

## CHAPTER XVI

### THE COURT'S ADMINISTRATIVE BUSINESS

The reconstructed Court of 1820 was required to take notice of all matters relating to the administration of justice in criminal cases and to the police<sup>1</sup>. The scope of the Court's duties in respect of these matters was amplified in the legislation of 1827. The court had now to superintend the administration of criminal justice and the police, to bring to the notice of the Government defects in the law, and to furnish the Government with information on a multiplicity of matters—"on the state of police and criminal justice in each zillah, of offences from their prevalence or atrocity requiring particular notice, the increase or decrease of crime, and the cause of either fact, the state of the gaols, and the efficiency and activity of the official establishments; it shall also keep Government acquainted with the effects produced by the law, the conditions of the people, and generally, all matters concerning the public welfare"<sup>2</sup>. On its civil side the Court was required to investigate allegations of negligence and misconduct by officials of the lower courts. If they were covenanted servants the Court was, if necessary, to make a report to the Governor in Council; if they were native officers it could suspend or dismiss them<sup>3</sup>.

The Sadar Foujdari Adalat exercised its supervisory powers through the zillah magistrates, who were responsible for the local police administration<sup>4</sup> and were required to furnish the Court with such record and reports as it might call for<sup>5</sup>. Police matters inevitably tended to become increasingly the direct concern of the Government. The zeal of police officers fitted ill with the impartiality of the judges, and the relationship of the two branches of the administration became increasingly unsatisfactory<sup>6</sup>. It was not however until 1852 that the superintendence of the police was transferred from the Sadar Foujdari Adalat to the Government and the duty of the former to furnish information on police matters to the latter was abolished<sup>7</sup>.

As part of the Court's general responsibility for the administration of justice and police the judges on circuit were required to inspect the gaols<sup>8</sup>,

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1. Bom. Regn. 7 of 1820, s. 10(1).

2. Bom. Regn. 13 of 1827, s. 27(4).

3. Bom. Regn. 2 of 1827, s. 6.

4. Bom. Regn. 12 of 1827, s. 3(1).

5. Bom. Regn. 13 of 1827, s. 29(1), (2).

6. Minute, 28th Apr. 1848, of Sir George Clerk, Governor of Bombay: *Selections from the Records of the Police Branch of the Judicial Department*, No. III, p. 1 (Government of Bombay, 1861).

7. Act 28 of 1852, ss. 1, 2.

8. Bom. Regns. 7 of 1820, s. 30; 13 of 1827, s. 16(3).

and on their return to submit a comprehensive report on the state of law and order in the zillahs which they visited<sup>a</sup>. The court was expected to advise the Government on such miscellaneous matters as the construction of new prisons and alterations to existing ones,<sup>9</sup> overcrowding,<sup>10</sup> the clothing,<sup>11</sup> diet<sup>12</sup> and employment of prisoners<sup>b</sup>, the weight of their fetters<sup>13</sup> and the provision of hospitals for those who were sick.<sup>14</sup>

The judges were of the opinion that prison discipline should be rigorous. Prisons, they believed, should deter through severity. In 1827 the Directors approved the introduction of treadwheels, provided they were used under the most vigilant supervision and their use discontinued if there was any indication that they were employed as instruments of oppression<sup>c</sup>. The Court was consulted. It referred to what it described as the indolent character of native prisoners and to "the dread entertained by all classes of punishment involving active bodily exercise", and it was in favour of the proposal.<sup>15</sup> The Government sanctioned their introduction subject to strict conditions on use.<sup>16</sup> To what extent they were employed is not clear, but in 1832 the majority of the Court (Ironsides was the exception) expressed a strong view that in the absence, save at prohibitive cost, of any satisfactory means of ensuring that the labour involved was not excessive, the scheme should not be proceeded with<sup>d</sup>. The Governor in Council agreed, and he refused to sanction the installation of a treadwheel into the Poona jail<sup>e</sup>.

