinary person, although his Counsel had requested the Court to assign a place near himself. The indictment was then read. The defence first advanced a plea to the jurisdiction of the Court, but withdrew it subsequently for technical reasons, because in the event of a formal rejection of that plea by the Court, the defendant was bound to be precluded from pleading not guilty to the indictment. The prisoner, therefore, pleaded not guilty, and maintained that his entire transaction with Bulaki Das was correct and genuine. The prosecution, on the other hand, contended that Bulaki Das had neither executed the bond nor owed any money to Nandkumar whose claims were declared as entirely false and forged.

The trial stretched over a period of eight days without any adjournment whatsoever. According to the existing rule of the Court, at least one of the Judges had to remain in its premises, and so did the members of the jury. Each day, the Court sat in the morning at eight o'clock, and examined witnesses till late at night. The course of trial was often delayed by the complexity of the case as well as the unfamiliarity of the Judges with the nature and habits of the

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1 Alexander Elliott acted as interpreter of the Court. He was versed in both Persian and Hindustani. He was the son of Gilbert Elliot who took an active part in the impeachment of Sir Elijah Impey in 1788.

In the choice of Alexander Elliot as interpreter, the defence counsel had raised certain objects in the beginning; but they were subsequently withdrawn, and his selection was approved unanimously.

people who appeared as witnesses. Besides, their ignorance of the various languages, in which the disputed accounts existed, made their situation all the more difficult. "How complicated and perplexing," writes Busteed, "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."[1]

Another striking feature of this trial was that the Judges, for the most part, carried out the work of the Counsel for the Crown, and cross-examined witnesses in minute details. The necessity for so doing, it is believed, proceeded from the incapacity of the King's Counsel successfully to conduct the task of prosecution. This proceeding, however, was bound to cause suspicion, as it did, in the mind of the accused, who expressed his anxiety to his Counsel about the inevitability of his doom on that account. Ferrer, however, assured his client about the honesty of the Court's intention, and also manages somehow to communicate this feeling of apprehension to the Judges. They explained their conduct, and convinced the defence counsel of the indispensability of that course of proceeding. Justice Chambers more particularly desired him to advise his client that the ground of his apprehension was entirely unfounded, and that every question put to witnesses was designed to explore the facts of the case.

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1. H.E.Busteed: 'Echoes from Old Calcutta', P.77.

The trial lasted till the midnight of 15 June, 1775, when the Counsel for defence closed his evidence. According to the existing rule of the Court, however, the counsel for a prisoner, committed under felony, could not address the jury. This rule, no doubt, was prejudicial to the accused. And the Judges could not help it. Nonetheless, they tried to minimise its vigour: they permitted the defence to hand over to them any observation in favour of the accused to be read out to the jury on his behalf. The Judges also asked Nandkumar to say anything he liked in support of his case. But he declined personally to plead his cause. He simply desired that one of his witnesses should be recalled and re-examined on the issue of the bond, which the Court gladly accepted.

The final evidence of Nandkumar's witness, however, turned the entire scale of decision against him. In the course of his summing-up in the early morning of 16 June, the Chief Justice observed that he would have directed the jury to find him innocent, but for his last evidence which confirmed his guilt, and rendered him liable to capital punishment[1]. The Judges thus gave a unanimous verdict of guilty, which was accepted by the jury. The defence Counsel then decided to make an appeal to the King's Council, and petitioned the Court for a favour to stay the execution of the sentence so long as the decision of that Council

1 See Letter from C.F.Brix, Assistant to Farrer, the defence Counsel, 16 June, 1775, (Busteed: Echoes from Old Calcutta, PP.82-83.

was not known. His petition, however, was rejected and Nandjumar was executed on 5 August, 1775.

Nandkumar's execution subsequently became a subject of profound controversy among writers and politicians. It formed one of the important charges under which Sir Elijah Impey was impeached in 1788[1]. It was generally believed that Nandkumar was put to death by a judicial process on account of his hostility to Warren Hastings against whom he had brought charges of bribery and corruption in March, 1775[2]. This

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1 The charges levelled against Sir Elijah Impey covered forty-two printed pages. See Home Misc.372, PP.343-386. Sir J.F.Stephen has summarised these charges and examined them ontheir merits in 'The Story of Nuncomar and Impeachment of Sir Elijah Impey, Vol.II.

2 The paper containing Nandkumar's charges against Hastings was presented to the Supreme Council by Philip Francis on 11 March, 1775. On 13 March, Colonel Monson proposed that Nandkumar should be allowed to appear before the Council in order to substantiate his allegations against the Governor-General. Clavering and Francis both supported this proposal. But Hastings declared it as a serious affront to his dignity, and would not allow himself to be arraigned publicly before the Council of which he was President, although he had no objectionto enquiries being made into his conduct by a committee of the Council. See Minutes of the Council (Secret Dept), 11 and 13 March, 1775 (Forrest: Selections, etc. Vol.II, PP.298-315); also Minutes of the Governor-General, 3 April, 1775, (Forrest: Selections, etc. Vol.II, PP.337-342).

Hastings' reputation was seriously injured by the Council Majority, who used Nandkumar as a lever to pull down the Governor-General in the eyes of the Directors. In fact, on the arrival of their despatches in London, Hastings was first condemned as "the most corrupt man that ever filled the chair of Bengal." See Laurence Sulivan to Hastings, 3 Jan., 1776, B.M.Addl.Mss.29137, f.1a.) His conduct was justified only when the Home Authorities got possession of full facts about Nandkumar. See Laurence Sulivan to Hastings, 1 Feb., 1776, B.M.Addl.Mss.29137, ff.58a-58b). See also same to same, 18 Oct., 1776, Addl.Mss.29137, f.408a. "The battle," wrote Sulivan, "is at last ended with the preservation of your honour and fame - your friends restor'd,

impeachment thus involved the public conduct of both the Chief Justice and the Governor-General, although both of them were finally declared innocent and free from motives of malice or revenge.

