

BALIGA (B.S.)

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## P R E F A C E.

In this thesis I have traced the influence of the Home Authorities on the land-revenue and judicial administration in the Bengal Presidency during the governments of Lord Minto and Lord Hastings. It is a subject which has been little understood or investigated, important though it is, as covering a formative epoch which subjected the old system to criticism and began to build a new. Short sketches of administration have, indeed, been given by Mill and Wilson in their history of India; but these sketches trace neither the origin, nor the motives, nor the effects of the policy pursued, except in a superficial manner. Moreover, they hardly do any justice to the opinions, endeavours and influence of the Home Authorities. I have, therefore, based my work largely on original records so carefully preserved at the India Office. As will be seen, the reorganization at the Board's Office in 1807, the defects engendered by the Cornwallis system, the conservatism of the Bengal Government, the increasing activities in administrative matters manifested at the India House, these, and many more things, gradually induced the Home Authorities to reform if not to transform the very basis of the existing system. In order to bring out the full significance of this, as also to throw light on a little known but allied topic, I have shown what the Home Government was, its composition  
constitution

constitution and working. I wish to direct the attention of the students of Indian History to the caution, perseverance and zeal with which the Home Authorities studied the intricacies of Indian administration and prescribed remedies. That they sometimes stumbled was only natural; that they ever pushed their way to progress, in face of infinite difficulty and opposition, was beyond doubt admirable.

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# CHAPTER I

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## THE HOME GOVERNMENT

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### (1) Increasing Activities.

In the first quarter of the Nineteenth Century the Home Government of the Company's territories in India underwent important changes. Its basis still lay in the legislation of 1784-93; but, owing to various causes its work and efficiency vastly increased. The Conquests of Lord Wellesley and Lord Hastings presented new administrative problems demanding greater care and attention on the part of the Home Authorities. The diminishing profits of commerce<sup>1</sup> and the opening up of the India-trade in 1813, gradually wore away the Company's commercial character and turned it into a body of practical administrators. The business at the India House was, indeed, increasing<sup>2</sup>. Previous to 1804, the Examiner of Indian Correspondence had

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<sup>1</sup> Hansard Vol XXII Papers relating to the East India Company's Charter - Appendix CXXVII. In their letter to the President dated 17 Jany. 1809 the Chairs observe: "In fact the Indian-trade as an object of gain has gradually ceased to be of importance either to the Company or to Individuals."

<sup>2</sup> Foster. India House, p. 194 sqq.

had to draft answers to all letters from the governments abroad in the political, public, revenue, judicial and military departments. In that year it was found necessary to lighten his labour by confining his attention mainly to political matters and transferring his military duties to the Auditor of Indian Accounts and his "revenue and judicial" and "public" duties to two persons appointed under him. Within a few years the military department was consigned to a separate secretary. In 1809, the revenue and judicial work was divided between two Assistant Secretaries and an Assistant Examiner was appointed to deal with the "public" correspondence<sup>1</sup>. Still, it was felt that something more was to be done; and in 1813 a select committee was appointed by the Proprietors to consider and report on the expediency of augmenting the allowances to the Directors for the better and more speedy transaction of business. The investigations of this committee are interesting, not for what they led its members to propose,- the proposals based on a higher and graduated scale of salaries from the Chairman downwards were eventually consigned to limbo for economical and other reasons<sup>2</sup>; but for what they clearly testified,-  
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<sup>1</sup> Report on Allowances to Directors 1814, p.45.

<sup>2</sup> Debates at the East India House, April to June 1814, p.25 sqq.

the increased duties and responsibilities of the Directors as a whole<sup>1</sup>. However, matters were left unaltered till 1819 when a great change was introduced. Three vacancies were now to be filled up; those of the Assistant Examiner and two Assistant Secretaries. For some time, the work was palpably falling into arrears; the causes therefore, were thoroughly examined by a committee and on its recommendation four Assistants to the Examiner were appointed, at first temporarily, soon afterwards permanently, to look after revenue, judicial, public and miscellaneous subjects. Even then, the labour of these officers was not diminished. In 1829 the Chairs observed that "in the course of the last fourteen years, the Public business in India has been doubled in amount and that the correspondence of the Court of Directors has increased within that period in the same proportion."<sup>2</sup>

Meanwhile the Board of Control was devising new plans to meet the new situation. As far back as 1800 Henry Dundas had described the Board's office situated in the Treasury Buildings at Whitehall as quite "inadequate to

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<sup>1</sup> Report on Allowances to Directors, p.23 and pp. 51-52.

<sup>2</sup> Letters from the Company to the Board, No.9, pp. 452-3; also Parliamentary Papers (1831-32) Public, p.viii. The total number of folio volumes received in 21 years between 1793 to 1813 was 9094; from 1814 to 1829 the number was 12414.



to their accomodation . . . from the extent of Indian business."<sup>1</sup> Four years later, John Maheux the Chief Clerk wrote to the President Viscount Castlereagh, that the inconvenience had greatly increased "by the voluminous collection of papers which since that time have been added to the Records of the office;" and he added significantly that "the recent acquisition of territory must necessarily occasion a great increase of correspondence and consequently require additional room."<sup>2</sup> But it was not till 1806 that the Board moved to No.3 Downing Street<sup>3</sup>; and as soon as this was done, Robert Dundas the President on the advice of his Secretary Holford<sup>4</sup>, abandoned the slow and clumsy geographical arrangement for dealing with business and set up a vigorous system. On 11 September 1807 it was resolved that the executive business of the office was to be divided into four departments; secret and political; revenue and judicial, including salt, opium and customs; military; and public and commercial including the correspondence with the Prince of Wales Island<sup>5</sup>. One senior

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<sup>1</sup> Home Miscellaneous No. 341, p. 429.

<sup>2</sup> Idem, p. 654.

<sup>3</sup> Foster. John Company, p. 262. In 1810 the Board moved to Dorset House; in 1817 it moved to a separate office in Cannon Row.

<sup>4</sup> Hansard. New Series Vol. VI, p. 1135.

<sup>5</sup> Home Miscellaneous No. 341, p. 701 sqq. The revenue branch was separated from the judicial in 1826 and by 1832 there was a fresh branch for financial business under the Accountant.

senior and two junior clerks were attached to each of these departments and it was stipulated that their vacancies were to be regulated by seniority. Rules were also laid down for methodical book-keeping and annual report on business. The Chief Clerk was authorised to appoint temporary hands for special duties. This, together with the final resolution, explicitly anticipated more work: "as it will frequently happen that papers will necessarily require to be copied with the utmost expedition, in such cases, be it the duty of all clerks, whether attached to the departments or not, to afford the most prompt and cordial assistance in expediting the same."

These departmental changes more or less coincided with the increase of salaries of the President and the establishment of the Board. In 1793 the annual allowance of the President and the two paid Commissioners had been fixed at £2,000 and 1,500 each. In 1811 the President's allowance was increased to £5,000<sup>1</sup>. The clerks and other officers of the Board had, in 1805, petitioned to Lord Castlereagh for an increase of their salaries. In 1807, the Board had noticed that the labours of these officers  
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<sup>1</sup> Foster. John Company, p.258.