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<sup>a</sup> Bom. Regns. 7 of 1820, s. 33 and 13 of 1827, s. 23(4). These reports, which were usually prepared with care and in great detail, were forwarded to the Government by the Court with its own observations: see, for example, B.J.C., 22 May 1822, fol. 3224, P/399/13, and 12 Mar. 1833, no. 18, P/400/72.

<sup>9</sup> B.J.C., 5 Feb. 1823, fol. 447, P/399/21; 13 Feb. 1828, no. 41, P/400/15; 14 Jan. 1829, no. 41, P/400/23; 4 Feb. 1829, no. 21, P/400/23; 21 Apr. 1830, no. 76, P/400/36.

<sup>10</sup> B.J.C., 10 Dec. 1823, fol. 4957, P/399/28.

<sup>11</sup> B.J.C., 17 Jan. 1831, nos. 1, 2, P/400/42; 8 Feb. 1832, no. 46, P/400/53.

<sup>12</sup> B.J.C., 17 Mar. 1830, no. 9, P/400/35.

<sup>b</sup> B.J.C., 1 Dec. 1830, no. 47, P/400/40. The cultivation of silkworms was sanctioned at Sholapur jail, provided that it did not interfere with the work of those prisoners sentenced to hard labour.

<sup>13</sup> B.J.C., 17 May 1826, no. 3, P/399/59.

<sup>14</sup> B.J.C., 18 Sep. 1829, nos. 7-10, P/400/29; 6 Jan. 1830, no. 17, P/400/33.

<sup>c</sup> Judl. Letter to Bombay, 5 Dec. 1827, paras. 68, 69. Treadwheels were in use at Surat and Broach jails; at the former the machine was used to draw water to clean the jail: B.J.C., 10 Sep. 1828, no. 1, P/400/20. Treadwheels were introduced into prisons in England in 1779 and their use as a form of hard labour was sanctioned in the Prisons Act 1865 (28 and 29 Vict. c. 126, s. 19).

<sup>15</sup> B.J.C., 10 Sep. 1828, no. 1, P/400/20.

<sup>16</sup> *Ibid.*, no. 3.

<sup>d</sup> "The doubt which the Judges entertain is not of its capacity or suitability as a mode of inflicting punishment, but of the Jail Establishment being adequate to its efficient management": B.J.C., 6 June. 1832, no. 13, P/400/56.

<sup>e</sup> *Ibid.* In 1834 the Government changed its mind and a treadwheel, capable of employing 50 prisoners, was authorised for the Poona Jail: B.J.C., 20 Aug. 1834, no. 36, P/401/2. One of the judges, Barnard, proposed that convicts be confined in stocks as

The Committee for the Revision of the Regulations<sup>f</sup>. had already begun work when the judges of the reconstituted Court took office on the 1st January 1821; and the Committee relieved them of the burden of drafting regulations which would otherwise have fallen upon them. The regulations proposed by the Committee were, of course, sent to the Court for comment—which on occasions was made in considerable detail<sup>g</sup>. The Committee's work came to an end with the enactment in 1827 of the twenty-six regulations of the Elphinstone Code, and thereafter the drafting of regulations, as in the other Presidencies, became largely the responsibility of the judges<sup>h</sup>.

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constantly as could be done without causing injury. Barnard was a humane man and he believed that such treatment would deter offenders and enable sentences of imprisonment to be much shortened — so much so that “our jails would contain no more than a fourth part of the numbers with which they are now crowded”: B.J.C., 6 Jun. 1832, no. 13, P/400/56.

*f* See p. 122.

*g* The observations of the judges on two drafts submitted by the Committee in 1824 extended over 27 folio pages: B.J.C., 10 Nov. 1824, fol. 8109, P/399/39.

*h* Numerous instances are to be found in the Judicial Consultations. The drafts were usually approved without, or with only minor, alteration. On one occasion a draft prepared by the Court was criticised at length by the Governor and returned to the Court for amendment: B.J.C., 31 Dec. 1834, nos. 6-9, P/400/7.