CHAPTER-III: CHARTER ACTS OF 1813, 1833 AND 1853

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Parliament had announced in 1784 its opposition to the extension of dominion in India, and Cornwallis was a loyal servant. But even he had been compelled by force of circumstances to add to the Company's dominions, and it is curious to reflect that at one time he chafed under the necessity of sending large remittances to Bombay, holding that a trading centre there with that at Surat should suffice. In fact, however, the state of India negated the possibility of any cessation in extension of power. India was a complete stranger to the conception of a system of international law regulating the activities of a number of distinct fully sovereign powers. History had accustomed it to the claims of universal sovereignty by the Mogul Emperors. The reality of imperial power had passed away leaving it open for any ambitious officer to seek to establish his power, and the Company had resources which were manifestly certain to give it a great advantage over its rivals. It was now in political matters the agency of a first-class power with resources far superior to those at the disposal of any of its rival competitors for power. The chief drawback to early achievement of paramount authority lay in the moral principles and political maxims of the Home Government, which for long desired to limit dominion in India

and abandoned that policy only when its impossibility became too obvious to be longer ignored.

Shore, whose value as an adviser on revenue issues had secured his succession, though a servant of the Company, to Cornwallis, loyally in the main adhered to the policy of non-intervention, permitting in 1795 the Marathas assembled for the last time in feudal loyalty under the Peshwa to defeat the Nizam at Kharda. But even he, with the approval of the directors, had to strike a new bargain with Oudh, after determining the succession there. The treaty of 1797 not merely increased the tribute to seventy-six lakhs, but placed a British garrison in Allahabad and increased to 10,000 the number of British troops with whom defence was to rest, while the Wazir's forces were strictly limited, and he undertook to have no dealings with other powers without the assent of the Company.[1]

With the advent of Lord Mornington the attitude of the central government became definitely one of acquisition of paramount power. In the case of Oudh, Wellesley demanded security for the Company's possessions. He secured it by insisting in defiance of treaty on the cession in 1801 by the Wazir of the territory which he had acquired and paid for in the Rohilla War; the territory unquestionably profited and the subsidy ceased to be payable, but nothing effective was done for the amelioration of the lot of the people of the

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rest of Oudh where misrule continued, while the Company's support prevented revolution. The acquisition of full powers would have been wholly justified in the interest of the people; the actual steps taken were those dictated by British interests. In the case of Tanjore in 1799 the full measure of securing from the raja full powers of administration, civil and military, was adopted, a pension of 10,000 pounds being paid in lieu, and the result fully justified the transfer. In that of the Carnatic a pretext for deposing the nawab was forthcoming in correspondence with Tipu alleged to prove disloyalty. This interpretation was denied, but overruled in a completely high-handed manner, and by a very marked exercise of paramount power the succession was accorded in 1801 to a nawab who was content to hand over full control in return for a fifth of the net revenue. Final arrangements were at last made to discharge the nawab's debts, thus rewarding the dishonest servants of the Company for their flagrant disobedience to its orders and their criminal disregard of the welfare of the natives. One justification of the decision is worth noting. The nawab had been made an independent prince free from control by the subadar of the Deccan by the Company, and it rested with them to undo what they had done. In fact, as early as 1780 the old nawab had urged that he should be formally recognised as hereditary prince of the Carnatic with full power of administration and the right to select his

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successor under the protection of the Company and the English nation, ignoring his suzerain. Further, on his death in 1795 the succession was approved by the Company as paramount, and again in the events of 1801 the Emperor was simply ignored. In the same spirit on the death in 1799 of the nawab of Surat, Wellesley annexed it, adopting the view that, where the Company displaced the Mogul Empire, it had the right to decide the fate of principalities formerly subject to the Emperor. He added also part of Tipu's territory to that of the Company when his victory at Seringapatam in May 1799 established the Company beyond doubt as the paramount power in India. Much of Mysore, however, was handed back on condition of strict vassalage to the Hindu dynasty dispossessed by Hyder. In 1800 the Nizam accepted subordinate alliance, undertook to consult the company on foreign issues and to pay for a subsidiary force by ceding his gains from Mysore in 1792 and 1799.[2]

As against the Marathas a fundamental blow was delivered in 1802-3 when the Peshwa, all the wisdom and moderation of the Maratha government having disappeared with the death of Nana Phadanvis in 1800, accepted the treaty of Bassein, which definitely forced upon him the acceptance of the system of subordinate alliance, which was to prevail henceforth with a short interruption and to form the basis of relations with all states not already bound in this way. In form the treaty

provided for a general defensive alliance for the reciprocal protection of the possessions of the East India Company, the Peshwa and their allies. But the Peshwa bound himself to maintain a subsidiary force of not less than six battalions to be stained within his dominions; not to continue to employ Europeans of nations hostile to the British; to relinquish all claims on Surat; to recognise the arrangements made between the Company and the Gaikwad; to abstain not merely from hostilities but also from negotiations with other states, except in consultation with the British authorities; and to accept British arbitration in any dispute with the Nizam and the Gaekwad. The treaty unquestionably must be accepted as giving the British the Empire of India, for it reduced the head of the Maratha confederation to a position of complete inferiority, and in matters external of absolute subordination, to the British. The merits of the system in British eyes were clear enough. The fidelity of the state concerned was secured by the presence of the subsidiary force maintained at the cost of the state by the Company; the evils of war were kept at a distance from the source of British wealth and power, the military frontier was thrown considerably in advance of the political frontier, which, however, it naturally tended to become. The states for their part usually ceded territory to support the force in lieu of tribute, and thus to a certain extent were safeguarded from constant friction

over demands for unpaid sums. Further, they were protected from internal attack, with the result that they could misuse their subjects free from the fear of a rival raising the country against them. In the case of the Peshwa, Baji Rao, the fifteen years which British intervention secured him of continued rule, free from fear of destruction by one of the confederates, were marked by persistent maladministration, and at the same time plotting against the power which had humiliated as well as saved him. Small wonder that the other heads of the Marathas meditated war, but discussion resulted in their defeat in detail. Wellesley by Assaye forced the Bhonsle raja to accept, under the treaty of Deogaon, December 15th 1803, terms similar to those of the treaty of Bassein and to surrender Cuttack, thus making Orissa a reality, while Lake reduced Sindhia to acceptance of subordinate alliance by the treaty of Surji Arjungaon (December 30th 1803), and the Company acquired control of Agra, Delhi, Broach, and other territories. The operations so far completely successful were marred by war with Holkar, who belatedly joined in the fray and defeated Monson, but had to accept alliance in 1805, and with the raja of Bharatpur, who in 1805 repelled Lake, and had to be allowed to retain his stronghold. Moreover, the directors were distressed by the great cost and doubtful if they had not unduly extended their territories, so that they decided to recall the governor-general and entrust Cornwallis,

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now sixty-six years old and in bad health with making peace. The accords reached (January 7th 1806) with Holkar and (November 22nd, 1805) with Sindhia, surrendered a considerable area of the territory conquered, and released the Marathas from any obligation to respect the Rajput chiefs with whom the Company had begun to have relations. But Wellesley had set the example, in so far as he had delivered in April 1805 the raja of Jodhpur to Sindhia when the former declined to accept the conditions on which protection was offered. The Rajput states thus exposed to the Marathas in vain pleaded that, as the Company was now in possession of the paramountcy of the Mogul, it should interfere to keep them safe. The argument is interesting, but Sir G. Barlow naturally rejected it.[3]

In their attitude to the Emperor, Shore and Wellesley were in general accord. In 1797 Shore visited the begam and the two sons of the late Emperor at Benares, and professed humility and submission before these dependents on the bounty of the Company, who in their turn used the language of princes and invested him with a dress of honour. In 1803 the Emperor fell under British control on the defeat of Sindhia before Delhi. Wellesley attached great importance to this event, for impressed or obsessed as he was with the fear of French intrigue he accepted as serious the risk of the carrying out of the suggestion made by one of Decaen's officers that the

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Emperor might be induced to confer sovereignty on the French in lieu of the British. Henceforth the Emperor was to live under British protection, exercising full sovereign rights within his palace at Delhi. Revenues were assigned to him from a district round Delhi, which, though administered by a British officer, was administered in His Majesty's name, and in which Muhammadan law was administered, subject to the elimination of the punishment of mutilation. No engagement was made with the Emperor, who was to receive all the forms of respect due to the emperors of Hindustan, and from whom Lake had already accepted dress of honour and a title. He could, therefore, if he pleased, regard the treatment as the outcome of due obedience from a dependent. In fact, the Company had added to its power and prestige by being able to stand out as the agent through whom the theoretic paramount power of the Empire could be exercised. As has been seen, this view immediately commended itself to the Rajput states. The policy which dictated the action taken was generous, and it did something to soften to the Muslim world the resentment felt at the virtual subjections of Bengal, Oudh, and the Carnatic and the destruction of Tipu, all signs of the final passing away of Muslim importance.[4]

It was of course impossible to preserve for long an attitude of indifference to attacks in India on states not

