

DEVELOPMENTS OF JUDICIAL SYSTEM IN INDIA UNDER THE EAST INDIA COMPANY
FROM 1833 TO 1858. By R.C. Srivastava. Published by Dr. R.C.
Srivastava. 1971. Pp. xii+232. Rs. 45.

The present-day Indian Legal System is the creation of the British administrators. The foundations of the system were laid as early as 1772 in the Mofussil and the later half of the seventeenth century in the three Presidency Towns of Madras, Bombay and Calcutta. The system continued to grow during the entire British-period in India.

The book under review seeks to narrate the growth of the judicial system during the period 1833 to 1858. The book constitutes the thesis submitted by the author for his Ph.D. degree in the Department of History of the Lucknow University.

The book has been divided into eleven chapters. The first chapter is entitled as the "Introduction". Here the author mentions the main highlights of the developmental process of the judicial system during the period under review. The subsequent chapters describe this process in detail.

Chapters II and III describe the various steps taken during the period under review to remove the discriminations against the Indians in the judicial system. In 1793, Lord Cornwallis introduced his famous reforms in the Company's judicature in Bengal, Bihar and Orissa. These reforms emanated from a desire to make the judicial system effective and above corruption. Cornwallis desired that justice be easily accessible to the people. But he also committed a lapse insofar as he excluded the Indians from all positions of responsibility in the judicial system. The highest position which an Indian could occupy was that of a Munsiff entitled to decide cases up to Rs. 50. A similar situation prevailed in the Provinces of Madras and Bombay. However, during the period 1793 to 1833, some small steps were taken to induct the Indians in the judicial offices and give them a larger share of responsibility. In 1831, Bentinck created the office of Principal Sadar Ameen who could try cases up to Rs. 5000 in Bengal, Bihar and Orissa. The status of the Indian judicial officers was, nevertheless, inferior to the British judicial officers. The Charter Act of 1833 sought to improve the situation in this direction. It declared that no native in British India, "nor any natural born subject of His Majesty shall, by reason of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company". Various steps were taken thereafter to increase the Indian participation in the administration of justice. Act XXV of 1837 authorised the Principal Sadar Ameen to try suits of any amount.

Indian judges, however, suffered from another infirmity, *viz.*, they could not decide cases involving British subjects. By 1843, from the

sphere of civil justice, any such disability was abolished as regards the Indian judges. But in the area of criminal justice, British subjects continued to be triable exclusively by British judges for long. In course of time, some of the privileges enjoyed by the British subjects in the sphere of criminal justice were withdrawn, but some privileges continued till the Independence of India. It was only in 1949 Parliament enacted the Criminal Law (Removal of Racial Discriminations) Act. The author notices the steps taken during 1833 to 1858 to remove all disabilities of the Indian judges although he does not say much about the privileges enjoyed by the British people in the sphere of criminal justice and only a passing reference is made to this aspect of the matter on page 20.

In 1772, when Warren Hastings took over the Diwani functions from the Nawab of Bengal, he improvised a judicial system in the Province of Bengal, Bihar and Orissa with district Adalats and Sadar Diwani and Nizamat Adalats at the apex. In course of time, a similar judicial system was introduced in the Provinces of Madras and Bombay as well. The Sadar Adalats underwent several vicissitudes but continued in existence till 1861 when they were absorbed by the High Courts established under the Indian High Courts Act, 1861. In chapter IV, the author mentions some controversies which arose during 1833-1858 concerning these top courts, *e.g.*, whether these Adalats should, in addition to their judicial functions also continue to have the responsibility of superintending the subordinate adalats. The Court of Directors thought that supervision of the lower courts by the Sadar Adalats was an expensive proposition and led to an increase of arrears of work in the Sadar Adalats. The Directors accordingly suggested that the function of superintendence be transferred from the Sadar Adalats to the Commissioners of Circuit. This suggestion generated a controversy. The Bengal Government and the Sadar Adalats were not favourably disposed towards this change. They argued that the Commissioners of Circuit neither had the necessary time nor the judicial experience for the purpose. Ultimately, an arrangement was agreed upon under which administrative duty of the Sadar Adalat was sub-divided among its several judges. The author also mentions the steps taken by the Government of India to reduce arrears of work in the Sadar Diwani Adalats on which the load of work used to be heavy and, consequently, there occurred a lot of delay in the disposal of civil cases.