Sir J.F.Stephen has examined Nandkumar's case at full length onthe basis of primary sources, and derived conclusion as an impartial observer. He justifies the public conduct of both Impey and Hastings. "My opinion," he writes, "is that the trial was scrupulously fair, that the summing up was perfectly impartial, and gave every possible advantage to the prisoner."[1] Beveridge, on the other hand, regards Nandkumar's execution as a judicial murder perpetrated from political motives. His opinion, however, cannot be accepted as impartial and free from prejudice. He starts with the object of commenting "severely on the conduct of Warren Hastings and Sir Elijah Impey," and examines the case to prove "that the execution of Nandkumar was a judicial murder."[2] His conclusions are based on the writings of Burke, Mill and Macaluay whose opinions he accepts without reservations[3]. In drawing his conclusions, he takes no account of the great mass of Impey's papers, without which every study of the judicial administration of that period is bound to be partial.

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and the Ministry and Company disposed to receive you with every mark of respect."

1 The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol.II, P.37.
2 H.Beveridge: The Trial of Maharaja Nandakumar, P.1.
3. Ibid.P.5.

Besides, the work of Beveridge, although useful in so far as it supplies detailed information on the subject of this controversy, is for the most part lacking in the quality of a scientific analysis. And, there is always a risk of miscalculation if his conclusions are accepted without sufficient reservation.

As a matter of fact, there was no definite proof to show that Mohan Prasad had proceeded with the case of forgery at the instigation of Warren Hastings: nor did the counsel for defence ever adduce it in support of the accused. In a letter of 3 August, 1775, the Board acquainted the Directors with Nandkumar's conviction without making any comment whatsoever upon the trial or the conduct of the Judges[1]. The Council Majority entered a minute on the charge under which Nandkumar had been convicted. But not "a syllable (was) advanced in regard to his innocence or the partiality of the Court or jury or the illegality of the prosecution."[2] Nor did the Council Majority intercede to save the life of their protege, who, two days before his execution, had delivered an address to General Clavering to secure a respite to the execution of his sentence until the pleasure of the King's Council was known. Clavering did not even submit that address in time to the consideration of the Supreme Council

1 See Home Misc.372, P.302.
2 Ibid. Vol.372, 302.

at Fort William. It was nine days after Nandkumer's execution that he forwarded it to that Council.

In fact, the ground for suspicion against Hastings and Impey arose from the circumstances in which the prosecution for forgery was started against Nandkumer who had accused the Governor-General only about two months before. These circumstances, however, were based on rumours of which the Judges could not take a legal notice[1].

Impey's adversaries contended at the time of his impeachment that the law, under which Nandkumer was punished, was opposed to the principle of natural justice, and that the accused should not have been subjected to such law. But Sir Stephen rightly points out that to punish a judge for enforcing a bad law implies a right and duty on the part of the judge to decide whether the law is good or not, and (that) this puts the judge above the legislature.[2] Such a position, he adds, would have produced legal anarchy with monstrous results. The Chief Justice was thus justified in the administration of English law by which crimes were then punished in the Calcutta Settlement.

His refusal to stay the execution of the sentence,

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1 See J.F.Stephen: The Story of Nuncomar and The Impeachment of Sir Elijah Impey, Vol.II, P.16. Even Philip Francis, who spared no pains to discredit Hastings, regarded the subject of this controversy as a matter of speculation. See Francis to Sir Edward Hughes at Madras, 7 May, 1775, Mss.Eur.E.14, P.48.

2 The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol.II, P.17.

however, formed a more serious ground of objection. The Judges were vested with discretionary authorities, and they could have granted a respite, if they had so liked. But Le Maistre and Hyde were strongly opposed to it. The matter, therefore, vested finally on the casting vote of the Chief Justice who had practically no grounds to differ with his colleagues because of the unanimous verdict of the jury, leaving no room for the King's mercy. Moreover, Nandkumar was a person who exercised great influence with the Council Majority. A departure from the strict interpretation of law on the part of the Judges might at once have been misconstrued as an act of bribery and subordination to the executive government - a thing which they scrupulously avoided in order to conform to the design of their institution. In refusing to stay the execution of the sentence, therefore, the Judges were most guided perhaps by their zeal to assert the independence of the judiciary.

Nandkumar's execution, however, was bound to stir popular feeling, as it did, against the English Court of Judicature. According to the Hindu code of law, there was no crime so great as subjecting a Brahmin to capital punishment.[1] A member of Shudra or depressed community, on the contrary, was punishable by death for offences for which simple fine or imprisonment was inflicted on the members of

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1 Halhed: A Code of Gentoo Law, P.320.

higher castes[1]. The Mughal rulers of India recognised this class conception of justice, and recommended crimes of identical nature to be punished by advice or admonition in the case of persons of rank and position, but by different forms or severity in that of vicious or low persons. "Punish each man," declared a farman of Akbar, "according to his rank and station, for a severe glance is like death to a man of good family, while a kick will not reform a man of low birth."[2]

The Code of Hindu law, which was reconstructed in the early part of Hastings administration for the guidance of the Company's European servants, was based principally on the reactionary character of the early code of Manu, and recognised all the prerogatives of Brahmins.

The Judges of the Supreme Court, however, could not so easily reconcile themselves to invidious distinctions of caste in the administration of justice. They regarded such distinctions as contrary to the principle of equity and natural justice. "The Judges," observed Impey, "will, as far as by law they may, remit the vigour of the English law, in all cases where its effects may be prejudicial to the natives, on account of their religion; and perhaps in some cases, would yield even to prejudices, if national and deep-rooted; but they must not suffer the pretence of religion to be set

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1 Ibid. Chapter XXI, Section VII, See also Chapter III, where the Code prescribes all the cruel and invidious distinctions and disabilities for the Shudra or depressed community, which had originally been sanctioned by Manu, the Hindu law-giver.

2 Quoted by Dr. P.Saran in his 'Provincial Govt.of the Mughals,' P.367.

up for the purpose of eluding the ordinary course of law."[1]

Nandkumar was therefore put into the common gaol just like other prisoners, and his prayer for permission to live in a private house under proper guard was rejected. In the course of trial, the Court treated him as an ordinary prisoner, and declined to grant him any privilege by virtue of his rank, position or caste. And, finally, when his guilt was established, he was put to the gallows irrespective of any consideration of his being a Brahmin or otherwise. In these circumstances, it was but natural for many to regard Nandkumar's execution as amazing and sacrilegeous. Nonetheless, it established a great principle of the rule of law, which forms now an important contribution of British judiciary in the country.