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allied with the Company. Minto pointed out to the Company that military states such as were the Indian must aim at conquest and glory, and that the issue was whether the British were to maintain neutrality amid havoc, or intervene for the sake of suffering humanity, and the directors admitted that non-interference could not be rigid. But, while Amir Khan was driven from Berar in 1809, he was left to harry all non-allies. Of great importance, however, was Minto's insistence through Metcalfe on the acceptance of Ranjit Singh of British protection of the Cis-Satlej states, Nabha, Sirhind, Faridkot, and Patiala. The position regarding the states was made clear by a proclamation of May 3rd 1809, which promised them exemption from tribute and full exercise of the rights and authorities which they enjoyed in their territories before coming under British protection. The chiefs must assist with grain and other necessaries armies traversing their territories and join the British in full force to repel any attack. But it soon proved necessary to settle peace among the states themselves by paramount authority.[5]

With the advent of Hastings in 1813 the process of bringing all India into effective dependence was resumed. The British Government had finally thrown off any pretence, and in the Act of 1813 renewing the Company's privileges had referred to the undoubted sovereignty of the Crown of the

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United Kingdom over the territories of the Company. In the treaty of Paris next year with France, Article 12 refers frankly to the British sovereignty in India, and Holland in the same year, like France, acknowledged the fait accompli. It was urged by Metcalfe at Delhi that the office of Emperor should be abolished, and Hastings disliked the nominal subordination of the Company so deeply that he discarded from his official seal the admission of subordination, and the usual ceremonial presents ceased to be presented in the name of the governor-general since they implied inferiority. He refused to interview Akbar II unless he waived all ceremonial expressing supremacy over the Company's dominions, so that the two did not meet. At the same time by his overthrow of Maratha power he completed in essentials the system of subordinate alliance. In this policy he had the prompting of Metcalfe, whose experience at Delhi filled him with a strong dislike of native rule. He urged the maintenance of powerful forces, the overthrow of rival powers, the acquisition of territory where possible, and the insistence of pecuniary aid from dependent states. Occasion for advance was accorded by the suffering inflicted on Bengal and the Northern Sarkars by the Pindaris, bandit cavalry, often on good terms with Sindhia and Holkar, who seemed likely to follow the career of the Marathas themselves. The directors were induced to remove the ban on action, and the Rajput states were at least

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taken under protection, the termination of the treaty of 1805 being notified to Sindhia and Holkar. Sindhia accepted the decision in November 1817 and agreements were at once (in 1817-18) made at Delhi with Udaipur, Jodhpur, Jaipur, Kotah, Bhopal, Bundi, and other states on terms of subordinate alliance. Later, on the evidence of further hostility, Sindhia was required by treaty of 1818 to cede Ajmir, Holkar, defeated in battle, by the treaty of Mandasor (1818) surrendered his dominions south of the Narbada, relinquished any claims on the Rajput chiefs, recognized the independence of Amir Khan, made nawab of Tonk by the British, agreed to reduce his army and to maintain a contingent for service with the forces of the Company, and to accept a resident. The raja of Nagpur was deposed and the state was required to cede the Sagar and Narbada territories. The Peshwa was first compelled in 1817 to relinquish his headship of the Maratha confederation, to cede the Konkan, to abandon the claims he had on the Gaekwad whose independence he recognized, to grant him Ahmadabad for a tribute of four lakhs a year, and to cede to the Company the tribute of Kathiawar. Later, after war, he was deprived of all power, and exiled in 1818, but with an enormous allowance which he seems to have employed in stirring up troubles for the paramount power. The descendant of Shivaji, was recognized as raja of Satara, but on conditions demanding more explicitly than usual co-operation with the Company.

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With the Gaeckwad relations were made still more intimate. Already in 1802 Baroda had ceded territory and admitted the Company's right to supervise its political affairs. In 1805 it accepted a further treaty providing for a subsidiary force and for the submission to the Company of any differences with the Peshwa and of foreign policy in general. In 1817 a fresh treaty provided for the increase of the subsidiary force, and the exchange of Ahmadabad for certain other territory.[6]

In Rajputana the agreements with the states provided for their independence internally as distinct units, but prohibited as usual any relations with any other state or foreign power. It was decided that tributes paid to the Marathas be continued but paid through the British Government.

In the case of Oudh the worst aspects of the system of non-intervention appeared. The Company, on the score of the value to the nawab of the establishment of friendly relations with Nepal, insisted on forcing payment of two crores of rupees, but did nothing to compel amelioration of his administration. Moreover, by a mischievous innovation, Hastings in 1818 induced the nawab to accept the style of King, which the Nizam of Hyderabad refused to do, thus alienating the Emperor and wounding Muslim sentiment without securing any real affection from the rather reluctant King. The Nizam's dominions remained in disorder, and a scandal ruined the

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happiness of the governor-general. A firm, Palmer & Co., obtained permission to lend the Nizam funds at 35 per cent for the payment inter alia of the frightfully expensive contingent for which he had to pay, and it was only the exertions of Metcalfe which cost him the friendship of the governor-general, influenced by personal affection for a ward, the wife of one of the partners, which ultimately secured some relief from this scandal.

Against Nepal, Hastings had to wage determined war, which ended in acceptance in 1816 of peace, with the cession of Garhwal and Kumaun and withdrawal from Sikkim and acceptance of resident at Kathmandu, relations with foreign countries to be subject to British control.[7]

To Amherst (1823-8) belongs the credit of adding part of Burma to the Empire. In this case the government had little choice, for as conquerors of Arkan, Burma made demands on Calcutta and raided British territory. War from 1924-6 brought cession of Arakan, Tenasserim, Assam, Cachar, Jaintia, and Manipur, the payment of an indemnity, and a promise, not kept, to send a representative to Calcutta and to recognize a British resident. A constitutional issue was raised during hostilities regarding Bharatpur, where the resident had sanctioned the succession of a minor to the throne and proposed to maintain him there by force of arms. Amherst

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demurred to the view that recognition involved such intervention, but Metcalfe on succeeding the former resident persuaded him the paramount power must be prepared to insist on respect for its decisions, and the fort was now at last stormed. Doubtless it was this incident among others which induced Akbar II to accord the governor-general a meeting on the footing of equality, no presents as from an inferior were presented, the Emperor giving Amherst a string of peals and emeralds, and in correspondence Amherst modified the terminology to recognize superiority, not vassalage or allegiance.[8]

Lord William Cavendish Bentinck came with instructions from home to restrict activity as regards the states, and this instruction led to the unfortunate condition of affairs under which states were allowed to drift into disorder from which there was no rescue save in annexation. Against Coorg, whose raja was murderous and deflant, was formally declared, and his state annexed (1834). It is interesting to note that the idea of treating the state as in rebellion in the technical sense of the term was not entertained. It was also necessary to take over control of Mysore in 1831 as the peasants revolted against misgovernment. In Jaipur the murder of the assistant to the resident and of the child ruler was followed by intervention, and the appointment of a council of regency for a new child ruler. But in Gwalior, Indore, Udaipur, and Baroda

disorder and hostility to the Company were rampant, nor could the governor-general intervene effectively. But the sacrifice of three British subjects resulted in the annexation of Jaintia, and misgovernment of a gross character ended the existence of Cachar. Hyderabad continued in utter disorder, and a minister in Oudh who attempted reform was driven out, in the absence of any aid from the Company. On the other hand Oudh, Hyderabad, and Gwalior proved helpful in the extirpation of thagi, but the central states successfully resisted his efforts to determine opium policy. Policy towards the Emperor was marked in 1835 by the abandonment of the practice of striking the coinage in the nineteenth regnal year of Shah Alam, the rupee now bearing the King's image and superscription.

Auckland's tragic rule (1836-42) was noted for the conclusion of an abortive treaty with Oudh, the deposition, on uncertain accusations of intrigue with Portuguese and Indian authorities, of the raja of Satara in 1839, and the annexation of Karnul in Madras whose nawab was accused of trying to levy war.

In 1840 Jalaun lapsed, and in 1842, the titular nawabship of Surat also lapsed.[9]

Ellenborough (1842-4) felt bound to intervene decisively in Gwalior, where anarchy had steadily developed under the non-intervention policy of the Company, and a huge army of

40,000 men controlled the state. He found justification in the fear that the Sikhs and Marathas might combine, and relied for legal justification on the promise of Gwalior in the treaty of 1804 to accept a subsidiary force, though the treaties of 1805 and 1817 did not contain this stipulation. The state force was drastically limited, and a contingent of the Company's force placed in Gwalior fort while for ten years British officers governed for the minor prince. Sind, on the other hand, was annexed in 1843 with the acquiescence of the Company. It is impossible to justify the action taken on any legal plea; its sole excuse must be that the people profited by the change, and the simple and effective administration therein established by Sir C. Napier anticipated that which was to prove decisive later in securing the Punjab. Ellenborough naturally in his strong imperialism meditated the possibility of ending the empty fiction of the Empire by inducing the princes to quit the palace and transfer the title to the Queen, and despite the wishes of the directors he stopped the making of the usual presents in the name of the Company.[10]

Sir Henry Hardinge's tenure of office (1844-8) was marked by two Sikh wars, the outcome of which was the annexation of the Punjab in 1849. Unquestionably there was no option to such action if the British power were to remain paramount in India. Less fortunate was the decision taken in 1846 to establish a distinct Kashmir state under a Hindu prince in subordination.