"have particularly of late years been rendered much more incessant and severe from the extension of territory, the consequent enlargement of correspondence and from other causes equally obvious."<sup>1</sup> As a result therefore, their salaries and those of the Assistant Secretary and Secretary who supervised them were raised successively in 1811 and 1813<sup>2</sup>. In 1818 the pressure of work demanded a further rise in the emoluments of the Secretary<sup>3</sup>. Such increased expenses defrayed by the Company, were not the result of extravagance on the part of the Board as was alleged in the House of Commons<sup>4</sup>; they were the logical sequence of the growing business and activity. In 1822, George Canning, doubtless with some exaggeration, but with much truth declared that "the present state of business at the India House and the Board of Controul," compared with what it was in 1793 had "increased nearly a hundred-fold;" and he also confidently expressed that it had "increased within the last five or six years, in the ratio of 20 per cent."<sup>5</sup>

(2) The

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<sup>1</sup> Parliamentary Papers, May 1811, pp. 1 & 4.

<sup>2</sup> Foster. John Company, p. 265.

<sup>3</sup> Hansard New Series, Vol. VI, p. 1154 sqq.

<sup>4</sup> Idem, p. 1120 sqq.

<sup>5</sup> Idem, p. 1148.

(2) The Court of Proprietors.

The work at the India House was conducted by the Court of Directors who were the sole Executive body of the East India Company; for, since 1784 the Proprietors had lost all direct voice in Indian administration. The Proprietors could neither suspend, vary, nor revoke any order of the Directors which had the Board's sanction. All proceedings in Parliament affecting the interests of the Company and all grants of money above £600 were submitted to them; but no grant above £600 made by them was valid unless confirmed by the Board. Their authority chiefly lay in declaring a dividend which could not by law exceed  $10\frac{1}{2}$  per cent, in electing the Directors from among themselves and in making By-laws which were binding on the Company when no Act of Parliament existed to the contrary. In all their general transactions of business, persons possessed of £1,000 stock could give a single vote; 3,000 two votes; 6,000 three votes; and 10,000 or upwards four votes. These votes were not always exercised with discretion; and the mode in which they were given was certainly liable to objection and frequently provided means of mischief<sup>1</sup>. With  
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<sup>1</sup> Tucker. Memorials on Indian Government, p. 24.

all its advantages, voting by ballot in lieu of open voting, was not without its concomitant evil. A retired Indian Official, however able or efficient and however abundantly assured of support, if he had no important connections, found it difficult to get himself elected as a Director. Canvassing demanded "leisure and money." The constituency was scattered throughout Great Britain and Ireland. "There was no place from the Land's End to John O'Groats, in which a Proprietor of India stock with one or more stars to his name might not be located." Taverns balls and dinner parties "constituted at least a portion of the legitimate allurements which were employed."<sup>1</sup> In fine, a prolonged and humiliating period of canvass often extending over seven years and costing about £4000 must have deterred many of these retired officers from venturing to stand for the Direction.<sup>2</sup> But, there was nothing to prevent them from becoming Proprietors instead; and in the early Nineteenth Century there were a large number of them in the General Court.<sup>3</sup>

The presence of these men of Indian experience in the General Court greatly contributed to its strength and

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<sup>1</sup> Kaye. Life of Tucker, p.330-5.

<sup>2</sup> J. Dickinson. The Government of India under a Bureaucracy, p.13; also Campbell. India As it may Be, p.32.

<sup>3</sup> Malcolm. Government of India, p. 251 sqq.

and usefulness. The Proprietors as a whole, though virtually precluded by law from interfering in Indian affairs, began in practice to exercise a salutary influence on the conduct of Government. In their debates held usually in the months of March, June, September and December, and on special occasions whenever nine or more among them qualified by £1,000 stock requisitioned the Court of Directors, they often discussed Indian questions and fearlessly attacked or upheld the policy followed by the Home Authorities and the governments abroad. Moreover, to some extent they prevented the Ministry from furthering selfish interests by giving full publicity to the major conflicts arising between the Court and the Board.

These general propositions can be substantiated by the following illustrations. In 1798, when the General Court was summoned to grant a pension to Lord Hobart who had been recalled from the government of Fort St George, Alderman Lushington, justly enough, alluded to his "most salutary regulations for the ascertainment and collection of the revenues."<sup>1</sup> In 1799, the vote of thanks to Lord Wellesley for the overthrow of Tippu was coupled with an eloquent address by Peter Moore who was prompted by his  
Indian

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<sup>1</sup> Proceedings at the East India House Dec. 1798 - Dec. 1812, p. 11.

Indian experience to urge the introduction of a "visible, firm and effective government" not only in the conquered territories in the South, but in the whole of British India: "farming must be prohibited, and the Company's covenanted servants as collectors or superintendents be stationed throughout the whole country."<sup>1</sup> Such vote of thanks and pensions and rewards the Proprietors never failed to bestow on the Company's servants<sup>2</sup>; and sometimes they showed an unanimity and independence which left an indelible mark in history.

A singular instance of gratitude and respect is shown in the tenacity by which they heaped honours on Warren Hastings. To maintain him in office they defied both the Court of Directors and the House of Commons, and sacrificed a substantial share of their powers; to recognise his merits, they proposed in 1795 to vote him an annuity of £5,000 for nineteen years and a sum of £71,000 to defray his legal charges. When the Board of Control opposed these measures they pressed the Directors once more in 1796 to approach the Board; and again when the Board's consent was only given to an annuity of £4,000 and an extra sum of £42,000 they offered the reduced annuity with a retrospective effect

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<sup>1</sup> Proceedings at the East India House Dec.1798-Dec.1812, p.61 sqq.

<sup>2</sup> For a concise list see Auber. Analysis &c of the East India Company, pp. 765-81.

effect from 1785 and in addition to £42,000 lent him without interest £50,000 out of which they ultimately forgave him £35,000. In 1814 they fixed the annuity for life<sup>1</sup> and in 1820, they finally honoured the departed statesman by voting for the erection of his statue in their Hall<sup>2</sup>. He was "their own . . . was literally brought up in their service; to their interests he had dedicated the whole of his life;" and they would do all that they could for him<sup>3</sup>.

On the other hand, some of the Proprietors held such independent views as were hardly in unison with the sense of the General Court. A.E.Impey in 1802 in a debate on Private Trade openly declared himself in favour of it and ardently believed that it would be for the good of India, of the Company, and of the whole English Nation<sup>4</sup>. Also, he criticised the Directors for having exhibited an utterly disrespectful and uncompromising attitude in their communications with the Board. But Henchman went to the root of the matter and in a striking speech thus moved an adjournment.

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<sup>1</sup> Debates at the East India House April to June 1814, p.353 sqq.

<sup>2</sup> Asiatic Journal for 1820 Vol.IX, p.264 sqq.

<sup>3</sup> Idem, p. 281

<sup>4</sup> Proceedings at the East India House 1798-1812, p.274 sqq.