The freedom of the English judiciary in Bengal was resented also by many of the European inhabitants whose arbitrary proceedings were often restricted by the Judges. In March, 1775, they made a common cause with the landed aristocracy of the province, and joined the latter in their attack upon the Supreme Court. They lodged a collective petition of complaint under the leadership of one of their agents, by name Touchet. The basis of their Compdaint arose from the refusal of the Supreme Court to try the civil suits of British subjects by jury.

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1 From Elijah Impey to the Governor-General and Council, 9 May, 1775 (General Appendix III, reference No.22, I.O. Parliamentary Branch Collection No.9).

The agitation of the European inhabitants of the province subsequently led to the establishment of the parliamentary Committee in 1781[1]. In the course of his evidence before this Committee, one William Hickey, an Attorney of the Supreme Court, pointed out that the Court had actually refused trial by jury in a civil suit of damage against one James Creasy, a British subject, who claimed this right of trial by jury in all civil suits of European subjects onthe basis of the contemporary practice of civil courts in England. This demand, however, was not supported by the Charter of Justice (1774), which had made no provision for trial by jury in the civil suits of British subjects in Bengal. As for criminal causes, the report of that Committee could not cite a single instance in which a British subject had been tried in a manner repugnant to the law of England. The Judges of the Supreme Court were thus justified in their conduct to administer justice according to the royal charter of 1774.

The second point of complaint in the petition of the Company's British subjects was that they wanted some regulations to be established on the subject of admission or rejection of evidence in trials before the Supreme Court, as also on the subject of appeals from its judgment. The

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1 The Committee is generally called after Touchet, one of the leading European agents of Bengal.
It was indeed strange that no representative was appointed on the part of the Supreme Court of Judicature. The report of the Touchet's Committee was thus partial except in so far as it incorporated some of the correspondence of the Chief Justice and the Judges of that Court. The Touchet's Committee unequivocally acknowledged

parliamentary Committee of 1781, however, regarded this demand more as a matter of reforms and principles of reasoning than an object of enquiry. In fact, the motive of their agitation was to weaken the Court's authority which obstructed the exercise of arbitrary powers. Their movement thus synchronised with the progress of the Kasijara case in 1779, when they combined with revenue agents and members of the executive government in their opposition to the Court.

True, the combined forces of reaction, both foreign and indigenous, held back the progressive developments of the country's judicial administration. The amending act of 1781 recognised, on the ground of religion, the artificial barriers of caste between man and man; it also removed the jurisdiction of the Supreme Court over the Company's revenue agents, who exercised arbitrary powers of punishment in the collection of their demands. But it could not with-hold the progress of judicial administration for all time to come. The rule of law, established by the Supreme Court, was bound to assert itself, as it did, with the progress of education and the effectual impact of western influences in the country.

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this drawback in the body of its report.
See I.O.Records Dept., Parliamentary Branch Collection, No.9. P.4.

CHAPTER XV

SOME CONCLUSIONS

Our analysis in the foregoing pages has shown how the Mughal institutions of law and justice constituted the basis of the Company's judicial administration in the formative period of its rule in Bengal. The indigenous courts of qazis, both civil and criminal, were revived and reconstructed to satisfy the judicial requirements of the Company's government. The town police even of Calcutta, which formed the metropolis of the English settlements of the province, was organised on the Mughal pattern of the Kotwal, who combined in his office the police, and municipal functions of the town. The indigenous institutions of police, justice and law not only guided the course of English administration throughout Bengal in our period of study, but also influenced the form and nature of subsequent judicial developments.

Nonetheless, the contributions of the new conquerors stood out unprecedented in the history of the country. They introduced uniformity in every branch of the administration, which contributed to the growth of political unity and the strength of the central authority. They established 'the rule of law', which secured the liberty of individuals and freedom of the judiciary. They set up a regular gradation of law courts, which administered justice within the limits specified to each. They prescribed extensive rules of

evidence and process, which minimised arbitrary proceedings and the abuse of authority on the part of judges. They built an elaborate system for maintaining records of judicial proceedings, which put an end to the earlier practice of one and the same case being tried a number of times by the same authority. And, above all, they shook and finally removed the entire Mughal foundation of administering law and order which had formed part of the several obligations annexed to the tenure of land, and which had been discharged on the principle or local responsibility. In fact, they established the principle of the king's peace, and took over the administration of law and order as the direct and immediate responsibility of the state.

These features of the English judicial administration emerged from the interaction of the Mughal and the British systems of justice. The process of this interaction, however, did not start effectively before the year 1772. The reason was that in the Diwani provinces the administration of justice was guided by Clive's policy of double government designed to secure to the Company all the benefits of power without involving it in any of the inconveniences of avowed responsibility. So long as the Company's interest was safe, Clive worried little about what happened in the Nawab's courts of justice. And, so far as the Mayor's Court at Calcutta was concerned, its jurisdiction was confined to the Settlement itself and the Factories subordinate to it.

within the extent of even that small jurisdiction its judges could not act independently of the governor and council at Fort William, who exercised the power of their nomination and dismissal. Besides, their want of legal training increased their subservience to the executive all the more. Evidently, no ground of contention between the two systems could possibly develop so long as this state of subordination continued: the British judiciary could not resist the evils arising from the exercise of arbitrary powers.

The Bengal famine of 1769-70 created a new situation which forced the Company to be keenly aware of the dangers, political and economic, threatening its very existence in the province. As one part of the remedy on revenue and judicial side a plan of supervision over the Nawab's officials was adopted in 1769, and it was soon followed by the establishment of the controlling councils of revenue in 1770. But, owing to the inherent defects arising from the governmental system they failed to bring about a state of security in life and property. In effect the ruling influence of the Company deprived the country courts of their powers, especially of the means to enforce their decrees. Justice thus depended on the mercy and resources of powerful and local individuals or groups, who exploited the state of insecurity to their own advantage. These circumstances necessitated the reversal of Clive's policy.

