

INTRODUCTION

CHAPTER I

INTRODUCTION

At the beginning of the 18th century the East India Company's responsibility for the administration of justice in India was confined to the presidency towns of Calcutta, Madras and Bombay and the settlements and trading posts subordinate to them. In each of these towns the Company had set up its own courts. Never very satisfactory, their inadequacy and inefficiency became increasingly apparent as the population and commercial importance of the towns increased, and in 1727 they were replaced by new courts which derived their authority from the Crown. They were royal courts, established under a Charter granted by George I in 1726¹. That Charter was replaced in 1753 by one granted by George II;² the judicial arrangements made under the earlier Charter were modified but the status of the courts remained unaltered^a.

In the second half of the century the political situation changed. The battles of Plassey in 1757 and Buxar in 1764 made the Company the master of Bengal^b, and the Company was, for the first time, confronted with the problem of providing for the administration of justice to persons living beyond the limits of a presidency town. The first decisive step was taken in 1772 by Warren Hastings. A hierarchy of courts was established at the head of which were the Sadar or Chief Courts³. The Sadar Dewani Adalat was vested with an appellate jurisdiction in civil matters and the Sadar Nizamat Adalat with power to revise the proceedings of the criminal courts.

1. Shaw, *Charters relating to the East India Company*, 230 (24 Sept., 1726).

2. *Ibid.*, 252 (8 Jan. 1753).

a Under the Charter of 1753 civil cases were heard by the Mayor's Court or, if the amount in dispute did not exceed Rs. 15, by the Court of Requests. Criminal justice was administered by the Governor and members of Council sitting as Justices of the Peace and as a Court of Quarter Sessions for the trial of all offences other than high treason. The Governor in Council also heard appeals from the Mayor's Court, and a further appeal lay to the King in Council if the amount involved exceeded Rs. 3000. The Mayor's Court applied English law (as far as it was known to the judges) and offenders against the criminal law were tried, as far as circumstances allowed, in the same manner as in England. The Mayor's Court had no jurisdiction to hear suits between Indians save with the consent of both parties. This provision, and the very restricted jurisdiction of the Court of Requests, explain the continued existence for some time after 1753 of the Zemindar's Court in Calcutta and the Choultry Court in Madras, both of which were Company Courts: see Jain, *Indian Legal History*, Ch. VI.

b That is to say of the Bengal Subha, consisting of the Mogul provinces of Bengal, Bihar and Orissa.

3. General Regulations for the Administration of Justice, 21 Aug. 1772; Colebrooke, 1.

The Governor and members of the Bengal Council were the judges of the Sadar Dewani Adalat. The Nizamat Adalat was presided over by an Indian official appointed by the Nawab Nazim of Bengal who for the time being was left in charge of the administration of criminal justice. The Court was subject to some measure of supervision by the Governor and members of Council.

The Company was however in serious financial difficulty. It had exhausted its resources and was forced to apply to the Government in England for a loan. The application led to the passing of the Regulating Act of 1773⁴. The Bengal Council was reconstituted, and provision was made for the establishment in Calcutta of a Supreme Court of Judicature of which the judges would be appointed by the Crown. The court came into existence in 1774. It had exclusive civil and criminal jurisdiction within the presidency town, and jurisdiction over all British subjects, and over Indians employed by or in the service of the Company or by any British subject, elsewhere in the Presidency⁵. The extent of the Court's powers beyond the city limits was however ill-defined and became the subject of an acute controversy with the Bengal government which remained unsettled until 1781. Under the Act of Settlement of that year⁶ the extent of the Supreme Court's jurisdiction beyond the city limits was clarified, and natives of India, by reason only of their being employed by the Company or by a British subject were no longer to be subject to the court's civil jurisdiction except in cases of tort or where by agreement in writing they submitted to its decision⁷. The Act also formally empowered the Governor General (as he was now styled) in Council to frame regulations for the Company's territories in Bengal outside Calcutta,⁸ thereby bringing to an end a period during which there had been much doubt as to the legal basis for the legislative power exercised by the Bengal government. At the same time the Sadar Dewani Adalat was confirmed in the exercise of its civil appellate powers. It was declared to be a Court of Record^c, and its judgments were to be final except upon appeal to the King in Council in suits the value of which was not less than £5000⁹.

As a result of the conflict between the Supreme Court and the government sittings of the Sadar Dewani Adalat had been suspended in 1774. They were not resumed until 1787, and then only "with as much regularity as the business in it required and our other employments would permit".

4. 13 Geo. III, c. 63.

5. *Ibid.*, s. 14.

6. 21 Geo. III, c. 70.

7. *Ibid.*, s. 10.

8. *Ibid.*, s. 23.

^c Court of Record: a court whose proceedings (originally enrolled on parchment as a permanent record) are of such authority that their truth is not to be called in question.

9. 21 Geo. III, c. 70, s. 21.