"Too much heat animosity and private interest is got amongst us; it is time therefore, that the differences should come to an end in this place and be referred to another, where the examination will proceed on public principles . . . where those who decide . . . will, after a candid and thorough investigation of the merits, come to that decision, which shall be just towards the East India Company and most beneficial to the general interests of the kingdom at large."<sup>1</sup>

Impartial decisions of that type could not conceivably be arrived at by a monopolistic body. In the Charter discussions of 1813, Joseph Hume - a radical both in and out of Parliament - repeatedly upheld in the General Court the Ministerial policy of throwing open the India-trade; but not with success<sup>2</sup>. Yet, the words used by him on that occasion, savour of a strong sense of justness and reality; and apart from his main proposition they must have, in part at least, impressed a considerable section of the Proprietors. "The Company were not to look upon themselves as merely Traders; they were to consider themselves as Sovereigns;" and there<sup>fore</sup>, when the Ministry had

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<sup>1</sup> Proceedings at the East India House 1798-1812, p.332.

<sup>2</sup> East India Debate, January 1813, p.54.  
 Idem March 1813, p.88.  
 Idem June 1813, p.164-5.

had made no attempt "to touch the political privileges of the Company . . . it was their bounden duty to meet the wishes of Government."<sup>1</sup>

Persons of that calibre were no doubt few; but they were capable of appreciating the current needs and their presence put many on their feet and created lively discussions which, while adding weight to their deliberations lent a new significance to their constitutionally diminished and diminishing status.

Nor were they insensible to the rapid political transformation then taking place in India. Even after the brilliant victories and extensive territorial acquisitions of Lord Wellesley, the Directors remained as it were, soaked in conservative caution. To them the futile and barren clause of the Act of 1784, that "to pursue schemes of conquest and extension of dominion in India were measures repugnant to the wish, the honour and policy of this Nation,"<sup>2</sup> still remained a source of inspiration and they looked upon it with a reverence little short of scriptural sacredness. For this reason, they had ardently acquiesced in the appointment of Lord Cornwallis to the Supreme Government in 1805 and  
looked

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<sup>1</sup> East India Debate, March 1813, pp. 88-9.

<sup>2</sup> 24 George III Cap 25 sec 34; also 33 George III cap 52 sec 42.

looked forward to his pacific policy. The line chalked out by Shore and Barlow in fact, represented their highest aspirations both from the point of view of economy and from the dread of war and fresh expansion. These ideas, the moving spirits of the Proprietors could never bring themselves to relish. For instance, in the original resolution of the Directors thanking Lord Wellesley for his eminent services, there was "a sort of mental reservation . . . a sort of side-wind accusation" which took away much of its value; "without entering at present into the origin and policy of that war." The Proprietors saw the fault and Randle Jackson moved successfully the amendment, "the document respecting which not being yet before the Court" and in his own words "the honour of that great man was saved."<sup>1</sup> In the resolution expressing thanks to Lord Hastings for the suppression of the Pindarees and the Maratha Confederacy, there was another such sting; that "this Court while it deeply regrets any circumstances leading to the extension of the Company's territories duly appreciate his services."<sup>2</sup> Randle Jackson once more lamented this inclusion. He could see no reason why these "vain regrets" should be paraded when the Company's territory was actually doubled in size.<sup>3</sup> Joseph Hume

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<sup>1</sup> Asiatic Journal Vol. VII, p. 284.

<sup>2</sup> Idem, p. 277.

<sup>3</sup> Idem, p. 286-7.

Hume, who by now had begun to command much respect among the Proprietors, remarked, "It was folly in the highest degree for the Directors to pretend that their eyes and ears had been shut all the time;"<sup>1</sup> if they did not want extension they should have peremptorily enjoined their servants to that effect. Here, of course, he knew that the Directors were helpless as the instructions went from the Board. The Directors by their "regret" had "worse than starved the resolution."<sup>2</sup> In addition, from his own Indian experience, he truly enough, observed:

"The principle so often re-echoed by the Court of Directors, so frequently resorted to, in order to prevent the individuals who were placed at the head of the Indian Government from possessing territories. . . had produced in many instances, the worst effects. It was a policy that had been most mischievous in its consequences. The fear of being censured at home, in consequence of the discretion they might use abroad, paralysed the efforts of every man connected with the government."<sup>3</sup>

All this, however, did not suffice to wipe off the "regret" expressed in the resolution; essentially because of  
Charles

<sup>1</sup> Asiatic Journal, Vol. VII, p. 292.

<sup>2</sup> Idem, p. 294.

<sup>3</sup> Idem, p. 295.

Charles Grant's unlimited encomium on the pacific policy so fervently advocated by Lord Cornwallis for the security of the Company's possessions<sup>1</sup>. But, it is well to remember, that the eloquence and reasoning of Randle Jackson and Joseph Hume were not in vain. The final resolution including certain amendments made by them entirely pushed "regret" into the background and voiced a warm approbation of his Lordship's policy<sup>2</sup>.

The growing interest of the Proprietors in Indian affairs can be clearly noticed in the attitude taken up by them regarding the ~~origination of motions~~ <sup>proposals for</sup> bestowing honours on Indian statesmen. When Lord Cornwallis was thanked for his services, the Directors had merely stated his merits in the General Court and fixed another day to consider a motion of the Proprietors respecting them. In the case of Lord Wellesley the same procedure had been followed and the Proprietors had therefore scrutinised the motion and succeeded in making it palatable. But when thanks were about to be given to the Earl of Buckinghamshire and were actually given to Lord Hastings after the Nepaul War, the Directors had come forward with their own full fledged resolutions and the Proprietors had not been allowed to interfere<sup>3</sup>.  
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<sup>1</sup> Asiatic Journal Vol. VII, p. 299-300.

<sup>2</sup> Idem, p. 309.

<sup>3</sup> Idem, p. 284 sqq.

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The result was that neither of the propositions had expressed the really warm sentiments of several of the Proprietors. When therefore, thanks to Lord Hastings for the successful conclusion of the Maratha War were proposed by the Directors, again by their ready-made resolution, Randle Jackson and Joseph Hume firmly stood upon their right to originate such measures<sup>1</sup>; and the point was given up only when the Directors consented to their amendment. The nerveless <sup>complaint</sup> ~~plaint~~ of Charles Grant that though the Proprietors had equal rights with the Directors in bringing forward such motions, the Directors should, because of their more thorough knowledge of Indian subjects, be given preference, was completely ignored by the enthusiastic members.<sup>2</sup>

Two of the Proprietors made a novel claim in 1815<sup>3</sup>. When a dispatch relative to the restoration of one of the Company's servants to office, from which he had been suspended by the government of Madras, was under the discussion of the Directors and the Board, Douglas Kinnaird an active member, proposed in the General Court that certain instructions should at once be sent to that Presidency. Randle Jackson supported him. But the Chairman contended that it was not  
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<sup>1</sup> Asiatic Journal Vol. VII. p.283 sqq and p. 291 sqq.