The most significant development concerning the Sadar Adalats was their amalgamation with the Supreme Courts resulting in the establishment of the High Courts under the Indian High Courts Act, 1861. There was a lot of discussion and exchange of views concerning this matter among the various authorities concerned during the period covered in the book under review. The author does not devote as much attention to this matter as its importance deserved. He only makes a passing reference to this aspect of the matter on pages 75-77. He could have, with great advantage, devoted more attention to this matter which, after all, was a development

of the highest significance in the evolution of the Indian Judicial system.

Chapter V describes the changes effected during the period under review, in the constitution and functions of such offices as the Legal Remembrancer, Advocate-General, Company's Solicitor, *etc.* Chapter VI states some of the norms adopted by the various governments in India for deciding upon the applicability of the British-Indian laws to the subject of the Indian states, and the applicability of the laws of the Indian—states to the subjects of the British India when they committed crimes within the state boundaries. The author characterises this as the "Inter-State Law". After taking note of the various instances where such questions arose and the way they were decided, the author concludes that in this matter the government was guided by "convenience and expediency".

Chapter VII is devoted to describe the evolution of the court language in the Company's Adalats, especially the Sadar Adalats. To begin with, Persian was the language of the court. Various people then started advocating for the use of other languages in place of Persian, such as, English, Hindi, or other local vernaculars. Ultimately, in the North-Western Provinces, Persian was replaced by Hindustani written in the Persian characters and this experiment proved to be very successful. In Bengal, the Sadar Adalat was allowed to use the local languages in place of Persian, but this experiment did not prove very successful because of the widespread territorial jurisdiction and the Sadar Adalat was called upon to use a multiplicity of vernaculars. To avoid confusion, Urdu was adopted as the language of the Sadar Adalats at Calcutta. In the district courts, local vernaculars were used to some extent. Thus, Persian ceased to be the court language and its place was taken mainly by Urdu. With the passage of time, the English language was introduced in the Sadar Adalats and it ultimately completely overrode the Urdu language. This process was hastened by the permission granted to the English barristers of the Supreme Courts to practise in the Sadar Adalats. These people knew no other language except English and, thus, the English language became the rule.

Chapter VIII deals with the working of the Small Causes Courts in the Presidency Towns during 1850 to 1860. Courts of Requests were established in these towns in 1753 (and not in 1763 as stated on page 130 which appears to be a misprint). These courts were replaced by the Small Causes Courts by the Act IX of 1850. The jurisdiction of these courts was limited to four hundred rupees. These courts, according to the author, proved a great success. Emboldened by this success, Small Causes Courts were established in the Mofussil as well by the Act XLII of 1860.

Chapter IX deals with "Law Commissions and Codification of Law". There was a great uncertainty in the law in the Mofussil and the Presidency Towns. There was a diversity of customs of the people; confused and contradictory regulations prevailed in the various provinces and the atmosphere was wholly uncongenial to impartial and equitable administration of justice. A feeling, therefore, started growing among those concerned