The judicial history of Bengal entered upon a new phase with the beginning of Hastings' government which envisaged conditions necessary for the interaction of the indigenous and British judicial systems. These conditions developed in the first place from the failure of the Company's servants to conform to his regulations, and secondly from the establishment of the Supreme Court of Judicature with powers to take cognizance of their failings throughout the provinces.

In 1772, the Company stood forth as the Diwan, and assumed through its own servants the direct responsibility of civil administration. The President and Council at Fort William adopted a judicial plan, and re-constructed civil and criminal courts of adalat in every district under an English Collector. To supervise these inferior courts they also set up superior courts of appeal at Calcutta, and laid down rules for the conduct of justice in all of them. In 1774, these arrangements were slightly altered at the instance of the Directors: the Collectors were recalled from their districts which were grouped together into six Provincial Courts responsible for the administration of revenue and justice. In other respects, however, the regulations laid down for the guidance of these Councils were similar to those of 1772.

The framers of this plan started with the assumption that if these courts of adalat worked under proper supervision, they would produce the same degree of efficiency

as they had done under the Mughals. Their policy was therefore to restore them to the design of their original institution.

But how to secure the execution of that design? The Mahomedan officers of the adalat were mostly guided by motives of personal gains, which lay more in the failure of the plan than its success. As for the Company's civil servants, their total [in Bengal] strength in 1776 was 160, which increased to 312 in 1782. They could not occupy all the important situations even if they wanted to. Besides, most of them were lacking in the proper training and knowledge of the law they were called upon to administer. The execution of the judicial plan thus ultimately fell to a large extent on the native law officers whose conduct it was intended originally to reform.

Worst of all was the state of criminal administration. In spite of Hastings' views to the contrary, the Directors desired this important branch of government to be administered, for political and financial reasons, as the exclusive part of the Nawab's responsibility. Mahomed Reza Khan therefore held the office of the Naib Subah for most of this period, and controlled the affairs of this department on the lines of the Mughal institution of the Nizamat. But the want of adequate authority and means to discharge his obligations

produced a state of disorder, and finally led to the utter failure of his plan. The continuance of the Nawab's government served as a screen to cover acts of oppression rather than an instrument to secure relief and protection. As for the rationalisation of the Mahomedan criminal law, Hastings proposed a number of amendments; but they could not be enforced, because the Mahomedan officers of justice, who were entrusted with that responsibility, regarded the task as blasphemous. The inadequacy of his powers, the continued opposition of the Council majority and the wavering support of the Directors were yet other factors which rendered Hastings' reforms for the most part inoperative.

Our study of the Patna and other causes tried by the Provincial Councils of the several divisions between 1774 and 1780 has clearly established the existence of a wide margin between the theory and practice of the regulations adopted in the earlier part of Hastings' government. And, had it not been for the provision of an independent judiciary in 1773 the incongruities of the Company's courts of adalat would have passed unnoticed and unopposed as before. The Regulating Act created a new situation by providing a Supreme Court of Judicature with powers to act independently of the Executive. The Chief Justice and the three puisne Judges were duly qualified and trained in the law and judicial practice of Great Britain. The jurisdiction of that Court was not confined to the Settlement of Calcutta or to British

subjects, but extended to all persons employed directly or indirectly in the service of the Company or any of the British subjects residing in any part of Bengal, Bihar and Orissa. It set up a higher standard of justice which was rational in concept and democratic in constitution. It established rules of process and evidence which, on account of their rigidity and complexity, were incompatible with the exercise of arbitrary powers.

The Supreme Court of Judicature thus differed fundamentally in principle and technique from the courts of adalat. The former was suited to a dynamic and democratic society designed to secure the civic rights of individuals. The latter, on the other hand, were based on land economy, and intended to conform to the despotic constitution of the Mughals whose concept of justice was confined to the primary duty of protecting life and property. Conflicts between the two systems would have certainly developed in due course even if the Company's courts of adalat had acted conformably to the regulations of 1772; because these regulations were lacking in the quality of legal perfection, and fell far short of the standard set up by the English Court of Judicature.

But conflicts started soon after the establishment of the Supreme Court. The reason, it is true, might be attributed partially to constitutional defects: the

Regulating Act of 1773 extended the territorial jurisdiction of that Court in effect over the Diwani provinces of the Company without affecting the sovereignty of either the Mughal Emperor of Delhi or the Nawab of Bengal. Our discussion of most of the civil cases tried in the courts of adalat, however, has clearly shown that troubles often proceeded from the failure of the Company's servants to adhere to the regulations adopted by Hastings' government for the conduct of justice in the courts of adalat. And, far from supporting the Supreme Court in its emphasis on the due observance of those regulations, the Council Majority used it as a lever to weaken the authority of that Court. They were perhaps moved by their desire to discredit Hastings by securing the failure of his reforms in which they had no part.

The conflicts of the Court and the Council, however, were not in vain. They indicated the main and proper course along which subsequent reforms were planned and directed. This course was neither fully Indian nor fully British. It was an embodiment of the essential features of both. The revised code of 1781, which was prepared by Hastings and Impey, represented the first of the series of attempts made to produce that synthesis. It was the first product of the interaction of the Indo-British judicial institutions, which laid the foundations of the modern judiciary in India.