<sup>2</sup> Idem, p. 303.

<sup>3</sup> Asiatic Journal Vol.I, p.84 sqq.

the practice in that Court "for the Proprietors to be permitted to alter the despatches of the Court of Directors. There was no order of the Court or By-law, authorising such a practice." The discussion ended without any decisive result; but it showed the temper of the energetic Proprietors.

There is at least one remarkable instance in which they succeeded in frustrating the policy of the Directors. In 1809 a committee of the House of Commons appointed to investigate and report on the alleged abuses of the disposal of patronage, brought to light some cases, in which commissions for cadetships and writerships had been obtained by questionable means<sup>1</sup>. The Directors resolved upon recalling the unfortunate cadets and writers from India. The subject was discussed in the Commons and a motion to prevent the Directors from pursuing their determined course was lost by a large majority<sup>2</sup>. But, when the Directors brought their resolution in the General Court, the Proprietors defeated it<sup>3</sup> and thus averted the preposterous measure intended to visit the sins of the patron on the client<sup>4</sup>.

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<sup>1</sup> Report on East India Patronage, p.2 sqq; also Hansard Vol. XIII, Appendix No. iv. cxxv.

<sup>2</sup> Hansard Vol. XIV, p.1071 sqq.

<sup>3</sup> Proceedings at the East India House 1793-1812, p.514 sqq.

<sup>4</sup> The sales were made by the Intermediaries and the cadets and writers were ignorant as to whether their commissions had been purchased.

The utility of the General Court did not simply consist in its occasional opposition to the Directors. Whenever the Directors came into conflict with the Board, the Proprietors naturally supported them and in the first two decades of the last century they exposed two of such main conflicts to the public. First in 1802, when Lord Wellesley's proposals in favour of Private Trade and India-built shipping were forced by the Board on the unwilling Directors<sup>1</sup>; and secondly, in 1816-17 when the claims of Major Hart were finally settled by the Board's obtaining a writ of mandamus against the Directors<sup>2</sup>. On both these occasions papers relating to the controversy were ordered to be printed for general use by the Proprietors and the words of the Chairman in 1816 are significant; "the course pursued by the Board of Control was a very extraordinary one; and the Directors not only wished the Proprietors, but the Public to know it."

The tension between the Court and the Board in the Major Hart controversy resulted in the heated passage of an important By-law in the General Court. On 12 June 1816, the Committee of By-laws ordained among other things, that  
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<sup>1</sup> Asiatic Annual Register. State Papers, p.1 sqq: also Proceedings at the East India House 1798-1812, p.252 sqq.

<sup>2</sup> Asiatic Journal Vol.I, p.384 sqq: Vol.II, p.202 sqq: Vol.IV, p. 486 sqq, 497 sqq.



"no proprietor holding office or place of emolument under the Crown shall be eligible to become Director."<sup>1</sup> The debates which took place over this law clearly showed that the Proprietors were bent on eliminating the influence of the Ministry over the Court of Directors. "If half the Directors had places under Government" was it likely "that the Directorial body would have power of resisting the influence of that Government?"<sup>2</sup> Such was the question the Proprietors asked themselves. And though the legal opinion was that the By-law could not be valid unless confirmed by the Legislature<sup>3</sup>, they ignored this opinion and resolved that "any Director who shall hereafter hold any office or place of emolument under the Crown shall be liable to be removed from the said office of Director."<sup>4</sup> A special exception was however made in the case of Mr. Lindsay, the only Director who then held an office of profit under the Crown.

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<sup>1</sup> Asiatic Journal 1816 Vol.II, p.72.

<sup>2</sup> Idem, p. 195.

<sup>3</sup> Idem, p. 73.

<sup>4</sup> Asiatic Journal, Vol.V (1818), p.154.

(3) The Constitution and Working of the Court and the Board.

While the influence of the Proprietors was on the whole, necessarily indirect, variable, and spasmodic in character, that of the Directors was direct, steady and continual. The Court of Directors was the immediate authority at home and originated all orders and instructions, save secret. It was composed of a body of twenty-four members, each possessed of not less than £2000 stock and holding office for four years, a quarter of the number being annually renewed. The six ex-directors for all practical purposes formed "the house-list" and except in extraordinary cases were re-elected in the ensuing year<sup>1</sup>; so that, as a shrewd observer remarked, the Directors were "nominally elected for four years but virtually for life."<sup>2</sup> This mode of retirement and re-election contributed to preserve a conservative temper in the Court, which was materially accentuated by another factor, the recurring reappointment of the Chairman and the Deputy Chairman; for, though the two latter officers were annually elected, they usually quitted one office only to step into the other

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<sup>1</sup> Malcolm. Government of India, p. 232.

<sup>2</sup> Campbell. India As it may Be, p. 34.

other. For instance, between 1800 and 1826, ten Directors held these posts thirty-eight times out of fifty-two, giving an average of nearly four years of office for each. The extreme case in this respect is that of Charles Grant who spent six years in office.<sup>1</sup>

The Directors were required by the By-laws to meet once in every week at least<sup>2</sup>; but they frequently met twice or thrice or even four times<sup>3</sup>. Their hour of meeting was generally between eleven and twelve and they sat till seven or eight and sometimes as late as ten in the evening.<sup>4</sup> Thirteen formed a quorum - a rule which was scrupulously observed - and their resolutions were taken by a majority. Upon all matters of importance the sense of the Court was ascertained by ballot - a method, which while it avoided embarrassments, altogether failed to attach responsibility to any one. It was a notable expedient for frittering away the individual responsibility of the Directors, while the great defect of the system itself was "the absence of all responsibility." "No man" wrote Tucker "whose intentions are good and whose principles are correct, ought to be  
ashamed

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<sup>1</sup> See the List of the Chairs printed in Auber's Analysis of the Constitution of the East-India Company, pp. 739-40.

<sup>2</sup> By-Laws Cap 6 sec 1.

<sup>3</sup> Report on Allowances to Directors, p.22.

<sup>4</sup> Idem, p. 23.

ashamed or to be afraid of recording his opinions." The shelter of obscurity could not but vitiate the ends of justice in important decisions<sup>1</sup>.

The decisions of the Court of Directors however, as far as they related to Indian administration, were not final. They were subject to the revision and sanction of the Board of Control which was empowered to "superintend, direct and control" all matters "which in any wise relate to the civil or military government or revenues of the British territorial possessions in the East Indies."<sup>2</sup> It was constituted by a commission under the Great Seal, consisting of certain members of Privy Council, always including the two principal Secretaries of State and the Chancellor of the Exchequer, together with two others not of that body. The first named member was to act as the President of the Board, and in his absence his place was to be taken by the senior of the members present. It had access to all the Company's papers except those relating to commerce. It might "disapprove, alter or vary in substance"<sup>3</sup> the Dispatches proposed to be sent out

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<sup>1</sup> Tucker. Memorials of Indian Government, p.21.

<sup>2</sup> 24 George III Cap 25 sec 6.

