

CHAPTER XVIII.*

The Judiciary in India.

109. (a) The judiciary in India is not, as in England and America, restricted to those who have had experience at the Bar. The Indian judiciary may be described as an official corps organised under the High Court in each Province (in some Provinces the Highest Provincial Court is called Chief Court) with the twin objects of securing their judicial independence and maintaining their professional efficiency.

The Indian judiciary in each Province is self-contained, and from the High Court or Chief Court an appeal lies to the Privy Council, subject to certain limitations.

The machinery for the administration of justice in a Province is an organic whole which may conveniently (neglecting local variations) be described by the following table:—

<i>Criminal Side.</i>	<i>Civil Side.</i>
Magistrates with 3rd class powers.	Munsifs.
Magistrates with 2nd class powers.	Subordinate Judges, 2nd grade.
Magistrates with 1st class powers.	Subordinate Judges, 1st grade.
Sessions Judge.	District Judge.
High Court or Chief Court.	High Court or Chief Court.

The High Court, both on the criminal and civil side, enjoys some original jurisdiction, but the bulk of its work is appellate. The other Courts indicated above are all Courts of first instance, but an appeal lies from the decisions of all third and second class Magistrates to the District Magistrate, from all first class Magistrates (including the District Magistrate) to the Sessions Judge, and from the Sessions Judge to the High Court. Similarly on the civil side an appeal from a Munsif's decision and from those of the lower grade of Subordinate Judges lies to the District Judge, and from the higher grade of Subordinate Judges and the District Judge, to the High Court.

It must be understood that while there is one High Court for each Province, the rest of the judiciary as described above is grouped by Districts, each District having a District Magistrate and a District Judge, the former with Subordinate Magistrates and the latter with Subordinate Civil Judicial Officers, under his control.

* The substance of this chapter is taken from a Memorandum submitted by the India Office before the Joint Select Committee.

(b) *The Subordinate Criminal Judiciary* :—The Criminal Judiciary is constructed on a plan uniform for all British India by an Act of the Indian legislature (the Code of Criminal Procedure). That Act in its Second Part deals with the Constitution and Powers of Criminal Courts, prescribing the classes of Criminal Courts which shall exist in the Provinces, and assigning powers to each class by specifying in a schedule the offences of which each class of Court may take cognizance. Further powers are assigned by particular Acts, Central and Provincial.

The Code of Criminal Procedure, however, leaves it to the Provincial Governments to provide the *personnel* required to man the subordinate criminal judiciary. At the stage of Sessions Judge, a varying number of appointments are made direct from the Bar, though these have, in most Provinces, been few in number, but below that stage the *personnel* is provided (so far as Honorary Magistrates are not employed) by drawing upon the administrative cadres employed in the Provinces (the Provincial Civil Service). To varying degrees, from Province to Province, a distinction between officers of these cadres employed upon magisterial duties and those employed upon administrative duties has been drawn; but, generally speaking, the subordinate magistracy is employed also in administrative or revenue work as well as in strictly judicial duties.

The broad result, therefore, is that all magistrates are drawn from departmental cadres, which they enter at the outset of their official career, and through which they pass by rising, in due course, from grade to grade and within grades, by surmounting various "efficiency bars." Progress depends partly upon seniority and partly upon professional efficiency. The clerical establishment of Criminal Courts is provided by the Provincial Governments from their subordinate services.

(c) *The Subordinate Civil Judiciary* :—The Subordinate Civil Judiciary is organised by provincial legislation. The plan is, therefore, not necessarily uniform from Province to Province. In fact, there is a good deal of uniformity in general arrangement, but there are differences of detail. Certain classes of Courts are required to be set up. The jurisdiction of each is determined according to the pecuniary value of suits, and that jurisdiction is supplemented by specific Acts which may assign jurisdiction according to other criteria. The provision of *personnel* to preside over these Courts is generally left to the Provincial Government, but in some Provinces, for certain Courts, has been entrusted entirely, or in effect, to the High Court. But whatever the method, the feature common to

all systems is that the *personnel* compose official cadres into which normally a man enters at the outset of his career and through which he passes over efficiency bars and grade distinctions. The cases in which officers of these services are employed on work other than strictly judicial work are comparatively few.

The office of District Judge and Sessions Judge are almost invariably held by one individual who is commonly described as 'District & Sessions Judge.'

(d) *Control of the Subordinate Judiciary* :—These arrangements are part of a system which recognises that subordinate courts, civil and criminal, in India, while preserving their judicial independence, require a degree of administrative superintendence and control unknown in England. The Judge or Magistrate in charge of each Court makes periodical returns of the state of business in his Court which are reviewed by the District and Sessions Judge and by the District Magistrate at shorter, and by the High Court at longer, intervals. All Courts are regularly inspected, and at least in some Provinces one or more Judges of the High Court go on tours of inspection round the Courts in the Province. In the course of all this, presiding officers are criticised, commended or reprimanded. There are efficiency bars to be passed and grade promotion awarded. Transfers must be arranged, leave granted and provided for, and there are also matters of discipline.

Much of this administrative control, which is very considerable in amount, and very important in nature, is exercised by the High Court. Much of it has been devolved upon the Court by statute ; a great deal is exercised by less formal arrangement with the Provincial Government.

The Advocate-General :—Under S. 114 of the Government of India Act His Majesty may appoint by Warrant, an Advocate-General for each of the three Presidencies of Madras, Bombay and Bengal. Under the section the functions of the Advocate-General are not precisely defined. He is merely directed to take, on behalf of His Majesty, such proceedings as may be taken by His Majesty's Attorney-General in England. In practice his functions are :—

- (1) To advise the Local Government on any legal problem that may be referred to him.
- (2) To represent the Crown in original civil cases in the High Court to which the Crown is a party.
- (3) To appear in criminal appeals in the High Court which are regarded as of special importance.

- (4) To enter a *nolle-prosequi*.
- (5) To grant a fiat for review of verdict in criminal cases tried by the High Court in its original jurisdiction.
- (6) To protect public rights in such matters as public charities and public nuisances.

CHAPTER XIX.

The Indian Railways.

110. The first proposal for the construction of Railways in India was made to the East India Company in 1844 and the earliest construction was made by the E. I. Ry. and the G. I. P. Ry. The East India Company guaranteed a return of 5% on the capital invested by the Railway Company. This system of entrusting the construction of Railways to Companies on the guarantee of a specified return was adopted as a policy from the time of Lord Dalhousie in 1853, and between 1854 and 1860 contracts for the construction of Railways were entered into, at first by the East India Company, and after the transfer of Government to the Crown in 1858, by the Secretary of State, with various incorporated companies. Under these contracts, the capital was to be supplied by the companies and the lines were to be constructed and worked by the companies. The East India Company or the Secretary of State provided land for the construction, and guaranteed a specified return of interest. The rate varied from $4\frac{1}{2}\%$ to 5% according to the prevailing market rates when the contracts were made. If, in any particular year, the profits earned were in excess of the guaranteed interest, half the surplus was to be utilised for repaying to the Government any sum which it may have been called upon to pay, in the previous years, so as to make up the guaranteed rate of interest, and the remainder was to be divided among shareholders. Under the contracts, except in the matter of choice of staff, the companies were placed under the supervision and control of the Government. The Railways were to be held by the companies on leases terminating at the end of 99 years, and on such termination the fair value of their rolling stock, plant and machinery were to be paid to them. The companies were also enabled to surrender their lines to the Government and to receive in return their capital at par. The Government was also enabled to purchase the lines after 25 or 50 years.

Under this system, while the Government guaranteed the companies the interest on the capital, and thus became liable for loss on