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Anal. & No.	Title	Synopsis	Chief Characters	Quot-ation	Parallels	Remarks & Year-Title Number
II.1a	Importance of Virtue: Importance of good H'z, and the danger of flattery	Kings with good H'z prosper, while those with bad H'z perish.	Historical examples of Previous Eras			
II.1b	False Deferences produced by Flattery	Shun and with the Enforcement as a hostage to Hsia, Hsiang K. surrenders the King of Sui not to listen to slanderous gossip. Yai	Sui Hsiang K.		SPT (AB) CHT (B)	
II.1c	Baneful Flattery at Court	Han Hsu warns Yu Hsun against listening to slanderous gossip Ch'in	Ch'in Mu K. Han Hsu Lin Tung-yai Han K.)		SS (AB) TIH (B) HY (B) (AB (1) b. 300	Tsung Tzu-chien (1) on also some in Hsiang Yu's Yen Yu Ts'e (Yen Yen Sun)
II.2	Authority of a Ruler: H. has no authority apart from his Prince	Hsiang I says that dissatisfaction in the north four Powers Chao Hui had become his Prince is an eighth Ch'u	Ch'u Yung Chao Hui, Lord Hsiang I		CHT (A)	CHT
II.3	H. must be allowed to exercise authority without interference from the Court	Pi Yen Hsien exculates that he is not allowed to govern Hsin Fu without interference In	Pi Yen Hsien Ts'ung Yen Pao Ts'ai Yung Yen Ch'eng p'ien		LSSC (B) KTCC (DC)	Pi Yen KTCC (1)
II.4	HIGH OFFY. A Prince must clearly ascertain the results of a country throughout that country	A man of Ch'u presented his King with a fish, from handling him a valuable lesson Ch'u	Ch'u Yung			
II.5	Necessity for a single person-ality in H's. Governing a Double man	Yuan Chi succeeded Liang-governorate to Lou-ch'eng Ch'i	Yuan Chi Ch'i Liang-Yang	Tai Kung: Ts'ung Yen Ch'eng p'ien		Yuan Tzu Yuan Tzu Chuan (B) KTCC (1)
II.6	A Prince should treat his ministers sincerely if they are to be loyal to him	P.M. of Yan asks which of two H's are willing to unnecessary his late wife Yan	P.M. of Yan		CHT (DC) HY (DC)	CHT and HY make this a Ch'i story.
II.7	No pre-dominance by acting privately one man overcomes ministry contrite Kuo Liao Chao	Chin Wen K. found a snake in his pit, and interpreted it as a warning. He reformed his work. Chin	Chin Wen K.		KTCC (B)	Chin Wen King
II.8	Prince must be prepared to make personal sacrifices for the sake of his people Wen Hou	Kung-Sun Hsi prevented Ling Chih from shooting a traveller when hunting a flock of wild geese Sui (A)	Kung-Sun Hsi Ling Chih			
II.9	Ill omens donates not so much in actual occurrence as in failure to wish in the paths of virtue Omen	Chao Wu Y. announced. His he acted prisoners wardour Only country had been visited by evil omens Chao K.Hyn.	Chao Wu Y.		LSSC (A)	LSSC
II.10	Function of a Prince: is to rule, not to waste time in personal pleasures Hunting Governing a Double man	Chin Wen K. is rebuked by a flatterer for not hanging to his proper functions Chin	Chin Wen K.			Chin Wen King
II.11	Prince who does not keep to his proper functions will find himself ousted Governing a Double man Hunting	Chin Wen K. is rebuked by Lou Ho for not keeping to his proper functions Chin	Chin Wen K. Lou Ho Lsun Wu Tzu			Chin Wen King
II.12	MEETING. Trouble should be dealt with in the establish stages Omen	Ch'i Huan K. refuses to have his illness treated as P'ien Ch'iao, and dies Ch'i	Ch'i Huan K. P'ien Ch'iao		CPT (A) SC (B)	P'ien Ch'iao Pai Chiang Pi Chiang
II.13	BAD GOVY. King who is unconscious of what may befall his country is bound to perish	Chuang Hsin rebukes Ch'u Hsiang K. for loose conduct Ch'u	Ch'u Hsiang K. Chuang Hsin		CHT (A)	CHT
II.14	If people are overburdened with taxes they will disintegrate	Sui Yan K. declines to remove from Yang Shan, due to official extortion Sui (A)	Sui Yan Wen		CPT (B)	Sui Wen Hou
II.15	GOOD GOVY. Good govt. consists in perfect harmony between Prince & M. Ch'u	Ch'u Chuang W. wishes to work in harmony with Sun Shu Ao and his whole H's. Ch'u	Ch'u Chuang W. Sun Shu Ao			
II.16	Prince must not mix privacy with duty Ch'i	Ch'i Ch'ing rebukes Ch'u Chuang W. for remaining ignorant for 3 years after succeeding to the throne. Ch'u	Ch'u Chuang W. Ch'i Ch'ing		SPT (B) LSSC (B) HC (B)	
II.17	A Prince should not seek to live amongst outside his own country. Ch'i	Ching Kung tells he discomfort from Tsui-Ch'eng Hsiao by a man of Ch'i. Ch'i	Ching Kung		SPT (AB) CHT (AB) HHY (BC)	
II.18	SUGGESTION. Prince should accept criticism even from the humblest sources. Influence of Women	Ch'i Hsiao W. makes the women from Yu Tan his Empress and reforms his Government. Ch'i	Ch'i Hsiao W. (a woman from)		LSC (A)	LSC