<sup>3</sup> 33 George III cap 52 sec 12.

out by the Directors, might require the Directors to prepare drafts on prescribed subjects, and in case of neglect or delay, might require their own drafts to be transmitted to India, without waiting for the concurrence of the Directors. Further, in matters requiring secrecy "concerning the levying of war or the making of peace or treaty or negotiating with any of the Native Princes or States in India"<sup>1</sup> it could send its orders direct through the Secret Committee formed by the Chairs and one of the senior Directors, without informing the whole Court.

Ample as were the powers of the Board, in matters of administrative detail, it was largely dependent on the Court. Charles Grant declared that "the great mass of dispatches which went to India on all matters of administration . . . were prepared at the India House;"<sup>2</sup> and George Canning in the House of Commons admitted that "with a trifling exception . . . the Board originated nothing."<sup>3</sup> The fact was, the Company by long contact with the East had acquired such practical knowledge and experience as could hardly be dispensed with by a board set up mainly as a superintending and controlling authority. In the early  
Nineteenth

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<sup>1</sup> 33 George III cap 52 sec 19.

<sup>2</sup> Hansard, vol. XXVI, p. 926.

<sup>3</sup> Hansard New Series, Vol. VI, p. 1148.

Nineteenth Century at any rate, when Indian administrative questions were little studied by English Statesmen and politicians, and when, with the notable exception of Lord Buckinghamshire, the Presidents of the Board were principally interested in European politics, the help of experts was essential to solve the intricate and perplexing problems arising out of the newly acquired territories and to safeguard the future of the growing Empire.

These experts were provided by the India House in Leadenhall-Street. Here, the business of the Company was transacted on a gigantic scale through about four hundred officers<sup>1</sup> and no less than fifteen committees of Directors<sup>2</sup> of which, by far the most important was the Committee of Correspondence, composed of the Chairs and nine senior Directors. In this committee three members formed a quorum<sup>3</sup>; the Chairs "almost always" attended its sittings and in their absence the senior member present took the Chair. Its work was very extensive as all the Letters from India in the "public, political, military, revenue, judicial, law, separate and ecclesiastical departments" came under its review; as also the replies to such letters before they  
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<sup>1</sup> Report on allowances to Directors 1814. Appendix No XV, p.119.

<sup>2</sup> Idem Appendix No. XVIII, p.129; also Auber. Analysis &c. p.183 sqq.

<sup>3</sup> Report on Allowances to Directors, p. 33.

were finally submitted to the Court. The main constitutional defect of this committee appears to have consisted, not so much in the annual appointment of its members, as in the specific regulation which required that such members should have in the first instance, passed through the Committees of Warehouses and Shipping<sup>1</sup> - a provision which precluded those who had previously held responsible public offices in India from participating at once in the duties best suited to them. Again, the subjects that came before it were too vast and multifarious to be attended to with much care and deliberation. A few more additional members and a judicious distribution of their labour among sub-committees would have simplified its work and secured a greater degree of efficiency<sup>2</sup>.

The actual routine of business was based on the principle of securing expert knowledge subjected to general supervision. All Letters received from India or not went in the first instance to the Secretary's Office<sup>3</sup>. Letters addressed to the Secret Committee were kept separate for the consideration of the Board; but general Letters were laid by the Chairman before the first Court that met after their receipt, and if important were read to the Court at length.

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<sup>1</sup> Parliamentary Papers Public 1831-32, p.V.

<sup>2</sup> Tucker. Memorials on Indian Government, p. 24 sqq.

<sup>3</sup> Parliamentary Papers 1831-32, Public, p. V.

At this stage no discussion seems to have taken place. As soon as the reading was over, the Secretary sent them directly to the Examiner whose duty it was with the aid of assistants, first to take copies of them for the Board, secondly to circulate abstracts of them apparently to the Chairs and the different members of the Committee of Correspondence; and thirdly to prepare draft replies<sup>1</sup>. Previous to the preparation of these replies what were called "Collections" or compilation of all papers to be found in the Consultations, relating to the points discussed in the Letters and usually forming an appendix of 2 - 10,000 pages to each Letter were made<sup>2</sup>. This method of collecting papers for the elucidation of every subject, and answering the Letters paragraph by paragraph originated in the recommendation of Lord Melville and though attended with much labour was continued throughout because of the facilities it afforded in the transaction of business. It enabled the Chairs, the Committee of Correspondence and the Board to revise and correct the proposed Dispatches by a ready reference to facts in each case<sup>3</sup>.

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<sup>1</sup> Letters from the Company to the Board, No.9, p.441.

<sup>2</sup> Idem: also, Parliamentary Papers 1831-32, Public, p.24.

<sup>3</sup> Idem, p. 442.



A draft reply prepared by the Examiner and his subordinates was first submitted to the Chairs with the Collections. It was read and amended by them if necessary - the Chairs sometimes themselves referring to the Consultations in order to be fully prepared to meet the multiplicity of questions which might arise in the later stages<sup>1</sup>. It was then sent unofficially with the Collections to the Board in the shape of what was technically termed the "Previous Communication." At the Board's office it was in the first instance, brought under the inspection of the senior clerk of the department to which it belonged. He usually prepared statements embracing the principal facts and also reasonings relative to every question mentioned in the draft, at the same time, offering his own observations or suggestions. The departmental report with the draft was next forwarded to the Secretary, who made such additional remarks as he thought fit and brought it directly before the President for his revision<sup>2</sup>. The President after having consulted his paid colleagues approved or altered the draft and sent it back to the Chairs.

The Chairs determined on the adoption or rejection,  
or

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<sup>1</sup> Report on Allowances to Directors, p. 29.

<sup>2</sup> Parliamentary Papers 1831-32, Public, p.24.

or modification of the alterations made, and then laid the draft officially before the Committee of Correspondence, with the relative Collections. This remained before the Committee "for about a week, sometimes a longer period"<sup>1</sup> to give the several members sufficient time to examine and consider the propriety of the measures proposed. The Committee on account of its more thorough knowledge invariably made a searching examination and discussed all the points connected with the subject. Having been approved, the draft with the accompanying papers was laid before the Court. Here it lay for one or two weeks, for the full consideration of every Director<sup>2</sup>; but it appears that the Court usually acquiesced in what was proposed by the Committee, save in exceptional cases, when, it was referred back to the Committee for reconsideration. The draft thus approved by the Court was transmitted officially to the Board, where, sometimes notwithstanding the previous unofficial communication, it underwent fresh alterations. When returned officially by the Board with such alterations, the "Reasons" being specified in each case, the draft was read in the Court and referred once more to the Committee of Correspondence, who recommended to the Court whether to acquiesce

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<sup>1</sup> Report on Allowances to Directors 1814, p.46.

<sup>2</sup> Idem, p.29.

acquiesce in the alterations or to make a "Representation" to the Board against them<sup>1</sup>. If the Court consented, it was forthwith sent by the first ship leaving for India; otherwise, the Board again stated its Reasons for the amendments made and the controversy was carried on till the Court approved, the Board in the last resort possessing power to force the Court to sign the Dispatch so altered, by the writ of mandamus.