It will be seen, therefore, that annexation was distinctly in the air when Dalhousie in 1848 became Governor-general. The principle had been laid down in 1841 that the Company should persevere in the one clear and direct course of abandoning no just and honourable accession of territory or revenue, while all existing claims of right were to be scrupulously respected. The difficulty, of course, was to value claims of right, and herein trouble was inevitable. The directors espoused the perfectly tenable view that they should sparingly recognize any political succession due to adoption in the case of a state which was fully dependent, that is created by the Company or held on a subordinate tenure, to the overlordship of which the Company had succeeded. The Indian rule of law thus adopted was well known and in regular use by the Maratha overlords of Rajputs. They recognised adoption only if permitted prior to the ceremony; otherwise escheat was possible, but it was normally not enforced in full, though part of the territory might be withheld, the tribute raised, or the conditions of tenure otherwise varied. The failure of the raja of Satara, who died in 1848, to obtain consent to the adoption he made doubtless gave a formal right to enforce escheat, and the directors approved. But Elphinstone dissented, and, though doubtless technically Satara might be regarded as a state created by the Company, Indian opinion considered rather that it represented the line of Shivaji. Sambalpur also lapsed in 1849. In 1853 the raja of Nagpur died without making any

adoption, and Dalhousie urged successfully annexation. He then classified the states as tributary and subordinate, when consent to adoption should be required; as of the Company's creation when adoption should not be allowed; and as independent when the Company had no right to intervene. Nagpur he classed as created by the Company. In vain did Colonel Low plead the maxims of Lord Hastings, Elphinstone, Munro, and even Metcalfe in favour of permitting adoption to continue state rule, on the ground that British rule was unpopular, that annexation denied the aristocracy in the states any outlet for their energies, and that a childless raja was apt to misgovern the subjects, who were not to pass to a descendant. But the directors approved an annexation of such obvious military and commercial advantage.

In the case of Jhansi, which won notoriety because of the bitter hostility shown by the rani during the mutiny, the case of the Company was clear. The territory had merely been held by a provincial governor under the Peshwa, who fell under British control on the disappearance of his sovereign. Jaitpur and Sambalpur in 1849 also lapsed justly.[11]

In another case, that of Karauli, a Rajput state claiming to date from the eleventh century, Dalhousie proposed annexation, and, while ready not to urge the point against the view of low, insisted that the right to annexe was clear. He was overruled by the directors, who quite soundly urged that Karauli was not

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a dependent state but a protected ally. Dalhousie himself in cases where there was no immediate dependency was not prepared to intervene. Thus in 1852-3 against the wishes of John Lawrence he declined to interfere in a disputed succession in the Muslim state of Bahawalpur, though eventually a rebel established himself there by force of arms. Similarly, though he sued all his personal influence against suttee, he could not insist on its abolition at the funeral of the Rajput rulers, in Dungarpur. on the other hand, the crime was punished severely during a temporary British regency.

There remained Oudh, whose wretched princes were so absolutely loyal that no excuse could even be imagined for depriving them of power. In 1837 Auckland made a new treaty which gave power of intervention in case of misrule and the right to employ British officers to remedy abuses. But the directors rejected it, and Auckland failed so to inform the King, and by his carelessness the treaty was long believed by all concerned to be in force. Hardinge in 1847 warned the King that action might be necessary. Sleeman as resident in 1849 and Outram in 1855 concurred in reporting the deplorable misgovernment of the country, though the former was decidedly opposed to annexation as likely to provoke a sepoy mutiny. Dalhousie did not think annexation justifiable in view of the fact that no treaty had been broken. He regarded the situation as governed by international law, so that all he thought right

was to persuade the King to hand over the administration while maintaining the sovereignty. But the directors overruled him, and as the King refused to yield he was deposed in 1856, and unhappily there was serious delay in providing suitable allowances for the dependants of the royal family. The disbanded forces of the state became soures of disloyalty, while the sepoys of the Company's forces, many of whom had homes in Oudh, were deeply perturbed.[12]

As regards the Nizam, Dalhousie was able to take a step of great value to Hyderabad. The misgovernment of the territory was serious, and there was added constant friction over the pay of the contingent due by the state. In 1853 by taking over the administration of the Berars, while leaving the sovereignty in the Nizam, the claim for subsidies was dropped, to the great advantage of the ruler's position though annexation might have been better for his subjects at that time.

No criticism is possible of the decision not to continue the titles of nawab of the Carnatic on the death of the holder in 1955 or the extinction of the title of raja of Tanjore in like circumstances. Nor, despite the infamous deeds of Nana Sahib during the mutiny, can it be made a matter of censure that Dalhousie declined to continue to a mere adopted son the vast pension which the undue charity of Malcolm had promised to the ex-Peshwa, when Baji Rao died in 1851.

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Dalhousie's policy, instigated and supported by the directors, thus completed the work of Hastings and of Wellesley. The states of India were brought into definite relations of subordination or annexed, so that there could be no doubt where lay complete power in India. In Burma after provocation leading to war he annexed Lower Burma; the King, unable to sign a treaty of cession, in 1853 intimated his acquiescence in the loss and asked for renewed trade.

Towards the Emperor Dalhousie's view was that natural in a firm believer in the advantage to India of direct British rule. On the death of Bahadur Shah II he urged that the title should be allowed to lapse. The directors were required by the Board of Control to approve, but with so much doubt that Dalhousie accepted the suggestion of reconsideration and agreed with Fakr-ud-din, the heir-apparent, that he should retain the title, if he vacated the palace which was desired as the ideal site for a military depot and accepted a new residence and undertook to treat the governor-general as an equal. On the death, however, of Fakr-ud-din in 1856 this project dropped, the directors being induced to agree that the title die with the Emperor. In fact it expired before him; tried on the accusation of complicity in the mutiny he was deposed, and died at Rangoon in 1862.

The disappearance of the Emperor was an event of greater importance in Indian history than is commonly admitted. It

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rendered the direct sovereignty of the Crown natural as well as inevitable, and it rendered the Crown entitled if it so desired to make use of all the Mogul prerogatives which the Emperor still claimed, though he could not effectively make them operative. The tone of the British contentions from this moment is decisively changed. Nothing more is heard of international law as regulating the relations of the Company and the states as under Bentinck and Dalhousie. All are now dependent, because the Emperor had been, or had claimed to be, titular superior of every Indian state.[13]

2. THE CONSTITUTIONAL LEGISLATION OF THE IMPERIAL PARLIAMENT: THE CHARTER ACTS OF 1813-53

The main structure of Indian government as laid down in the Charter Act of 1793 remained unchanged during the long period of European war, but minor measures were enacted by Parliament to meet emergent needs. The earlier attempts to save Indian states from the evil consequences of bad finance were reinforced by an Act of 1797 which forbade the lending or raising of loans to or the Company or the local government. Any person contravening this provision was to be guilty of misdemeanour and his security was to be void. It was under this Act that Hastings gave the consent to loans so the Nizam which ultimately involved him in resignation.

The Act, however, had a far more important effect, for it

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gave further approval to the system of legislation practised in Bengal. Cornwallis had passed many regulations, consolidated in 1693 with the assent of his council, but not under the precise terms of the Act of 1773. Rather, he acted as inheritor of the nawab's legislative power, but he had doubts as to the extent of the authority which could be exercised under the Act of 1781 above referred to and desired further imperial legislation. It came now in a cautious form. Cornwallis in his regulations, No. XLI, had provided for forming into a regular code the regulations enacted for the internal government of Bengal. Parliament endorsed this provision and directed that all regulations affecting the rights, property, or persons of the natives and others subject to the jurisdiction of the provincial courts should be registered in the judicial department, formed into a code and printed with translations, the reasons for each regulation being prefixed. The courts were to be bound by such regulations, and copies were to be sent to the directors and Board of Control.[14]

The Act also reduced to two the number of puisne judges of the Supreme Court at Calcutta and provided for the creation of Recorder's Courts at Madras and Bombay. Supreme Courts were substituted by Acts of 1800 and 1823 respectively, with powers discussed later. The Act of 1800 also extended over Benares and other areas annexed to Bengal the authority of the Supreme Court

at Calcutta. In 1807 the governors and councils of Madras and Bombay were given powers of legislation for these towns and their dependencies similar to those of the Regulating Act, subject to registration and approval by the Supreme Court and the Recorder's Court respectively. In both cases a power to legislate had already been exercised under the charters of 1753 and power to deal with regulations for the Company's Courts as in Bengal was given to Madras in 1800, in view of the fact that Madras had now vast Indian territories within its boundaries.

The constitutional issue of the European military force of the Company was simplified by an Act of 1781 which provided that the Crown should take in hand the enlistment of Europeans for service in India and should transfer them from time to time to the Company on its petition. The total number might not exceed 3,000 or such figure as was specified in the Mutiny Act, while the Company might raise and train not over 2,000 and appoint officers holding also the royal commission. All the men were to be subject to the Mutiny Act until embarked for India, and thereafter to the Indian Mutiny Act.[15]

Searching inquiry preceded the renewal of the Company's charter. The conquests of Wellesley had raised financial difficulties which necessitated applications for relief, and the House of Commons in 1808 appointed a committee of

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investigation which did its work so well that its fifth report in 1822 is the standard authority on the judicial and police arrangements then in force and on land tenures. Finally, at the end of 1812 Melville intimated the decision of the government that other British subjects must have access with their ships to India. The Company in vain urged that their commercial privileges and their political power were inseparable and that the commercial profits were essential as a source of revenue. Not only was this point disputed, but the continuation of the tea monopoly accorded the one real source of profit, stress was further laid by the Company on the danger of the admission of persons not under their control into India. It was pointed out, with the approval of Warren Hastings among others, that great injury might be done to the Indians by the presence of such persons, especially as they could be punished for offences only by the Supreme Courts or other courts at headquarters. The solution adopted was licensing entry, subjection to regulations by the local governments, and restrictions on residence.