Sect. & No.	Title & Virtue	Synopsis of Story	Chief Characters	Sub-titles	Parallels	Remarks & Possible Sources.
I.1a	Moral Effects of Abstract Virtue Filial Piety	Shun disciplines Filial Piety to-wards his relatives Early Tyn.	Shun	Comf. utterance from Filial Piety Classic	LNC (A) SC (BC) Wales Ching (Pan quot.)	Book on Filial Piety (?)
I.1b	Confucian moral effect of his Prestigeship	Confucius displays his virtue and performs Religious Rites. Lu	Confucius	LY: Yen Yuan p'ien	HT (A) (four quot.) KTCY (A) (few lines)	KTCY (?)
I.2	Virtuous Action stronger than evil Omen Omen	Sun Shu Ao kills snake and prospers Ch'u Influence of Women	Sun Shu Ao		CIHS (A) LNC (C)	CIHS Omen Book (?)
I.2a	Good effects of having a Virtuous Wife, and Vice Versa Influence of Women	Examples of Virtuous & Depraved Women, & their influence upon Forces Wen	Historical Examples		SC (B)	
I.2b	Good Effects of a Virtuous Wife Influence of Women	Pan Chi promotes Sun Shu Ao & country prospers Ch'u	Pan Chi Sun Shu Ao Ch'u Chuan Wang	(F)	HSWO (B) LNC (BC) SY (D)	LNC (?)
I.3	IMPORTANCE OF GOOD M'n A Virtuous M. criticizes, even after death	Shih Ch'in is buried with incomplete rites because the King fails to take his advice Wei	Wei Ling K. Chi Fo Tz	LY judgment Quot. from LY: Wei Ling p'ien	CIHS (A) TTLC (A) KTCY (C)	CIHS KTCY (?)
I.3b	A Virtuous M. disregards personal prejudices	Ch'i Kai recommended M's for office without partiality Chin	Ch'i Kai	HT Shu Ching yüeh: Hung Fan LY: Li Yun p'ien Li Yun p'ien K'ung Tzu yüeh	LSCC (B) TC (C) Kao Tz (D)	[illegible]
I.4	Promotion by King of most suitable candidate, despite personal prejudices	Ch'u Kung W. dismisses his favourite Shan Kou Fo & puts Kuan Su in office Ch'u	Ch'u Kung W. Shan Kou Fo Kuan Su	Tseng Tzu yüeh: Tseng Li: Ta'i Fu p'ien LY: Li Yun p'ien K'ung Tzu yüeh	ST (AB) LSCC (B)	Tseng Tzu ??
I.5	A King should always get M's better than himself	Wu Ch'i advises Wei Wu Hou to follow Ch'u Chuang's example Wei (L)	Wei Wu Hou Wu Ch'i		HT (A) LSCC(C) HSWC (D)	Wu Tzu One of two HSWC stories without Shih Ching quotations
I.6	The people have a right to expel an unworthy Prince	Shih Tzo K. asks Shih K'uang whether rel was right in driving out his Prince Shin	Shih Tzo K. Shih K'uang		TC (C)	Shih K'uang
I.7	CRITICISM Right of M. to criticize his Prince	Chao Chien Tzu rebukes Hu Kui for not pushing his carriage. Hu Kui criticises him Chao	Chao Chien Tzu Hu Kui		HT (B)	
I.8	Criticism appreciated	Chao Chien Tzu employed Chou Shu, who criticised his faults Chao	Chao Chien Tzu Chou Shu		HSWC (A) SC (C)	One of two HSWC stories without Shih Ching quotations
I.11	Criticism not appreciated, but worth realised	Chai Kung annoys Wei Wen Hou by his criticisms and is dismissed. Later recalled to office Wei (L)	Wei Wen Hou Chai Kung		LSCC (B)	Wei Wen Hou
I.12	Criticism implied: prayers useless without virtuous actions	Hsien, an engineer, says that his prayers are of no use if the King fails to govern properly	Hsien			
I.13	IMPORTANCE OF GOOD M'n Effects of a complex character in its good M'n Virtuous resistance	Ch'in refrains from attacking Ch'i because of Ch'i's good M's Ch'u	Ch'u Kung Chao Kai Sun	HT		HSWC Unhistorical Story
I.14	Country impregnable by reason of its good M's Chin	Chin refrains from attacking Ch'i because of Ch'i's good M's	Chin P'ing K Fan Chao Yen Tzu	(B) Chang Hs	HT (A) HSWC (BC)	Yen Tzu
I.15	Good M's will come if their worth is really appreciated. Chin	Ho Sung advises Chin P'ing K. to encourage M's to come to his Court	Chin P'ing K Ho Sung	HT	HSWC (AB) SY (BC)	HSWC (?)
I.16	Talents of a good M. cannot be properly appreciated by subordinates Ch'u	Ch'u Wei W. asks Sung Tz why his talents pass unnoticed	Ch'u Wei W. Sung Tz			Sung Tz
I.17	BAD GOVT. Blindness of government Chin	Shih K'uang says that corrupt govt. is worse than blindness	Chin P'ing K Shih K'uang			Shih K'uang
I.18	The Brutal General	Shu Hsiang says that harsh govt. will ruin a country Chou	Chao Wen Tzu Shu Hsiang		HT (A)	HT (?)
I.19	Lascivious Women Influence of Women	Fu Ch'en advises Ch'u Chuang W. to restrain from taking Chi, an immoral woman Ch'u	Ch'u Chuang W. Shan Kung Tz Ch'en		LNC (C) TC (C)	LNC (?) Biography of Fu Ch'en

Page No.	Title	Summary	Text	Chart/Figure	Reference	Remarks & Cross Refs.
4.1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.9	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.10	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.11	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4.12	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

SECTION VI

Sect. & No.	Title	Synopsis of Story	Chief Characters	Quotations	Parallels	Remarks & Possible Source.
VI.1	CRITICISM: UNSUCCESSFUL. Unsuccessful criticism from a Minister.	Chieh contemptuously rejects the advice of I Yin, who goes over to T'ang & becomes his Minister. E. Dyn.	Chieh I Yin	F	HSWC (A) LNC (C) HNT (D)	HSWC (?) I Yin
VI.2	- Ditto -	Chou's extravagance and cruelty led to a rebellion from which he could not escape, even though disguised as a common man. E. Dyn.	Chou		LNC (D)	
VI.3	CRITICISM: SUCCESSFUL. A) By logical reduction to the absurd.	Hsü Wan dissuades Wei Wang from attempting to build a tower as high as heaven. Wei	Wei Wang Hsü Wan			
VI.4	B) By speech in defence of the people	Wan Ch'ün prevails upon Wei Ling K not to overwork his people during a cold spell. Wei	Wei Ling K Wan Ch'ün		LSCC (A)	LSCC
VI.5	C) By historical illustration.	Hsiang Chü rebukes Ch'i Hsüan K for attempting to build a house so large that it exhausted the resources of the country. Ch'i	Ch'i Hsüan K Hsiang Chü	Hsiang Shu yüeh: Shu Ching Notes give no source for the quot. but it is contained in the LSCC	LSCC (A)	LSCC
VI.6	D) By mockery.	Yu Mo rebukes Chao Hsiang Tzu for drunkenness, & says that the only reason for his not being deposed is the unworthiness of contemporary rulers. Chao	Chao Hsiang Tzu Yu Mo			
VI.7	E) By pointing out a breach of morality.	Yen Tzu rebukes Ch'i Ching K. for immorality. Ch'i	Ch'i Ching K Yen Tzu	F	HSWC (B) YT (B)	Yen Tzu HSWC
VI.8	F) By practical illustration. (1)	Ch'i Chi teaches Wei Wen Hou four good lessons by practical illustration Wei (L)	Wei Wen Hou Ch'i Chi			Wei Wen Hou
VI.9	G) - Ditto - (2)	Ching forbore to attack Sung because the Ching ambassador respected Sung	Ch'ih Tzu Han	K'ung Tzu yüeh: (Notes do not give source for the words of Conf.)	LSCC (A)	LSCC KTCY (?)
VI.10	H) By the humility of a Prince. Good M's are the riches of a country.	Meng Hsien of Lu says that the wealth of his country consists in two good M's. Lu-Chin	Meng Hsien Hsüan Tzu (Yen Hui Tzu Wu Ling)	K'ung Tzu yüeh: (Notes do not give source for words of Conf.)		KTCY
VI.11	I) By the actions of a Prince.	Tsou Mu K conserves the riches of his country by abolishing former extravagances. Tsou	Tsou Mu K		CIHS (A)	CIHS