Business transacted in this manner involved some important considerations. In the first place, the previous communication tended to avoid friction between two parallel and in some degree, necessarily conflicting authorities, the one governing and the other controlling; the one representing the Company and the other symbolising the Ministry. It was a channel through which the President of the Board could communicate unofficially and "confidentially" any difference of opinion arising out of the draft dispatch to the Chairs, so that they might decide whether or not to approve the Board's suggestions before its submission to the Committee of Correspondence<sup>2</sup>. On minor matters the Chairs usually acquiesced. But if the Board's proposals were entirely repugnant to the Court, as they sometimes were in the early Nineteenth Century, the views of Lord Wellesley for example, on

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<sup>1</sup> Letters from the Company to the Board, No.9, p.447.

<sup>2</sup> Hansard, New Series, Vol.VI, p. 1149.

on the Private Trade and the College of Fort William, upheld by the Board, the Chairs protested in private communications and interviews with the President and generally came to terms. The previous communications according to T.P. Courtenay, the able Secretary of the Board from 1812 to 1828, "were usually the subject of much private communication."<sup>1</sup> The constant attendance of the Chairs at the India House was described by James Cobb, the Assistant Secretary of the Court, as "indispensable from the frequent communications with the Ministers." Also, he refers to the fact, that whereas formal communications with the Board relative to all dispatches were made through the Secretary, those "of a private nature are made by the Chairs either in writing or personally and frequently occupy much time."<sup>2</sup> The private correspondence of Lord Castlereagh with the Chairs points to the same conclusion and exhibits a genuine desire to avoid conflicts<sup>3</sup>. Indeed, "the use and objects of the previous communications" as Canning is stated to have observed "is free discussion." They enabled the Board to state its objections not with "an air of dictation" but with a spirit of co-operation, so that each party could become acquainted with the other's sentiments

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<sup>1</sup> Parliamentary Papers 1831-2, Public, p.35.

<sup>2</sup> Report on Allowances to Directors, p. 22.

<sup>3</sup> Home Miscellaneous, No.504, pp. 227-412.

sentiments "without being committed in point of dignity and consistency to its own."<sup>1</sup>

If the previous communications were non-existent and alterations made by the Board had been all resisted by the Chairs and made the subject of an "official proceeding, it would have been almost impossible to conduct the Government of India."<sup>2</sup> Official procedure would have naturally pinned both parties to their own different views, not always because they implicitly believed in them, but because each would have made it a point of honour not to yield to the other. The matter instead of remaining private between the President and the Chairs would have become public at all events, to the whole body of twenty-four Directors; and the Court as well as the Board, even if pliable otherwise, would have been forced to stiffen themselves. The result would thus have been a long series of writs of mandamus under an active, independent and interfering President like Lord Buckinghamshire and a resolute, well meaning, but unbending Chairman like Charles Grant; an anomaly, which would have reduced Indian administration to  
utter

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<sup>1</sup> Parliamentary Papers 1831-32, Public, p. 23.

<sup>2</sup> Idem, p. 35.

utter chaos and dislocation. For the Legislature, it must be remembered, had fixed a short time in which differences could be overcome. The Act of 1784 had prescribed fourteen days for the revision of a dispatch submitted by the Court to the Board<sup>1</sup>. The Act of 1813 had, it is true, extended this period to two months<sup>2</sup>. Still, it was manifestly impossible to come to any definite decision or terms within that time.

The only drawback therefore, of such an informal procedure as described above, was delay. The preparation of the Collections and the draft reply seems to have taken about 3 months. The time absorbed by the previous communication depended on whether or not the Board wished to suggest amendments; in the <sup>latter</sup> former case, the draft was at once sent to the India House to undergo its various other stages; in the <sup>former</sup> latter, it was detained generally 3 months<sup>3</sup>, sometimes a much longer period. The rest of the procedure, until the dispatch came up to the Board in the shape of what was technically termed the "Draft" took up nearly a month<sup>4</sup>. The Dispatch was thus ready to be transmitted to India within 6 - 8 months<sup>5</sup>; and about 4 - 6 months were required for the ship

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<sup>1</sup> 24 George III Cap 25 sec 12.

<sup>2</sup> 53 George III Cap 155 sec 71.

<sup>3</sup> Parliamentary Papers 1852, p.19.

<sup>4</sup> Idem, p. 43.

<sup>5</sup> Idem, p. 5 & 14.

ship to convey it there<sup>1</sup>. In matters of urgency - rather of precipitancy than of importance - the Home Authorities followed a method at once simple and expeditious. Supposing such a Letter should arrive on Monday; the Chairs, without delay would consult together with the officer to whose department the subject belonged and decide what reply to make. On the very next day, they would meet the President and discuss the subject with him in the light of the relevant collection of explanatory papers. Mostly, they brought back the proposed answer on the same afternoon and rushed it merely for formality's sake through the Committee of Correspondence and the Court by Friday, and dispatched it abroad, at the earliest opportunity<sup>2</sup>.

This was not all. In matters of high policy, such as the declaration of war and making of alliances and treaties, the instructions went from the Secret Committee being in no way hampered by the groundless and at times fatally injurious scruples of the Directors. Yet, even these instructions obviously, were in the majority of cases insufficient to guide the Governor General. A sudden flare up in the South, an immediate dissolution of alliances, the unexpected  
appearance

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<sup>1</sup> Parliamentary Papers 1831-32, Public, p. 136.  
<sup>2</sup> Parliamentary Papers, 1852, p.57 & p.53; also Parliamentary Papers 1831-32, Public, p.14.

appearance of an enemy, all these and the like so quick in their origin could only be promptly and effectively handled by the man on the spot on his own initiative and responsibility. He had thus a large share of discretion, as inevitable as it was essential. In general administration alone, the Court and the Board exercised considerable influence; and herein delay operated in two ways. First it gave them time to consider and to discuss the expediency of the proposed measures and enabled them to transmit definite instead of tentative instructions, formed on the rapidly accumulating information that accompanied every Letter from India. When information on a vexed question was wanting - such as of permanently settling the revenue of the Ceded and Conquered Provinces, - they applied for it and secured it, thereby enhancing, as will be shown in subsequent chapters, the weight of their decisions. On the other hand, the governments abroad had to pursue temporary measures liable to be reversed by the Home Authorities. But, if it is admitted that even in an age of settled government tentative schemes have a value of their own, it would be easily recognised that in the early part of the last century they had a significance far more vital in the progress of Indian administration. They meant mature deliberation on some of the fundamentals of society



society and government; on for instance, the propriety of introducing the permanent settlement in newly acquired territories, of separating the judicial and magisterial duties and investing the Collectors with the latter, of simplifying the system of administering justice, of renovating the long accustomed and ancient Indian institutions of the panchayet, the chokeydarry system and innumerable other questions.

(4) The relations between the Court and the Board.