The Act of 1813 therefore continued the Company in the enjoyment of its territorial possessions and revenues, over which the sovereignty of the Crown was now expressly proclaimed, for twenty years, gave the Company a continued monopoly of the China trade and that in tea, but threw open the rest of the trade to British subjects. The commercial and territorial accounts

were to be kept apart, full powers of superintendence being assured to the Board of Control. The debt was to be reduced, the dividend to be at the rate of 10½ per cent with five-sixths of any surplus for the state. The patronage of the Company was retained, the Crown to approve appointments of governor-general, governors, and commanders-in-chief, and the Board of Control certain other appointments. The college at Hailebury opened in 1805 was to be continued, no person to be appointed writer until he had resided there four terms and had duly conformed to the rules of the college. For military purposes the seminary at Addiscombe was to be continued; the Board of Control was to have the right to control these institutions as well as those at Calcutta and Madras.

The number of troops which the Crown might send to India at the cost of India was fixed at 20,000 save on special requisition. In further elucidation of the rights of the Company it was provided that the governments in India could make laws and regulations and articles of war for the native troops and authorize the holdings of courts martial.

The governments in India were also authorised with the sanction of the Court and Board of Control to impose taxes on persons subject to the jurisdiction of the Supreme Courts, and to impose imprisonment for failure to pay. This power, of course, was supplementary to that exercised under the authority

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inherited from the Indian states, which was of doubtful validity in respect of European British subjects.[16]

In view of the influx of traders expected justices of the peace were given jurisdiction in case of assault or trespass committed by European British subjects on natives of India, and in case of small debts due to Indians. British subjects residing, or occupying immovable property more than ten miles from a presidency town were to be subject to the jurisdiction of the provincial courts in civil matters, and special arrangements were made for criminal cases.

Persons desiring to go to India whether as missionaries, a point over which controversy had reged, or as traders, might be licensed for this purpose by the directors or on appeal the Board of Control, with authority to remain so long as they conducted themselves properly but subject so such restrictions as might from time to time be deemed necessary. Unlicensed persons were to be subject to the penalties imposed on interlopers by earlier legislation and to be punishable on summary conviction in India. British subjects permitted to reside more than ten miles from a presidency town must register with a district court. Possibly in connexion with the influx of undesirables which was feared, or for some other reason, special clauses imposed punishments for theft, forgery, perjury, and coinage officers.

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By an innovation the Act sets aside a lakh of rupees each year for the revival and improvement of literature and for encouragement to the learned natives of India, and for the introduction and promotion of a knowledge of science among the inhabitants of the British territories in India. Nor was religion neglected, for provision was made for a bishop of Calcutta and three archdeacons, the bishop to have jurisdiction over the ministers of the Church of England in India, but naturally no attempt was made to establish the church therein.

Curiously enough it became necessary in 1814 to enact specifically with retrospective effect that the governments in India might impose customs and other taxation on British subjects, foreigners and any other persons, an indication of the narrow ambit which it seems always to have been the practice to assign to Indian legislative power. In 1815 the Indian governments were authorized to extend the limits of the presidency towns and power was given to remove from India persons not being British subjects or natives of India. By a Foreign Enlistment Act of 1819 permission to engage in the military service of any potentate in India must be obtained from the governor general in council or in conformity with his orders.

In 1820, the Company was authorised to raise a corps of volunteer infantry not exceeding 800 from its employees. In 1823 the sum of 60,000 pounds was charged on Indian revenues for

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the payment of pensions of the royal forces serving therein. Another Act consolidated the regulations punishing mutiny and desertion of officers and men of the Company's Indian army. In 1828, the Bombay marine was placed under the Mutiny Act.[17]

The rules as to hiring of ships by the Company were codified in 1818, and in 1823 a Navigation Act opened expressly the trade with all ports save in China to British vessels in general.

In addition to legislation in 1823.5, regarding salaries and pensions of bishops and archdeacons, an Act of 1819 authorized the archbishops and the bishop of London to admit to orders persons intending to serve in His Majesty's foreign possessions, such persons not to be entitled to act in England without further permission, and an Act of 1823 allowed the bishop of Calcutta to ordain persons to act in that i diocese only, excusing those who were not United Kingdom British subjects from the necessity of taking the oaths requisite in England.

Judicial matters were regulated as regards salaries and pension by the legislation of 1823.6, as regards juries the restriction limiting as regards grand juries and the trial of Christians, the right to act to Christians disappeared finally in 1832, when the appointment of others than covenanted civil servants as justices of the peace was sanctioned. In

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1823 a Supreme Court for Bombay was authorized. It is significant of the limited character of the legislative power ascribed to the presidencies that it was felt necessary in 1818 to legislate to remove doubts as to the validity of marriages performed by Scots clergymen, in 1828 to enact a bankruptcy law, to make the real estate of British subjects dying within the jurisdiction of the Supreme Courts liable for their debts, and to extend certain amendments of English criminal law.

In 1824 it was agreed to take over all the Dutch possessions in India and Malacca in exchange for Bencoolen and the British holdings in Sumatra. Singapore was transferred to the Company by an Act of 1824, and provision for its government made in the following year, when the ceded territory on the Coromandel coast and the Northern Sarkars were placed under Madras.[18]

The Charter Act of 1833, like its predecessor was the outcome of much inquiry and consideration. It was produced at a time when Whig and Liberal principles were politically victorious, when Macaulay was Secretary to the Board of Control, and James Mill, the disciple of Bentham and admirer of his views on legislation and condification, was examiner of correspondence at the India House. It followed from the whole trend of affairs that the trade monopoly disappeared, and the Company was required to wind up its commercial transactions. Its debts were

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charged on Indian revenues and they were authorized to pay $10\frac{1}{2}$ per cent, but arrangements were made for redemption of the stock at 200 pounds per cent, for which purpose the Company was required to pay two millions to the National Debt Commissioners, to be accumulated at compound interest until it reached twelve millions.

The territorial possessions of the Company except St. Helena, which was vested in the Crown, were continued to the Company for twenty years but in trust for His Majesty, his heirs and successors, for the service of the government of India, and the control of the British of Control, which was expanded to include the great officers of state, but in fact the President continued to act. The Company received at long last a compendious name, the East India Company; it was relieved from the disability of the Act of 1773 under which any one in its service was ineligible for election as a director, but otherwise the system of control was continued, with special emphasis on the secret committee and on the retention of patronage. Macaulay defended this position and the retention of the Company on the ground that it was not desirable to give so much uncontrolled power to the Crown, for Parliament was incapable of exercising effective supervision over Indian Government.

The original proposal was to entrust to the governor-

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general and councillors the government of India, but that was in the Act reduced to the superintendence, direction, and control of the governor-general in council. Another project of centralization had proposed the abolition of the councils of Madras and Bombay, but it was felt sufficient to give the power to abolish or to reduce, and in both cases the number was brought down to two. The council of the governor-general was fixed at four, one for legislation only, while the commander-in-chief or commander-in-chief of the Bengal army might be made an extraordinary member.[19]

It was proposed to divide the presidency of Fort William into two, Fort William and Agra, both under a governor and council, and with Madras and Bombay subject to the governor-general in council, whose orders as to civil or military government were to be obeyed and whose permission was necessary for creating new offices or granting any salary, gratuity, or pension. But the division was postponed by an Act of 1835 which authorised the appointment of a lieutenant-governor of the North-Western Provinces, and the Charter Act of 1853 continued the suspension. The governor-general of India was left governor of Bengal, a position relieved in practice by his appointing under the Act a deputy governor.

Alterations of vital importance were made in the legislative system of India. The aims stated by the government

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in justifying the measure included the simplification of law, and reform of legislative power rendered the more necessary because it had been decided to open India freely to the entry of British subjects as opposed to the permit system of the past. At the same time it was decided to centralize the wide legislative power to be granted, and to differentiate the function of legislation from that of administration. Hence the addition of a fourth member to the council of the governor-general who was not to be a member of the Company's service; he was in theory entitled only to sit and vote at meetings for the purpose of making laws, but the directors suggested that he should be allowed to sit at executive business meetings as a means of appreciating the great problems to be dealt with, and Macaulay was thus admitted to such meetings. The purpose of his presence was primarily to secure that legal measures should be duly drafted by a professional hand, and Indian legislation henceforth is certainly technically improved.[20]

The Act superseded the existing legislative powers of Madras and Bombay, and greatly extended the powers hitherto vested in the governor-general and council of Bengal. In all three territories power had been given to legislate so as to bind those Europeans and Indians who were subject to the jurisdiction of the Supreme Court by regulations duly registered by the Supreme Courts. But the governments agreed in objecting

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to this control, and refrained from this procedure, so that their regulations could be made effective only on Indians resident outside the headquarters of each territory and such Europeans as were subject to the control of the provincial courts. This fact explains the curious instances above noted of legislation on local issues for India by the British Parliament. English common and statutory law had been introduced for the guidance of the supreme judiciary by the charter of 1726, but unless specially extended to India subsequent legislation did not apply. For the guidance of the provincial courts, on the other hand, there were bodies of regulations, including the Cornwallis code of 1793 and subsequent regulations down to 1834, for Madras regulations from 1802 to 1834, and for Bombay Elphinstone's code of 1827 embodying legislation from 1799 and additions down to 1834. It was obviously most undesirable to maintain this division of legal enactments and of courts, and the new provisions were calculated to render fundamental change possible. Moreover, it was clearly necessary to remove from dispute the legal authority on which legislation rested.