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Sect. & No.	Title	Synopsis of Story	Chief Characters	Quotations	Parallels	Remarks & Peculiarities.
IX.1	ADVICE TO RULERS. Do not make promises you cannot perform.	Kuan Chung tries to dissuade Ch'i Huan K. from allowing Chêng & Sung to join a treaty between Ch'i & the Feudal Lords. Ch'i	Kuan Chung Ch'i Huan K.	TT	KL (A)	Kuan Tzu XXXC
IX.2	Do not neglect your opportunities. Divination Omens	Chou Hsiang Y was exiled during the T'ai Khu rebellion, but was later reinstated by Chin Wen K., on the advice of his daughter. Chin Wen K. was honoured by Chou Hsiang Y. Chin	Chin Wen K. Chou Hsiang Y Bo Yen		TC (A)	Chin Wen Kung TC
IX.3	Do not be blinded by small profits.	Chin Hsien K. wished to attack Kuo & offered bribes to the P. of Yü to let him pass through his country. Yü accepted the bribes & was later conquered by Chin, on their return journey. Chin	Chin Hsien K. Hsüeh Hsi (Kung Chih Ch'i)		KL (A) KY (B) TC (C)	KL
IX.4	MILITARY STRATEGY It is better to preserve small, friendly neighbouring states than to annex them, & so leave oneself open to the attacks of more powerful enemies	Chin Wen Kung surrounded Chêng, as an ally of Ch'in Hsi K., but was persuaded by Chu Chih Yu to raise the siege. Chêng	Chin Wen K. Ch'in Hsi K. Chu Chih Yu		TC (B)	Chin Wen Kung
IX.5	ADVICE TO RULERS. Practise virtue & Heaven will do the rest.	Szu-ma Hou persuades Chin P'ing K. to attend a convocation of the Feudal Lords summoned by Ch'u Ling Wang. Chin	Szu-ma Hou Chin P'ing K. Ch'u Ling W. Chiao Chê		TC (A)	TC
IX.6	One should not refuse help to a righteous cause, nor offer to help an unrighteous one.	Wu Zê Lu wished to raise an army against Ch'u to avenge the death of Wu Tzu Hsü's father. Later an army was raised to avenge this grievance, & also Ch'u's unjust treatment of Ta'ai Chao Kung. Wu	Wu Zê Lu Wu Tzu Hsü Ch'u P'ing W. Ta'ai Chao K.		KY (A) ZY (D)	Wu Tzu Hsü KY
IX.7	Good plans should be based on kindness.	Ch'in Hsiao K. reformed the laws, under the direction of Wei Yang, & made them more strict. Consequently Wei Yang came to a bad end. Ch'in	Ch'in Hsiao Kung Wei Yang (i.e. Chêng Yao)		Shang Tzu (A) SC (B)	Shang Chün
IX.8	One should complete the easy, rather than attempt the difficult.	Chang I advised Ch'in Hui W. to attack Han, but the King followed Szu-ma Ta'o's advice & attacked Shu, & took it in 10 months. Ch'in	Ch'in Hui W. Szu-ma Ta'o Chang I (i.e. Chang Yao)		SC (A) CXT (B)	Chang Yao SC (?)
IX.9	MILITARY STRATEGY Do not trust an incompletely conquered enemy.	Hsiang Hsieh persuaded Ch'in Chao W. to refrain from attacking Ch'u. Ch'in	Hsiang Hsieh Ch'in Chao W. Po Ch'i		SC (A) CXT (B)	SC (?)
IX.10	It is better to unite with small neighbouring states against a large aggressive country than to try to stay on good terms with the latter, who will eventually try to absorb you.	Chao, by giving a pavelease to Ch'i, gains their support against Ch'in Chao Ch'in	Chao Hsiao Ch'eng W. Lou Ch'eng Yü Ch'ing		SC (A) CXT (B)	SC (?) Yü Shih Ch'un Ch'iu
IX.11	A small country is ill-advised to ally itself with a greater one, because any advantage is reaped by the larger country, & any disadvantage by the smaller.	Yü Ch'ing rebukes Chao Hsiao Ch'eng W. for refusing to make an alliance with Wei. Chao	Chao Hsiao Ch'eng W. Yü Ch'ing (P'ing Yüan Chün)		SC (A) CXT (B)	Yü Shih Ch'un Ch'iu P'ing Yüan Chün SC (?)