Administration so conducted from Home, sometimes brought the Court and the Board into sharp conflicts. It should be noted at the outset, that such cases were comparatively rare considering the period over which they spread themselves. But they had a political as well as a constitutional aspect which is frequently overlooked. Thus, the rule of Lord Wellesley bristles with a variety of ~~such~~ important and interesting questions which kept the concurrent authorities at Home constantly in a state of tension and activity.

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The first topic that created friction between these two Bodies related to Private Trade and India-built shipping. In 1800 Wellesley in order to oust the Foreign Trade of the Americans and the Portuguese in particular from Indian ports and to encourage Home Industries, proposed to lower the price of the freight of the Private Traders and to employ India-built shipping<sup>1</sup>. The Court at once grew alarmed and drafted a strong dispatch attacking his policy on the ground, that it would tend to the unlicensed and injurious resort of Europeans to India<sup>2</sup>; to the conversion of the existing "regulated monopoly" to "regular free-trade;"<sup>3</sup> to the abolition of the Company's European trade;<sup>4</sup> to the subversion of the system established by the Act of 1793; and ultimately, to the extinction of the Company itself and "the interests commercial and political of the Empire and the dependencies at large."<sup>5</sup> Yet, it consented at the same time, to give some concessions on a minor scale<sup>6</sup>. Unfortunately for the Directors the subject was then under discussion in  
Parliament

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<sup>1</sup> Martin. Wellesley's Dispatches, Vol. II, pp. 376-94; also Pearce. Life of Wellesley, Vol. I, p. 401.

<sup>2</sup> Asiatic Annual Register 1802; State Papers, p. 25 & p. 30.

<sup>3</sup> Idem, p. 29.

<sup>4</sup> Idem, p. 29.

<sup>5</sup> Idem, p. 32.

<sup>6</sup> Idem, p. 34 sqq.

Parliament and their whole draft was coolly brushed aside by the Board on the pretext that it could not be sanctioned until the Legislature had pronounced its decision<sup>1</sup>.

The Directors, however, were not to be silenced without a fight. Here was a matter of the utmost urgency threatening their much cherished monopoly. If unrestrained the Governor General might push his project to further lengths. Hence, they argued that the Board had no right to alter a dispatch "purely commercial;" that its powers were solely confined to the civil and military government; and that its prohibition would sweep away all the exclusive privileges of the Company<sup>2</sup>. Still, the Board withheld its consent<sup>3</sup>. The Court modified the draft; and then began a contest of deletions and additions<sup>4</sup> combined with a final threat by the Board that if the Court persisted to send instructions other than those altered, "no power which the Legislature has vested in them shall remain unexerted to prevent any attempt to fetter . . . future discussions."<sup>5</sup> The Court was in reality afraid of  
Parliament

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<sup>1</sup> Correspondence between the Court and the Board, 1801-13, pp. 1-2.

<sup>2</sup> Idem, pp. 3-5.

<sup>3</sup> Idem, pp. 7-9.

<sup>4</sup> Idem, pp. 10-25.

<sup>5</sup> Idem, p. 28.

Parliament and hoping to strike an easier bargain came to terms with the Board. The consequence was, a compromise by which the Company agreed to lower the *price of the* freight of the Private Traders, to engage extra-ships both British and Indian and to relet those ships to them without profit<sup>1</sup>.

*Wellesley's*  
*Minutes*

The agitation on Private Trade had hardly calmed down in 1802, when a storm arose over the College of Fort William. The scheme and objects of that institution were nearest to the heart of the Marquis. The Resolutions of 10 July and the Minute of 18 August 1800 which originated it, demonstrably showed the necessity of a strict course of training for the covenanted servants before they could become efficient administrators<sup>2</sup>. But the Court mainly on the ground of expense, ordered its abolition in the following year. Wellesley could not thus be deterred. He postponed the abolition and wrote to the Chairman in August 1802 asking the Company to reverse the decision<sup>3</sup>. Already he had informed the Home Authorities of his readiness to resign on account of the want of confidence shown by the Court and its various reversals of  
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<sup>1</sup> Asiatic Annual Register 1802; State Papers, p.34 sqq.- See the alterations made by the Board and their accompanying Letters A and B to be sent to India.

<sup>2</sup> Martin. Wellesley's Dispatches, Vol.II, pp. 356-61; also Appendix, p. 732 sqq.

<sup>3</sup> Idem, pp. 640-666.

of his measures<sup>1</sup>. In January 1802 he had earnestly solicited the attention of Addington "to the affairs of India as connected with my resignation" and remarked that "without a speedy, vigorous and decisive interposition from the highest authority, there is no safety for our Empire in India."<sup>2</sup> Castlereagh therefore, as soon as he became the President of the Board, requested him not to resign until he had "fully completed all arrangements" for the stability of the Empire and promised to support him with his "utmost exertions."<sup>3</sup> The situation at the time was far from promising. The Peace of Amiens was no more than a truce; the French danger was still imminent although the power of Tippu had been crushed. Only the "vigour and wisdom" of a Wellesley could ensure security.

This being the case Castlereagh, unwilling as the Directors were, pressed them on the supposition of the "favourable change" which had taken place in the financial prospects of the Company since orders were sent for the abolition of the College, to forward a dispatch  
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<sup>1</sup> Martin. Wellesley's Dispatches, Vol. III, p. IV sqq.

<sup>2</sup> Idem, p. XXIV.

<sup>3</sup> Idem, p. 32.

drawn up by the Board, the purport of which was to continue the College pending later investigation<sup>1</sup>. The Directors pointed out that the Governor General had proceeded to a "hasty and premature" establishment of the institution; that they had been entirely kept ignorant of its expense; that its sanction would tend to excite "an invidious discrimination between the Governmental officers of the Company's possessions and those of the Commercial line" and concentrate vast patronage in the hands of the Governor General by making all the "Civil Servants" to resort to Calcutta<sup>2</sup>. But if the Board wished to humour Wellesley, they were prepared to direct the immediate institution of seminaries at the different Presidencies, to provide in these the teaching of the Oriental languages and institutions - excluding European language and literature, which could much better be acquired at home - and to limit the age of the writers going over to India not to 15 as the Governor General suggested, but to 17 or 18<sup>3</sup>. In addition, they agreed not to insist for the time being on the curtailment of the expenses of the College of Fort William provided

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<sup>1</sup> Correspondence between the Court and the Board, 1801-13, pp. 79-80.

<sup>2</sup> Idem, pp. 84-103.

<sup>3</sup> Idem, pp. 106-111.

provided that, it "will not be taken as a model for other seminaries."<sup>1</sup> The Board however, wished to preserve the "present means of the institution entire" and directed the Directors to draw up a draft to that effect<sup>2</sup>.

On the receipt of this injunction, the Court completely changed its attitude and in its draft enjoined an immediate reduction of expenses and challenged the Board on what authority it could order "the creation of any new establishment or salary or the granting of any pension or reward." Unless previously approved by the Court such an act on the part of the Board would be clearly contrary to the clauses 17 and 18 of the Act of 1793<sup>3</sup>. On the other hand, the Board viewed the whole question as "not of patronage but of policy" and based its claim on the clauses 9,12,13,15 and 18 of the same Act which gave them a general supervision of the Governments in India. It therefore, suspended the Court's draft and ordered another to be drawn up<sup>4</sup>. Both parties then sought legal advice on their claims<sup>5</sup>.