The difficulties of the position are admirably stated in an opinion of Sir George Grey and Sir Edward Ryan, which was before Parliament when it legislated. They pointed out that the bulk of the Indian territories had really become the possession of the Crown by conquest or cession, and that therein

its sovereignty was absolute, the overlordship of the Mogul being merely formal. The Company exercised two sets of powers, those derived from the Crown directly, and indirectly those of the rulers they supplanted which the Crown had acquiesced in their exercising in the judicial and legislative sphere, i.e. by the provincial courts and the regulations. The direct powers from the Crown given by Parliament had superseded those of the charters of 1698 and 1726. The indirect powers including that of taxation might be called in question now that India was to be opened to European entry. They drew attention to the extreme confusion which existed regarding the term British subject as used in imperial legislation, and deprecated the confusion caused by the maintenance of two completely distinct judicial and legislative systems, under which the most important powers of the Indian government, including the whole of the criminal law as applied to natives, lay outside the control of any power save the Company and the Board of Control. They strongly recommended remedial measures, justly criticising the very unsatisfactory terms of the existing charters of justice which purported to carry out the legislation under which they were issued.[21]

The strengthened legislature was put in the position to legislate for all British territories in India with the same effect as Parliament, subject to certain limitations. It could

(a) repeal, amend, or alter any law in force in the Indian territories; (b) make laws for all persons, British or native, foreigners or others and for all courts, chartered or otherwise; (c) legislate for all places and things whatsoever in the territories; (d) legislate for all servants of the Company within the native states; and (3) make articles of war for the government of the native officers and soldiers in the Company's military service and for the administration of justice by courts martial accordingly. But it might not repeal any provisions of the Charter Act of 1833 or of the Acts punishing mutiny or desertion of officers or soldiers of the Crown or the Company; or affect any prerogative of the Crown, or the authority of Parliament or any part of the unwritten laws and constitution of the United Kingdom whereon might depend the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over Indian territories. Nor without the previous sanction of the directors might it authorize any save a chartered high court to sentence to death any of His Majesty's natural-born subjects born in Europe or their children or abolish any chartered court. There was also an express saving of the power of Parliament to legislate for India and to repeal Indian Acts, which were to be duly laid before it. Acts of the Indian legislature could be disallowed by the directors subject to the Board of Control, but otherwise were to operate without registration as Acts of Parliament.

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It was proposed further that Indian legislation should be consolidated, and codified and that, where possible, general laws should be passed, and judicial systems and policy standardized, and an Indian Law Commission on which Macaulay sat was set up to report on ameliorative measures.

India was opened as regards the area under the Company on January 1st 1800, the Carnatic, Cuttack, and Singapore to British subjects, on condition of entering at a customs-house; for residence elsewhere a licence was still required, but other areas could be opened, and without formal repeal the system of licences was dropped. But the Indian legislature was required to legislate regarding illicit entrance or residence, and this was duly acted upon in Act III of 1864.

It was further enjoined on the legislature to make regulations, in view of the freedom of entry conceded, for the protection of the natives from outrage on their persons, religion, and opinions.[22]

By S. 87 of the Act it was expressly provided that no native or natural-born subject of the Crown resident in India should be by reason only of his religion, place of birth, descent, colour, or any of them be disqualified for any place in the Company's service. This excellent sentiment, however, was not of much practical importance, since nothing was done, despite the views of Munro, Malcolm, Elphinstone, Sleeman, and

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Bishop Heber, to repeal the provision of the Act of 1793, which excluded any but covenanted servants from occupying places worth over 500 pounds a year. A further reform was projected. The service was to be entered under the system of competition after nomination of four candidates at least for each vacancy, a period of three years' training at Haileybury to follow. But the directors defeated this wise proposal, inducing next year the passing of an Act postponing the operation of the proposal.

Provision was made for increasing to three the bishoprics in India, giving to the bishop of Calcutta metropolitan status subject to the general superintendence of the archbishop of Canterbury. In each presidency two chaplains of the Church of Scotland were to be provided and power was given to appoint ministers of other Christian sects.

Of fundamental importance was the provision requiring the governor-general in council to take into consideration the mitigation of the state of slavery, the amelioration of the condition of slaves, and the ultimate extinction of slavery. They were to submit drafts of legislation for the approval of the directors, and the latter had each year to submit to Parliament the drafts received and their proceedings in respect thereof. Already by the Acts of 1811 and 1824 engaging in the slave trade had become first a felony, and then piracy,

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whose penalty was death, and these Acts applied to India, but India was not included in the general legislation of 1833, it being recognized that Hindu and Muhammadan law had to be respected. By Act V of 1843 the necessary action was set on foot.

The Act of 1833 was supplemented by two Acts regarding the conditions of trade to India and China and the tea trade in special. In 1835 as noted above, permission was obtained to defer the partition of Bengal, and in 1840 the Indian Mutiny Acts were consolidated and amended and power given to the governor-general in council to legislate for the Indian navy. In view of earlier legislation on insolvency a further Act was passed in 1848 which stood until repealed and re-enacted for the presidency towns in 1909 (Act III).[23]

When the extension granted by the Act of 1833 approached its close, the situation was most closely considered. The passage of time had shown a steady growth in favour of the substitution of Crown control in place of that of the Company, but the power of the directors was by no means obsolete. They had still normally the initiative in public business, and, while the appointment of the highest officials tended to pass from their hands, as when Lord Auckland was chosen in 1835 in lieu of Metcalfe, they could recall a governor-general they disliked, as in the case of Ellenborough in 1844, despite the objections of the Queen herself. Moreover, their expert

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knowledge was obviously a great asset, which could not hastily be dispensed with. The decision therefore carried out in the Act of 1853 continued the powers of the Company in trust for the Crown until Parliament should otherwise direct. But it reduced the number of directors from twenty-four to eighteen, and made provision for the election of six by the Crown; of the others, six must, like the Crown's nominees, have served at least ten years in India, thus paving the way for a council of advice essentially expert. The quorum was reduced from thirteen to ten, thus rendering it even possible for the Crown directors to be in a majority. More vital as a sign of change was the taking away of the patronage of the directors and the substitution of competitive examination open to British subjects generally under a scheme prepared by the Board of Control. At the same time the position of President of the Board of Control was increased in importance by being placed on equality with a Secretary of State as regards salary, the reduction to 3,500 pounds from 5,000 pounds in 1831 having rendered the office a stepping-stone to higher positions, and the sanction of the Crown was required for all appointments to the councils in India.

The vexed question of the administration of Bengal was dealt with by authorizing the appointment of a governor, or until that was done a lieutenant-governor, a step taken in 1854. A new presidency might be created, or a lieutenant-governorship, and the latter step was taken for the Punjab in

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1859. The former measure was long overdue, for the governor-general in council was overburdened with work, and Bengal did not receive anything like the amount of oversight essential for its development or even for the elementary task of maintaining security of life.[24]

The legislative provisions of the Act were of considerable importance. The legislative member was now given full rank as a member of council with voting power in all business, as desired by Macaulay. At the same time the distinction between the council as executive and as legislative body was marked by certain changes. Hitherto the governor-general in executive business could act with one of the council and had an overriding power in executive business. In legislative business three councillors could legislate in his absence and he could not override them. Now he was given the right to withhold his assent, though not to pass legislation over the dissent of the majority of the council. Secondly the council was increased in size, to consist of the governor-general, the commander-in-chief, the four members of council, a representative of each presidency or lieutenant-governorship selected from civilians of ten years' standing at least by the head of the local government, the Chief Justice of Bengal and another Supreme Court judge; two other civilians might be, but were not, added. The sittings of the council were made public and their proceedings published. The proposal to

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add unofficial European and Indian members was negatived on the ground that it was impossible to select an Indian or a Muslim properly representative. The obvious solution, however, would have been to have a larger advisory body, for, while the new council was much better equipped in legal and provincial knowledge, it lacked effective spokesmen of Indian or non-official European views. As it was, the new legislature fell rapidly into disrepute with the government, for it adopted parliamentary models and showed an inclination to inquire into executive business and even to criticize the government in respect of its grants to the Mysore princes. This attempt to cast doubt on the wisdom of the government was as little appreciated in the United Kingdom as in India, and the step taken was remedied in 1861.

The law commission in India established under the Act of 1833 had worked hard, but no important positive enactments had resulted, and on the score of expense it had been reduced to a skeleton organization. Provision was now made for commissioners in England to work into legal form the final work of the Indian commission.[25]

The regulations for open competition were drafted by a committee under Macaulay, and were destined to improve seriously the quality of the service. But they ignored the fact that by establishing this system of entry by examination in India a grave obstacle was being placed in the way of entry of

Indians to the civil service. Moreover, it was decided to close from 1858 Hailebury as a place of training.