Check Ch.	Title	Response to Action	Chief Characters	Coop-erates	Invisible	Possible a Few Other Things
Ch.1	[illegible] Do not make loudness sure sounds.	Evan Chung rushes to disarm Ch'i Shen K. from alluring [illegible] to join [illegible] ready anymore Ch'i's Period locks. Ch'i	Evan Chung (Ch'i Shen K.)	[illegible]	KI (A)	Evan Yen
Ch.2	To not [illegible] your con-[illegible]. [illegible]	[illegible] Shen Ch'i [illegible] [illegible] [illegible]

Serial No.	Title	Synopsis of Story	Chief Characters	Mood-Setting	Parallels	Reporting & Press Title Headline
X.1	Military Advisory It is better to make terms than waste time on a difficult siege.	P'ei Kung & Hsiang Chi made a treaty with Ch'u Huai V. that the first to enter Hsien Yang would become its king. Han.	P'ei Kung Hsiang Chi Ch'u Huai V.		46 (A) 58 (AB)	Tan Tse Chuan Hsiang Kung Ch'u Han Ch'un Ch'iu HC (Y) NOTE: P'ei Kung = Liu Pang & Hsiang Yi
X.2	Make advantage of bad government.	Yen Hsin advises Han V. to attack Hsiang K. of Ch'u, saying that the latter had already become unpopular in Ch'in. Han.	Han Hsin Han Hsin Hsiang Yang		45 (A) 58 (AB)	Yen Tse Chuan Hsiang Yang Han Hsin NOTE: Han Hsin = Hsiao Ts'ao Erh
X.3	A woman can persuade a king that short war is to his advantage, war not really to his advantage at all.	Chao Ts Ch'an was captured by Yen, but was later returned to the throne on the result of a stratagem on the part of a Chao woman. Chao	Wu Ch'an Hsiang Erh Chao Ch		46 (A) 58 (AB)	46 (Y)
X.4	The importance of hearing what deserter has to say. A Ruler, his people, their food.	Li Shih Ch'i advises Han K.Ao fortify his ao Yang granary, & not to leave his whole army in the field. Han.	Han Kung Li Shih Ch'i (i.e. Li Shang)	—	46 (A) 58 (AB)	Han Tse Chuan HC (Y)
X.5	Do not let your enemies persuade you into a false sense of security.	Li Shang persuaded Ch'i to lay down their arms, saying that Han would ineffectively reverse them. Han Hsin then took advantage of their helpless position. Han.	Li Shang Han Yung Ch'i Yung Han Hsin	— — — —	46 (A) 58 (B)	Han Tse Chuan Han Hsin HC (Y)
X.6	A King should only act like T'ang or Wu if the circumstances in which he finds himself are really comparable with theirs.	When Ch'u was besieging Han Li Shang advised Han K. to re-establish Hsien over the 6 southerns. Chang Yen Feng retorted not the folly of this, & Li Shang was recalled. Han.	Han Kung Hsiang Yu Li Shang Chang Liang (i.e. Liu Hou or Chang Tzu Fang)	— — — —	46 (A) 58 (AB)	Han Tse Chuan HC (Y)
X.7	To secure the co-operation of generals, promise them a share of the territory they conquer. APPEARS IN [illegible]	Han K. was badly defeated by Hsiang Yu, having requested co-operation from Han Hsin & P'eng Yueh. Chang Yen Feng advised him to offer them a share of the conquered territory, & later the united armies defeated Hsiang Yang. Han.	Han Kung Hsiang K. Han Hsin P'eng Yueh (i.e.Hsien Ch'eng K.) Chang Yen Feng (Liu Hou)	— — — — —	30 (A)	Han Tse Chuan Han Hsin HC (Y)
X.8	Exempt a man who is bound to be your enemy, in order to restore the faithfulness of your Ministers.	Hsu Hsiang Yi was commanded by Lin Hou to convert Wang Ch'ih, whom he (that lord, as that his other K's would have for similar reasons & be pacified. Han.	Hsu Hsiang Yi Lin Hou	— —	30 (A) 46 (A)	Hsu Tse Chuan
X.9	The importance of securing the right hsun for the capital.	Lou Ching & Chang Yen Feng advised the Emperor to make his capital in the heart of the Hsien, rather than in Shen Yang. Han.	Hsu Hsiang Yi Lou Ching Chang Yen Feng	—	30 (A) 45 (A)	Lin Ching Lou Tse Chuan
X.10	Kneeling as the right Hsin-Ao-ment.	The Emperor wished to change the Hsin-Aoyment D yeh dian K.Ju I to his place. As the result of a clash between the Empress & Chang Yen Feng, the change was not made. Han.	Hsu Hsiang Yi Chang Tse Fang	—	30 (A) 58 (AB)	Hsu Tse Chuan HC (Y)
X.11	There is no use in putting a young general in charge of veteran troops.	The Emperor, though elder, was persuaded by the ever resourceful, perhaps then put the Hsin-Aoyment in charge of veteran troops. Han.	Hsu Hsiang Yi Ti'ai Yen Chang Yen Feng	—	30 (A) 46 (AB)	Hsu Tse Chuan
X.12	Be ready to sacrifice the smaller part to save the larger.	The Empress Dowager tried to poison Tai Hsi of Ch'i, but the latter gained her good graces by sacrificing her daughter with 10 of his cities. Han.	Hsiao Hsi Hsiang Yi Ch'i Tse Hsi W. Lu Hsu		30 (A) 46 (A)	
X.13	Without Comment Interpret thoroughly, or leave alone.	The Emperor assisted the Hsiung Nu barbarians, but his plans were not successful, & hostilities raged for ten years. Han.	Hsiao Wu Hsiung Yi Shu Ao Hsiung Nu Shu yé shih te Fu Hsu An Hsu		58 (A) 57 (B)	
X.14	Never allow the status of the Feudal Lords to become too large.	Chu Fu Yen advised the Emperor to partition the States of the Feudal lords, thus reducing the risk of active rebellion against the throne. Han.	Hsiao Wu Hsiang Yi Chang Ku Fu Chu Fu Yen		46 (A) 58 (A)	Chu Fu Yen 46 (Y)


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THIBET or BOOTAN
OUDE
ALLAHABAD
BAHAR
ASSAM
BENGAL
BAMGURR
BURWA CHUTIA
JUSPOUR
SINGROOR
GANGAPOUR
ORIXA
BAY OF BENGAL
A MAP of
BENGAL & BAHAR,
with part of
ORIXA.
Drawn from actual Surveys,
MDCCLXXV.