that India needed a code of laws. The Charter Act, 1833, made provisions for the appointment of a Law member in the Governor-General's Council. It also provided for the appointment of a Law Commission. Macaulay was appointed as the first Law member as well as the chairman of the First Law Commission. The appointment of the Law Commission raised some controversy in India. It was received with mixed feelings and was not universally welcome. The First Law Commission's major achievement was the preparation of a draft Penal code. It was mainly the handiwork of Macaulay. The Commission took this task in hand as the Criminal law at that time was in a very confused state. The Commission submitted the draft code in 1837. It raised another round of controversy in India. Many people including the judges of the Supreme Courts vehemently criticised the draft. There were some who commended it. It was only in 1860 that the Penal code could be enacted after Macaulay's draft underwent some changes at the hands of the succeeding Law members. The Second Law Commission was appointed in 1853 under the Charter Act of that year. The author brings out the difference of views generated by the draft Penal code. He also reviews in detail the steps taken to enact the Indian Penal Code, Criminal Procedure Code and Civil Procedure Code. But there are several other aspects of the work of the two Law Commissions which the author either does not mention or mentions only inadequately. For example, a very significant and controversial document prepared by the First Law Commission was the *Lex Loci* Report. The author only mentions it on page 148 but gives no details and in the view of the reviewer this is a serious omission as this Report had its own impact on the subsequent codification of laws in India. While reviewing the work of the Second Law Commission, the author fails to mention its second report. This is another serious omission on his part as the second report is an extremely important document so far as codification is concerned. In this report the Commission laid down the norms on which the future work of codification was to proceed in India. There are many other significant aspects of the legislative process of which the author fails to take notice. On the whole, the chapter under review is not comprehensive enough and leaves out of account many aspects of the formative period of our codes.

The last but one chapter describes the growth of the Indian Bar up to 1858. It was in 1793 that Cornwallis re-organised the Bar in the Mofussil. He regarded a well-organised Bar as an important limb of the machinery of the administration of justice. Before 1793, the Bar, if it can be called so, was in a deplorable state. Parties either pleaded their own causes or employed such agents for the purpose as they thought proper. These persons did not know much about law and the court procedure and could not, therefore, do an effective job of pleading. The persons who engaged in the profession of law were also similarly deficient. Over and above this, they were mostly people of low character and unscrupulous and sucked their clients by charging exorbitant fees. As a result, the administration of justice suffered. Even the courts could not administer justice properly

in the absence of adequate help from the Bar. Cornwallis realised that in the absence of an organised and enlightened Bar, the administration of justice must remain weak. Accordingly, Regulation VII of 1793 was enacted to regulate legal profession. It imposed a rigorous code of conduct on the lawyers. Thereafter, several modifications were made in Regulation VII. In 1814, Regulation XXVII consolidated all the earlier provisions made from time to time to regulate the legal profession. Changes continued to be made in the law. In 1833, Regulation XII provided that persons of any nation or religion could be appointed as pleaders in the Sadar Diwani Adalats. The progress of the Indian Bar up to 1858 has been noted in detail by the author, and the chapter is very informative as regards the formative period of the Indian Bar.

The book under review contains interesting materials on the development of the Indian legal institutions during the period 1833 to 1858. Srivastava has chosen the period for study for, as he states, the infra-structure of the British-Indian judicial system was laid during this time. Views may differ on the validity of this statement. However, the period has its own significance as in 1833, the Government of India and an All-India Legislature were created while in 1858 the East India Company was wound up and responsibility for administration of India transferred to the British Government. Then followed a quick series of reforms. The High Courts were created in 1861; the three major codes were enacted up to 1860; and the Third Law Commission was appointed in 1861. Therefore, one can argue that the infra-structure of the Indian judicial system was established during 1833 to 1861, and not during 1833 to 1858.

The subject of Indian Legal History has been largely ignored by the Indian scholars for long. It is only recently that some research work has been undertaken in this area and some literature has appeared. The author has collected his materials from the records of the National Archives at New Delhi. He has undergone great labour and pains to collect these materials. The reviewer welcomes the book as it constitutes one more worthwhile addition to the scanty literature on the subject of Indian Legal History.

The book has been priced at Rs. 45 which is very stiff for a book of nearly 240 pages. It will thus remain beyond the reach of most of the students of the subject. This is to be regretted.

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