In 1775 the administration of criminal justice was placed wholly under the control of a deputy of the Nawab Nazim¹⁰. This state of affairs lasted until 1790 when the Company assumed full responsibility for the administration of the criminal law¹¹. The local criminal courts were replaced by four courts of circuit^d presided over by servants of the Company and the Nizamat Adalat (the prefix 'Sadar' had fallen into disuse) was reconstituted. The Governor General and members of Council became *ex officio* the judges of that court as they were now of the Sadar Dewani Adalat. There was in fact one court, referred to at times, both in official papers and in the Regulations, as the Sadar Dewani and Nizamat Adalat, which exercised civil jurisdiction as the Sadar Dewani Adalat and criminal jurisdiction as the Nizamat Adalat^e.

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

There were thus in existence in Bengal at the turn of the century two distinct and separate systems of judicial administration. The territorial jurisdiction of the one was restricted to the town of Calcutta, that of the other extended over the remainder of the Presidency. The judges of the Supreme Court were members of the bar of England or Ireland, those of the Company's courts were civil servants. The Supreme Court was essentially an English court which followed English forms of procedure and over a wide field applied the common and statute law which prevailed in England in 1726. The law applied by the Company's courts was that laid down or sanctioned by the Regulations of the Bengal government. Both courts were of course bound to enforce the provisions of Acts of Parliament specifically having force in Bengal but these were few in number.

Judicial history followed a similar course in the other Presidencies. The royal courts established in Madras and Bombay in 1727 and 1753 were superseded by Recorder's Courts which in turn were replaced, in Madras in 1801 and in Bombay in 1823, by Supreme Courts of Judicature with powers similar to those possessed by the Supreme Court at Calcutta. As the territories subject to the governments of Madras and Bombay grew in size those

10. Proceedings of Council, 18 Oct. 1775: Colebrooke, 125.

11. Regn. of 3 December 1790: Colebrooke, 141.

^d At Calcutta, Murshidabad, Patna and Dacca. Additional courts were established at Benares in 1795 and at Bareilly in 1803.

^e Regn. 25 of 1814, s. 4, for example, refers to the appointment of "a judge of the Sadar Dewani and Nizamat Adalat", and Regn. 6 of 1831, s. 1, to the establishment of a "Court of Sadar Dewani and Nizamat Adalat for the Western Provinces."

governments set up their own courts to administer justice outside the presidency towns. At the head of these courts were the Sadar Courts, established in Bombay in 1799 and in Madras in 1802^f. The early judges of these courts were the Governor and members of Council of the Presidency. The courts were later reconstituted and civil servants not members of the government were appointed as the puisne judges. The office of Chief Judge continued however to be held by a member of Council.

In 1832 the jurisdiction of the Sadar Dewani and Nizam-at Adalat in Calcutta was restricted to the Lower Provinces of Bengal and a new Court, the Sadar Dewani and Nizam-at Adalat for the Western Provinces, was established at Allahabad^g.

On the 1st September 1858 the Company's territories in India vested in the Crown, the powers exercised by the Company came to an end, and the judges of the Company's courts were thereafter deemed to hold office under the Crown¹². The Sadar courts were not immediately abolished. The Indian High Courts Act of 1861¹³ authorised the Crown to establish a High Court at Fort William in Bengal for the Bengal division of the Presidency of Fort William, and High Courts at Madras and Bombay for those Presidencies respectively, and it provided that on the establishment of a High Court the Supreme Court in the Presidency town and the Sadar Court in the area for which the new court was created be abolished. The Act also empowered the Crown to establish a High Court in the North Western Provinces. High Courts were thereafter established at Calcutta, Madras and Bombay in 1862 and at Agra (for the North Western Provinces) in 1866. The last of the Sadar Courts was thereupon abolished.

The judicial system which had been established by the Company in Bengal formed the model for those later set up in Madras and Bombay, but whereas the Madras system followed closely the Bengal model that in Bombay diverged from it in a number of important respects. The degree to which the powers and duties of the Sadar Courts differed in the three Presidencies appears later in this book, but at this point it is convenient to consider the extent of the jurisdiction exercised by the Sadar Courts over British subjects and natives of India, for this jurisdiction was determined by Acts of Parliament and was the same in each of the Presidencies.

f In Madras the Company's chief civil and criminal courts were known respectively as the Sadar Adalat and the Foujdari Adalat, in Bombay (after some changes) as the Sadar Dewani Adalat and the Sadar Foujdari Adalat.

g See Chap. VII.

12. 21 and 22 Vict. c. 106, ss. 1, 58.

13. 24 and 25 Vict. c. 104.

A Sadar Dewani Adalat^h had jurisdiction over all persons who were not British subjects within the territory subject to its authority¹⁴. But British subjectsⁱ were never wholly exempt from the jurisdiction of the Company's courts. At the beginning of the 19th century few British subjects, other than military officers and government officials, resided in the country districts, and those who did had first to obtain the permission of the Company and enter into a bond rendering themselves subject to the local city or zillah (or district) court in all suits brought against them by persons not British subjects in which the amount at issue did not exceed Rs. 500¹⁵.

The Company's trading monopoly was however coming to an end, the number of persons wanting to live in the interior was increasing^j and an extension of the jurisdiction of the civil courts had become inevitable.