In 1854 the system of administration in India was supplemented by an important Act. The growth of Bengal had been remarkable. It included the conquered and ceded provinces which in 1834 were styled the province of Agra, and renamed North-Western Provinces in 1836, being placed under a lieutenant-governor. Assam, Arkan, and Tenasserim were ceded in 1826, small Dutch possessions exchanged in 1824, Serampur bought from the King of Denmark in 1845, the enclave of Darjeeling obtained from Sikkim in 1835 and a portion of Sikkim in 1850. The Act of 1853 had contemplated a new presidency and a further lieutenant-governorship, but these powers were found inadequate, and provision was felt to be necessary for areas which were not suited for creation into a lieutenant-governorship. The solution now adopted was to permit the governor-general in council, with the sanction of the directors and Board of Control, to take under his immediate authority any territory and thereafter to provide for its administration. The officers placed in charge of such districts, to whom were delegated such powers as were not held proper to be reserved to the central authority, were styled in practice chief commissioners, a style recognized by an Act of 1870. Thus when under the Act of 1853 a lieutenant-governor was appointed for Bengal, Orissa

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and Assam, Tenasserim was kept in the hands of the governor-general, and Arkan, at first handed over to the lieutenant-governor, was shortly afterwards restored to the governor-general. As a matter of fact the necessities of the case had led, when the Sagar and Narbada territories were acquired, and later when Assam, Arakan, and Tenasserim were occupied in 1824-6 and Pegu in 1852, to the decision of the government to exempt them from the operations of the Bengal regulations, and to govern them as non-regulation areas on simpler lines, employing military as well as civil officers. This practice may have been of doubtful legality, if so, it was now rendered possible to carry out the system legally.

The Act of 1854 further simplified government by taking from the governor-general his now unnecessary style of governor of Bengal, conferring on him in council all powers not allocated to the governments of the areas into which the old presidency was not divided. Further power was given to the government of India with home approval to alter the boundaries of the Indian provinces as held desirable.[26]

3. THE SYSTEM OF ADMINISTRATION

During this period, as already noted, the Company through its Court of Directors still remained an important factor in the system of administration, and controlled personnel, recalling

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Ellenborough and driving Wellesley to resign. The Board of Control doubtless had paramount power in all save commercial issues, but much depended on the strength of its president who came in practice to represent its authority. Dundas, Pitt's incompetent protege, was able as a rule to exercise the full authority of a cabinet minister, but the president might as in the case of Minto be left outside the cabinet. Even Castlereagh is found explaining to Wellesley how delicate was his task in handling the directors. Doubtless the president could send dispatches to the secret committee for dispatch to India, and dispatches might be sent from India to that body which could not show them to the other directors. But normally the business was settled between the chairman and the president informally, and only when agreement was reached was a formal draft submitted for the Board's approval. In the case of persistent disagreement the Crown could proceed by application to King's Bench for a mandamus to the Company, but that was necessarily rare. The net result was a distinct improvement on the earlier chaos. The government of India was brought into effective touch with the British Cabinet, but that body was not burdened by the patronage of India, nor was it left to attempt to devise policy without the aid of an authoritative body which stood between it and the public.[27]

As regards the government in India, the appointment of Cornwallis marked the decisive preference for sending men from

England to fill the office of governor-general. Shore indeed succeeded Cornwallis in 1793 for special reasons, but his management of affairs was not regarded as commending a repetition of the experiment, and the ineffective character of Barlow's tenure of office (1805-7) on the death of Cornwallis on his second visit confirmed the objections. The government at home refused to allow Metcalfe to succeed, sending in lieu the inefficient Auckland, and it was only in exceptional circumstances and after the Mutiny that the rule was departed from. Unquestionably there were advantages in the plan. The noblemen sent from England had a wider grasp of foreign affairs and politics generally than could be expected in the servants of the Company; they had higher moral standards, and their views were unquestionably received with far more respect by directors and Board of Control alike than would have been those of former servants of the Company. Applied to the case of the governorships of Bombay and Madras the principle worked worse. With the exception of Bentinck the men who accepted office were second-rate, inferior to Lord Macartney, whose appointment in 1780 to Madras marked the beginning of the system. Dalhousie considered that it might be dropped with advantage, and in some cases it was ignored. Thus for their services in the last Maratha War Elphinstone was given Bombay and Munro Madras, where they both accomplished much valuable work.[28]

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The presidency governments were constructed on the basis of the central government, the governor being aided by a council of two civil members to whom was added the commander-in-chief of the local forces. He had the same power to override his council, and until the passing of the Act of 1833 had legislative as well as executive powers, subject in the case of legislation intended to apply to those within the jurisdiction of the Supreme Court to registration therein.

After Cornwallis the subordination of the presidencies to the governor-general was complete. The Act of 1793 made it clear that the governor-general could visit a presidency and there exercise with the local council his authority as with the council of Bengal, and could issue orders to any servant of the Company without previous communication with the local council. Thus Wellesley was not hampered by local resistance when in 1798 he took upon himself the burden of controlling at Madras the preparations for the overthrow of Tipu Sultan. Even he complained of lack of readiness to carry out his orders, and his predecessor Shore found Lord Hobart ordering about the naval squadron on the coast without reference to him, and their quarrel was so serious that Hobart went home and threw up his charge of succession.[29]

If the servants of the Company lost the highest posts available they were amply compensated by the statutory security

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accorded in 1798, which gave the servants in each presidency a monopoly of offices inferior to councillorships. No post with pay of over 500 pounds a year could be awarded to any servant under three years' service; for 1,500 pounds six years were necessary, nine for 3,000 pounds and twelve for 4,000 pounds. The figures seem large, but it must be remembered that they were intended to replace the scandalous profits of the past. The new regime had the great merit of reducing the directors' patronage to writerships, and putting an end to the flood of greedy adventurers who visited India to seek employment. Only in areas exempted from the regulation system was it possible to evade the rules of the statutes. But the system shut out Indians from superior office, and this was a serious disadvantage, which was not remedied by declarations of principle such as that of 1833 above referred to, and was perpetuated by the adoption of open competition in England under the Act of 1853.

The special powers of the governor-general in council naturally resulted in the constant tendency to model government even outside Bengal on that system. The history of this period, therefore, is largely taken up with the different reactions outside Bengal to that model, while in Bengal itself tardily it was realized that the reforms of Cornwallis, necessary as they were at the time, involved disadvantages which had slowly

and tentatively to be eliminated.[30]

(a) BENGAL

Cornwallis's system was based on the permanent settlement of the revenue, the separation of revenue administration and the judicature, and the employment of Europeans in the high offices, subjecting them to the control of a complex system of regulations designed to check any misdemeanours. Unquestionably his motives were excellent. The weakness of his plan lay in the fact that recourse to the courts was wholly ineffective as a means of protection to the ryots against the zamindars, while their existence encouraged among the richer Indians a love for litigation not unknown in other lands but accentuated in India. The permanent settlement worked badly at first; litigation choked the courts, and sales of estates became frequent. In 1795 and 1799 it was felt necessary to give zamindars coercive powers over tenants, and in the latter year to authorize the arrest of the zamindars themselves. But only slowly was friction reduced and not until many of the original zamindars had disappeared.

To remedy congestion in the courts various devices were tried, mainly in the direction of increasing the number and powers of subordinate Indian judges, in limiting appeals, and expediting proceedings. In 1801 the Sadr Diwani Adalat was handed over to three judges, thus ending the judicial activity

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of the governor-general in council; in 1807 the number was increased to four, and in 1811 provision was made to augment the number of puisne judges as need arose. Provision was made in 1797 for hearing appeal cases, when the provincial courts were on circuit, while magistrates were given increased powers in petty cases. But none of these experiments served seriously to improve matters, and only in 1844 were effective steps taken to modify the basis of Cornwallis's system.

In 1844 the directors and the Board of Control raised the question whether it would not be right to give the collectors of revenue some part in civil justice as a means of aiding the ryots, and to associate them with the control of the police and magisterial functions. But there was much reluctance locally to undo the work of Cornwallis and reforms were slow. In 1813-14 the police were reorganized, in 1814 and 1821-31 munsiffs and sadr amins were given wider powers in civil cases, a fifth judge was added to the Sadr Diwani Adalat and the work apportioned among the judges. The number of Zillah judges was increased, and slowly some revenue matters were referred to the collectors, in 1819 claims to freedom from assessment in 1822 rectification of errors at sales. The action of the courts was aided by the definition of the rights of ryots and others in land by Regulation VIII of 1819, though by this time it was impossible satisfactorily to protect the ryot. In criminal

justice Regulation IV of 1821 permitted the government specially to authorize collectors to act as magistrates. In 1824 and 1831 steps were taken which led to collectors dealing with summary suits as to rent, though a regular suit could be brought in the civil courts. The collectors worked under the control of the Board of Revenue at Calcutta.[31]

In 1829 commissioners of revenue and circuit were appointed, who controlled the collectors and the judge magistrates, and themselves held courts of sessions, the provincial courts' duties being handed over to them. But in 1831 sessions work was given to the district judges, who handed over their magisterial powers to the collectors. In 1837, however, separation once more took place; each district tended to have a district civil and sessions judge, a collector, and a magistrate; these officers were aided by assistants of the civil service, by deputy collectors, and deputy magistrates, often natives, and at headquarters the collector's office included a treasury. The posts of deputy collector were legalized in 1833, that of deputy magistrate in 1843, while Bentinck created the post of joint magistrate to which senior subordinates could be posted to aid the collectors and the magistrates; later these officers became subdivisional officers, being stationed at subdivisions where it was specially desirable to bring justice close to the people and to supervise the police. In a few cases collectors also held magisterial

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functions. Bentinck, in a desire to extend the services of Indians in the judicial service, established principal Sadr Amins who could try cases up to 5,000 rupees value, and from them in certain cases appeal lay only to the Sadr Diwani Adalat.