In 1813 Parliament acted. The Company retained the right to restrict the entry of British subjects into its territories, but all British subjects who resided, carried on trade or business, or were in occupation or possession of immoveable property in any part of those territories at a distance of more than 10 miles from a presidency town were declared subject to the jurisdiction of the Company's civil courts, whether of first instance or on appeal, "in the like manner as natives of India"¹⁶. To this rule there was however a proviso, namely that in those cases in which an appeal would, in the ordinary course, lie to a Sadar Dewani Adalat, a British subject against whom the suit had been instituted was given the option of appealing to the Supreme Court in the Presidency in which the suit had been commenced¹⁷. That court would then decide the appeal in accordance with

h There is here a difficulty over nomenclature, the Company's superior courts not having the same name in the three Presidencies and, in the case of Bombay, the name having changed more than once during the period under consideration. In the circumstances it is convenient to this chapter to use the names current in Bengal, Sadar Dewani Adalat and Nizamat Adalat, as meaning respectively the principal civil and criminal court in each Presidency. Similarly 'Supreme Court' must be understood to mean, in Bombay, the Recorder's Court prior to its replacement by a Supreme Court.

14. Regn. 3 of 1793, s. 7; Mad. Regn. 2 of 1802, s. 4; Bom. Regns. 3 of 1799, s. 6 and 1 of 1800, s. 6.

i The expression 'British subject' meant a native born subject of the United Kingdom and his legitimate descendants. In 1821 the Supreme Court in Calcutta held that the illegitimate son of an Englishman and an Indian woman was not a British subject under the Regulating Act 1773: *Byjenaut Sing v. Chas. Reed*, Sir Ed. West's "Notes of Cases" in Morley's Digest, II, 36.

15. Regn. 28 of 1793, s. 2; Mad. Regn. 2 of 1802, s. 6; Bom. Regns. 3 of 1799, s. 8 and 1 of 1800, s. 8.

j The number was still very small. The number of British subjects in India in 1818 not in the service of the Company or the Crown was said to be only 2016 of whom most resided in the presidency towns or on ships belonging to the ports; Sel. Cttee. Rep., P.P. 1831-32, VIII App. 347.

16. 53 Geo. III, c. 155, s. 107.

17. *Ibid.*

the law by which the Sadar Dewani Adalat would have been governed had the appeal been lodged in that court^k. This alternative right of appeal to a Supreme Court came to an end in 1836/.

The civil courts also had jurisdiction over government officials, most of whom were British subjects, for acts done by them in their official capacity but not authorised by the Regulations¹⁸.

A Nizamat Adalat had jurisdiction over all persons, other than British subjects^m, in respect of offences committed within the territory subject to its authority¹⁹. Its jurisdiction was later extended when courts of circuit were given power to try native subjects of the British government for grave offences committed by them outside British territory²⁰.

Natives of India in the service of the Company or employed by British subjects were amenable to the Company's courts notwithstanding the fact that they were subject to the criminal and, in some matters, to the civil jurisdiction of a Supreme Court. In respect of such persons the Supreme Courts and the Company's courts had concurrent jurisdiction²¹.

^k According to Sir J.C. Hobhouse, President of the Board of Control, speaking in the House of Commons, the right of appeal to the Supreme Court was exercised only on two occasions between 1813 and 1833, "and in these cases the Supreme Court had to refer to the Sudder to interpret the law and answer the appeal": Hansard's *Parliamentary Debates*, vol. 41, p. 1146 (22 Mar. 1838).

^l Act XI of 1836. Notwithstanding the provisions of s. 107 of 53 Geo. III, c. 155, British subjects (and also other Europeans and Americans) had been for some years amenable only to the jurisdiction of such of the Company's civil courts as were presided over by English judges: see Jain, *Indian Legal History*, Ch. XVII.

18. Regns. 3 of 1793, s.10, 13 of 1816, s. 18 and 10 of 1819, s. 13; Mad. Regns. 2 1802, s. 7, 3 of 1809 and 1 of 1823; Bom. Regns. 3 of 1799, s. 9, 1 of 1800, s. 9, 4 of 1819 and 2 of 1827, s. 22.

^m Until 1813 British subjects were amenable only to a Supreme Court. In that year Justices of the Peace in the Company's territories were invested by Parliament with power to try British subjects on charges of assault and trespass (not being a felony) and impose a fine of Rs. 500 or in default a sentence of two months' imprisonment, but convictions were removable by writ of certiorari to the Supreme Court in the Presidency in which the applicant resided: 53 Geo. III, c. 155, s. 105.

19. Regn. 2 of 1796, s. 2; Mad. Regns. 6 of 1802, s. 19 and 9 of 1816, s. 31; Bom. Regns. 5 of 1799, s. 18, 3 of 1800, s. 18 and 11 of 1827, s. 1(1).

20. Regn. 5 of 1809; Mad. Regns. 11 of 1809 and 2 of 1829; Bom. Regn. 3 of 1809.

21. 53 Geo. III, c. 155, s. 109.

PART I
BENGAL