The system was unsatisfactory in operation, and Dalhousie 1854, the first lieutenant-governor, and Canning in 1857 were at one in a demand for the union of powers in the collector, so that he might take the place occupied by the corresponding officer of the time in Madras, Bombay, and the North-Western Provinces. This preference for patriarchal rule unquestionably corresponded with the need of the time and received effect after the Mutiny. It was not realized by the supporters of the system of Cornwallis that the protection of courts means nothing to persons without the means to make use of their advantages.

As regards the added territories, in 1795 a city and three zillah courts were created for Benares as well as a provincial Court of Appeal. In 1803 the Bengal system was introduced into the ceded area of Oudh, and extended in 1804 to the Duab. In 1831 a distinct Sadr Diwani Adalat was created for the North-Western Provinces. For criminal purposes in 1795 the judges of the Benares city and zillah courts were made magistrates and the provincial court given the power of a Court of Circuit. Over all was extended the jurisdiction of

the Sadr Nizamat Adalat. In 1803 in the Oudh districts the seven zillah judges were made magistrates, the provincial court made a Court of Circuit under the Sadr Nizamat Adalat. Similar provisions were made in 1804-5 for the Duab. In 1817 Dehra Dun and Kumaun were brought under the legal system, and in 1831 a separate court of Sadr Nizamat Adalat was set up at Allahabad, with authority over the North-Western Provinces, Kumaun, and the Sagar and Narbada territories.

Guttack, acquired in 1804, was brought under the judicial system as two zillahs under the Court of Circuit for the Calcutta division.[32]

In addition to these courts, whose powers were extended over all persons in 1836, there existed the courts established under direct parliamentary authority. The jurisdiction of the Supreme Court as it existed in 1853 applied to all persons within the area of Calcutta proper with a population of 4,13,182. The only limitation was that its eclesiastical jurisdiction was not exercised in the case of Hindus and Muhammadans beyond the grant of probate of wills. It also applied to all subjects born in the British Islands and their descendants, resident in the presidency or the province of Agra. Further, all persons resident in these areas who kept a house and servants in Calcutta, or carried on business in any place there through agents, were deemed subject to the common law

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and equity jurisdiction of the court. Indians who had bound themselves by written contract to accept its jurisdiction were subject to it where the cause of action exceeded 500 rupees. Persons who made use of the court thereby subjected themselves to its jurisdiction in the same matter on another side, e.g. if probate was taken out, the person so acting fell under the equity jurisdiction for due administration of the estate. Servants, past and present, of the Company or any British subject were liable in case of wrongs or trespasses, and by agreement in other civil suits, while they were liable in crime, misdemeanour, and oppression to its criminal jurisdiction. The Admiralty jurisdiction applied fully criminally in respect of crimes on the high seas and civilly in respect of the provinces of Bengal, Bihar, and Orissa.[33]

Moreover, the court had jurisdiction in respect of any crimes committed by British subjects at any place within the charter limits or in the territories of Indian states.

The law administered in the court was complex. It comprised: (1) The common law as it existed in 1726 so far as not subsequently modified by imperial or local legislation; (2) English statute law under the same conditions; (3) English statutes expressly applied to India, or adopted for India by local legislation; (4) the civil law as followed in the ecclesiastical and Admiralty jurisdictions in England;

(5) regulations made by the governor-general in council prior to the Act of 1833 if duly registered in the court, and Acts made under that measure; (6) Hindu and Muhammadan law and usages in cases regarding inheritance and succession to lands, rents, or goods, and all matters of contract and dealing between party and party where a Hindu or Muhammadan was defendant.

It must be added that under each head the law was hard to ascertain, and the judges had also to take into consideration the charter of the court, commissions from the government, circulars from the Nizamat and Diwani Adalats. treaties and arguments from international law. In the Company's Courts the matter was still more confused if possible, though English common and statute law were not regularly in force, for they felt bound in a manner unknown to the Supreme Court by the directions issued from the government and the Appeal Courts. It can easily be understood, therefore, that there was great difficulty throughout this period, even after the Act of 1833 gave full legislative authority and extended the jurisdiction of the Company's Courts, in ascertaining legal issues.

Police also remained inefficient, and an experiment from 1837 to 1854 under which the commissioners ceased to supervise the forces, which were placed under a superintendent, did nothing to improve matters. Not until 1856 was the protection

of villages improved by appointing chaukidars subordinate to the district magistrates and paid by a local cess. The country was overrun by thugs and dacoits, who rejoiced in an immunity greatly helped by legal niceties. Special legislation in 1836 was necessary to condemn to life imprisonment any associate of a band, and Sleeman's efforts gradually diminished the evil. Similar legislation in 1843 and 1851 reduced the curse of decoity.

Matters were not helped by the financial straits caused by the permanent settlement, the Zamindars objecting to pay cesses even for roads or education; customs and excise, the salt monopoly and opium were the other chief sources. The final control rested with the Board of Revenue in subordination to the supreme government.[34]

(b) MADRAS

Efficient administration of any kind at Madras dates virtually from the acquisition of Dindigul and Baramahal by Cornwallis, for the Northern Sarkars had been carelessly managed by incompetent agents and the Company's jagir was in no better case. A Board of Revenue was set up in 1786, and in 1794 Hobart installed district collectors under the Board in the sarkars, and placed the jagir under a single collector. Efforts were made by the latter, by place in Baramahal, and by Munro in Kanara, to establish direct relations with the

ryots for raising the land revenue, but Bengal in 1798 ordered the adoption of the system there in force. It was therefore in 1802-4 arranged to set up in the Sarkars, the Jagir, Baramahal, and Dindigul a permanent zamindari system, and the judicial organization of Bengal was brought into force with district judges who were also magistrates and in charge of the police darogas; with provincial Courts of Appeal from the judges, which acted as Courts of Circuit; and a code of regulations which vainly attempted to protect the peasants. Later the system was forced on the poligars of the Carnatic; but gradually its defects became visible, and Bentinck, governor from 1803-7, realized the claims of the ryotwari views of Munro. But the Board of Revenue preferred and experimented unsuccessfully with a plan of village settlements. The way was now open to revert to Munro's views, which included the conviction that the collector should have magisterial and police authority, that local panchayats should as far as possible be used to settle disputes, only appeals and serious criminal cases going to British judges, whose employment in general was too expensive, while legal complications denied justice to the ryots. This policy was adopted in 1818. The collector received magisterial powers and the control of the police, the darogas being disbanded and their work carried out by the collector's revenue staff and village watchmen. Paid munsiffs were stationed at convenient centres

to try causes upto 200 rupees, village headmen could try petty civil suits and panchayats suits of any value on submission.

The zillah courts' judges were given certain criminal powers but these in the main were conferred on the four provincial courts of appeal as circuit courts. The final court was from 1807 composed of judges presided over by a member of council; as a civil court it was styled the Sadr Adalat, as criminal court the Sadr Faujdari Adalat. In 1827 the use of native judges was extended for both civil and criminal cases where natives were concerned, while auxiliary judges with jurisdiction also over Europeans and Americans were set up in chosen districts. The introduction of jury trial in the circuit courts was also provided for.

In 1843 the provincial courts were swept away and the Zillah courts replaced in part by civil and sessions judges, in part by increasing the powers of the sadr amins.

Reversion to ryotwari settlements in place of zamindari was approved in 1818, and since then the former system has been widely extended. In 1822 the collector was empowered to interfere as a summary arbitrator, but this plan was unfavourably affected by decision of the courts in favour of determining rents on a competitive basis. Other sources of revenue were licence duties, a tobacco monopoly, abolished in 1852, transit

dues, abolished in 1844, the salt monopoly, taxation of liquor and drugs, and customs duties.

As in the case of Bengal, Madras had a distinct Supreme Court, which was created by charter of December 26th 1801, under statute to replace the Recorder's Court, consisting of the mayor, three aldermen, and a recorder, created by statute of 1797 with jurisdiction similar to that of the Supreme Court at Calcutta. Its jurisdiction extended over the town of Madras, and over British subjects in the narrower sense within the territories dependent on Madras and the territories of princes allied to Madras. The principles of the statute of 1781 affecting the Supreme Court at Calcutta applied to its jurisdiction.[35]

(c) BOMBAY

The extension of the territorial authority of Bombay was slow. The bay islands were yielded by the treaty of Salbai in 1782. Bankot in the south Konkan ceded by the Marathas in 1755, and Surat from 1759 was administered for the nawab by one of the Company's servants; in 1800, on the nawab's death the administration was completely taken over. Shortly after great accessions of territory resulted at the expense of Sindhia, the Peshwa, and the Gaekwad, which were largely augmented after the last Maratha war.

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Judicial organization tended to follow the lines of Bengal at first. Thus in 1812-13 for Gujarat there was a Sadr Adalat with criminal judges and magistrates subordinate to it, while it acted as a Court of Circuit and heard appeals in civil causes from the Sadr Amins who heard cases in the towns. In 1818 the important change was made of giving the collectors magisterial powers and control of the police. In 1827 the Sadr Diwani Adalat, now composed of four judges, and the Sadr Faujdari Adalat, consisting of a member of council and three judges, were removed to Bombay. In the districts there were judges with civil and criminal jurisdiction, subject in Gujarat until 1830 to a Court of Circuit. In 1830 the use of native judges was widely extended, most civil cases going before them; the magisterial powers of the collectors were increased, and they were authorised to take cognizance of civil suits regarding land and to decide issues of ownership subject to appeal to the district court. To secure due administration of justice special commissioners were appointed for Gujarat and the Deccan, who toured these areas.

For Bombay there was under the Act of 1797 a Recorder's Court similar to that of Madras which was transformed into a Supreme Court by Act of 1823. It had jurisdiction also over British subjects in the territories dependent on Bombay, and the native states, and its jurisdiction was based on the same principles as that of the Supreme Court at Calcutta. A small

causes court for cases upto 175 rupees was set up in 1799, and court of the senior, second, and third magistrates of police in 1812-30, and petty sessions were held from 1822. The jury system was confined to the Supreme Court's jurisdiction.

In Bombay, as in Madras, the confusion of law applicable was much as in Calcutta, but in 1827 a local code superseded Muhammadan criminal law. Regulations were codified in 1827, embodying twenty-eight years' earlier work; from 1807 regulations registered in the Recorder's, or later Supreme Court could bind that court.

In Sind after its annexation control was exercised by a commissioner, while the collectors in addition to magisterial powers presided over the administration of justice in the civil and criminal courts.

The land revenue was after a few years of farming out settled on a ryotwari basis, the government appointing the village accountants whose services enabled due assessments to be made. In addition funds were desired from customs, excise, including a tax on salt, fines on succession to property, pasturage fees, and fees for cutting wood on government land.[36]

(d) THE NORTH-WESTERN AND OTHER PROVINCES.

The North-Western Provinces were formed in 1836 from the

territory around Benares ceded by Oudh in 1775; the ceded territories covering most of the modern United Provinces save Oudh, ceded by Oudh in 1801; the conquered territories acquired from Sindhia in 1803; a portion of Bundelkhand then acquired from the Peshawar; the northern hill districts acquired in 1816 from Nepal; and until 1861 when the Central Provinces were created, the Sagar and Narbada territories ceded by Nagpur (1818) were included therein.

Further territories acquired were the Cis-Satlej states which in 1809 accepted protection, and with the exception of six gradually fell to the Company; the Jalandhar Duab acquired in 1846 after the Sikh war; the Punjab acquired by conquest in 1849; Nagpur and Jhansi which lapsed to the Company in 1853; Berar, assigned by the Nizam, in that year; and Oudh annexed in 1856. The fate of these areas varied. The Cis-Satlej states and the Duab, at first under commissioners, were merged in 1849 in the Punjab. Nagpur was included in the Central Provinces when created, and Jhansi in the North-Western Provinces. Berar remained under a commissioner until 1903, when it was attached to the Central Provinces. Oudh was placed under a chief commissioner until in 1877 the charge was amalgamated with the lieutenant-governorship of the North-Western Provinces, the whole being now the United Provinces of Agra and Oudh. The Delhi territory was in 1858 transferred from the North-Western Provinces to the Punjab.

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The earlier acquisituons were treated as extensions of Bengal, and the regulations of that presidency were applied thereto with necessary modifications. But the areas taken from Nepal and the Delhi territory were excepted, and later acquisitions remained outside the area of regulations. For them the governor-general issued on his executive authority such orders as he thought fit, and he used such officers as seemed desirable unhampered by the rules in force in Bengal. The local authorities similarly issued rules on their executive authority, and the system was regulated only in 1961 and 1870.[37]

To the regulation districts, the ceded and conquered territories, and the Bundelkhand area were applied the full administrative and judicial regulations of Cornwallis. The collector was confined to revenue functions, the judge and magistrate dealt with civil and minor criminal cases subject to the control of the provincial courts of Appeal and Circuit, which were subject to the Sadr Diwani and Sadr Nizamat Adalatas at Calcutta. In 1829 commissioners of divisions were created, and given the sessions work of the provincial courts; in 1831 separate Sadr Adalats were created at Agra, and in 1833 they took over the civil jurisdiction of the provincial courts, which disappeared. Next the commissioners handed over their criminal work to the district judges who became district and sessions judges, while the collectors took over the magisterial

powers of the judges and became collectors and magistrates, there being no reversion here as in Bengal from 1837 to 1859 to separation of functions. In 1831 the powers of the subordinate Indian Judges were largely increased to cover most civil litigation in first instance; in 1843 provision was made for the appointment of Europeans and Indians, not in the covenanted service, as deputy magistrates. As in the other provinces Muhammadan criminal law had to be applied, much modified by regulations and decisions, while in civil causes Hindu or Muhammadan law was applied to the defendant, and custom as regards landed estates.

Revenue administration followed at first Bengal methods, but happily the directors decided by 1811 against permanency and in 1822 onwards sounder principles came to be followed recognizing the need of a cadestral survey of the land, the recording of rights, a moderate assessment, and protection of tenants. Agreements were made with village communities of the zamindari type, and from 1832 twelve years' continuous occupation was held to justify a permanent and heritable tenure at a rent judicially fixed, and an Act on this basis was passed for Bengal also in 1859. Revenue was also derived from the liquor excise and the opium monopoly among other sources.[38]

In the Non-regulation provinces the principle adopted

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was the concentration in the hands of the district officer, styled deputy commissioner, of the executive, magisterial, and judicial powers, subject to the appellate and supervisional case of the commissioner. Much therefore depended on the personal character, vigour, and integrity of these officers, but responsibility often brought out latent strength, and unquestionably the system afforded greater access to the government for the people and that personal touch which they desired. It was applied with minor success in the Sagar and Narbada territories, but its complete fulfilment is best seen in the Punjab, after final annexation. Under the governor-general full powers of government rested with a board of administration of three members, who controlled the eight divisions under commissioners and the twenty-four districts under deputy commissioners, which again were divided into small areas under Indian tahsildars. Revenue settlement was arranged tentatively, avoiding the errors of Bengal. As a rule the villages were controlled by communities of the zamindari type with whom it was easy to fix terms; in other cases ryotwari tenure was arranged, while where seigniors existed, they were provided for by a fixed rent-charge instead of being made proprietors as in Bengal. Tenant right was safeguarded by giving judicial authority to the settlement officers and by adopting the twelve years' rule of the North-Western Provinces.

In order to secure settled conditions a large body of civil police, 7000 in number, under the deputy commissioners, was supplemented by 8,000 military police under separate command, and the province was disarmed. The criminal law followed with modifications that of Bengal, while a civil code, not made law, was issued in 1855, embodying much local custom and usage, as a guide to judicial officers. The Bengal regulations were also applied in substance in cases where no special rule applied.

In 1853 the board disappeared, John Lawrence becoming chief commissioner with a financial commissioner and a judicial commissioner, who also controlled the police, education and local and municipal funds.

In Oudh on annexation a chief commissioner was appointed as a non-regulation province, and summary settlement of revenue was made. In this Dalhousie pronounced in favour of arrangements not with the talukdars, former revenue-farmers who had acquired a quasi-proprietorial status, but with the subordinate communities, a fact which naturally was reflected in the disloyalty of the talukdars in the Mutiny.

Nagpur from 1818 to 1830, during the new raja's minority, was virtually ruled by the resident, who utilized native institutions and agencies while reforming abuses. Thereafter, until his death in 1853, the raja followed the same lines.[39]

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The judicial development of India took place largely without theadvantage to be derived from the supervision of the judicial activities by the Privy Council. An appeal in causes where the amount in dispute was over 1,000 pagodas was given by the charters of 1726 and 1753, and this principle was followed in 1773 when the Supreme Court was set up at Calcutta. It was also adopted by the Act of 1797 establishing Recorder's Courts at Madras and Bombay and continued for the Supreme Courts, which superseded them in 1801 and 1823, the limit in the case of Bombay being fixed at 3,000 rupees. But the Crown could grant special leave in any case.

In the case of the Company's Courts the Act of 1781 provided that appeals might be taken from the governor and council when the amount in dispute was 5,000 pounds or over. Rules of procedure were laid down by Regulation XVI of 1797 requiring action within six months, the giving of security for costs, etc. In the case of Madras and Bombay appeal was provided for at least from 1818, but without restriction on the amount at issue. It seems, however, that appeals were few and not very satisfactory in the absence of experience on the part of the agents employed.

In 1833 the Judicial Committee was formally constituted as an effective Court of Appeal with provision for the inclusion therein of members with experience of overseas

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jurisprudence. Rules were provided under the Act, a new set in 1838 reducing the amount of stake to 10,000 rupees. In 1845 the practice by which the Company after 1833 managed Sadr Adalat appeals by their agents was stopped, appellants in future instructing their own agents and counsel in England to handle their cases, while the transcript of the record was officially set to England, where the parties had to take action within two years.[40]

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