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<sup>1</sup> Correspondence between the Court and the Board, 1801-13, p.112.

<sup>2</sup> Idem, pp. 118-123.

<sup>3</sup> Idem, pp. 126-137.

<sup>4</sup> Idem, pp. 140-160.

<sup>5</sup> Idem, p. 161 sqq.

In this welter of petty politics more than three months had passed without any definite result and the time had come when Wellesley's postponed orders for the abolition of the College were to take effect. Something was to be done and that quickly, if the Board wished to carry its point and maintain Wellesley at the head of government. The Court had suggested that the validity of the right of the Board should be proved in the Court of King's Bench and not in the Privy Council<sup>1</sup>. Though Castlereagh would have accepted this spurious argument, the Court of King's Bench was closed for the vacation and a trial there "would effectively defeat the object of the Dispatch."<sup>2</sup> Under these circumstances, Castlereagh determined to bring in a short Bill in Parliament "to give the Council jurisdiction on all doubts arising under the Act;"<sup>3</sup> but before this step was taken, the Court wisely yielded to a compromise and consented to send the Board's Dispatch with some modifications.

The principal cause of the Court's opposition to Wellesley was revealed by Charles Grant to his brother-in-law; "It is singular enough that he himself inadvertently furnished the

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<sup>1</sup> Home Miscellaneous, No. 504, p. 39.

<sup>2</sup> Correspondence between the Court and the Board 1801-13, p.171.

<sup>3</sup> Home Miscellaneous, No.504, p. 39-40.



the means of defeat. His letter to the Court on enlarging the privilege of the Private traders arrived opportunely for that party to support their declining cause."<sup>1</sup>

Meanwhile, Wellesley had incurred the thorough hostility of the Directors. For some time Castlereagh had been on the look out for a competent successor to the Supreme Government. About the end of 1802 he frankly confessed to Wellesley, "how difficult and delicate a task it is for the person who fills my situation (particularly when strong feelings have been once excited) to manage such a body as the Court of Directors so as to shield the person in yours from any unpleasant interference on their part."<sup>2</sup> Almost a year later he wrote: "it would be only exposing your Lordship's name, at least to most unmerited coldness were I to call upon the Court to concur with the King's Government in urging you to continue in the Government of India."<sup>3</sup> In fact, the Court had "the means of embarrassment largely in their hands;" and these means were exerted with unabated vigour after the arrival of the news of Wellesley's Oudh and Maratha policy. Both these questions, it is well to observe, were not  
entirely

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<sup>1</sup> Morris. Life of Charles Grant, p. 243.

<sup>2</sup> Martin. Wellesley's Dispatches, Vol.III, p. 92.

<sup>3</sup> Martin. Wellesley's Dispatches, Vol.IV, p. 30.

entirely acceptable even to the Board<sup>1</sup>. The Treaty of Bassein, the acquisition of the Ceded and Conquered Provinces, the redistribution of the Maratha Confederation, and the war with Holkar while increasing the onerous responsibilities in India, had by no means apparently put an end to future convulsions. To the Directors this was highly abominable. In April 1805 they drew up a powerful draft<sup>2</sup> decrying the entire policy of the Governor General which they succinctly characterised as a "series of deviations from the constitution established by Law." Indian Government in his hands had been turned "into a pure and simple despotism;" the subordinate governments reduced "nearly to the condition of the provinces of the Bengal presidency;" the authority of the Court of Directors disregarded and in some instances "astonishingly insulted." Even the Board of Control had been overlooked. Information had been perpetually withheld from the Home Authorities; and instead of economy there had been a "needless profusion" which had swelled the Company's debt. As regards foreign policy, the terms of Law had been "signally violated" and the Company plunged "deeper than ever in the wars."  
Such

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<sup>1</sup> Martin. Wellesley's Dispatches, Vol. IV - Castlereagh's Letter of 14 October 1804, p. 222.

<sup>2</sup> Home Miscellaneous No. 486, pp. 5-154; Extracts from the Draft are also quoted in Roberts. India under Wellesley, pp. 267-76.

Such in brief was the tenor of the Draft No. 128 which the Board were called upon to approve. Deftly but firmly, the Board split up the whole draft into two sections; the remarks made on the mode in which the Government had latterly been conducted; and the observations on a variety of measures embracing the entire period of Wellesley's administration. The former, it re-wrote in a new draft expunging all the exaggerated indignation of the Directors, but at the same time touching upon the salient points put forward by them. The latter, including the external policy of the Government, it purposely omitted, remarking among other things that "the compass of a single dispatch" was very insufficient space in which to examine them. The Court had differed from several acts proposed by the Board and effected in India, and the Board felt it unnecessary to justify them<sup>1</sup>. The Court in reply wrote a long and vigorous Representation upholding its attitude on the assumption that the policy formulated in its draft was essential to the maintenance of the actual supremacy of the Government at home; to the salutary system of publicity under which Indian affairs had been

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<sup>1</sup> Correspondence between the Court and the Board 1801-13, pp. 261-4; Also, Home Miscellaneous No. 486, pp. 555-7; for the Board's Draft, pp. 559-76.

been invariably conducted; to the future security of the Company's possessions and to the reduction of its debts and responsibilities<sup>1</sup>. But the Board remained adamant and rightly remarked that the transmission of the Court's draft would mean that they themselves "were parties to a very extensive condemnation of the policy pursued in India for a series of years past," a situation which "would have been unjust in itself, impolitic in its consequences and injurious to the national character both at home and abroad."<sup>2</sup> The Court probably saw the seriousness of these remarks, for it consented to embody the Board's draft in a Dispatch<sup>3</sup>. It may be noticed in passing, that this Dispatch arrived too late in India to fall into the hands of Wellesley. He had by then embarked for home, leaving the Supreme Government to Lord Cornwallis.

The appointment of Cornwallis, as also the subsequent appointments of Governors-General and Governors, exhibit an interesting feature of the constitution of the Home Government. The Act of 1784 had, while empowering the Directors to select such persons, vested the power of recall not only in  
them

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<sup>1</sup> Correspondence between the Court and the Board 1801-13, pp. 472-95.

<sup>2</sup> Idem, pp. 304-5; also Home Miscellaneous No. 486, p. 615 sqq.

<sup>3</sup> Creevey in the Commons observed that the Board "put the projected dispatch (of the Court) behind the fire and substituted in its place a short, pithy, unqualified panegyric upon all Lord Wellesley's Indian administration" - Hansard, Vol. XXIII. This is pure exaggeration.

them but also in the Crown<sup>1</sup>. As these persons generally came from the political parties at home, the Ministry, it appears, had arrogated to itself the initial right of recommendation, This was natural, obvious and in some respects conducive to the good government of India. But, it was certainly an infraction of the constitution which had for political reasons vested the patronage in the Company. The Directors however, did not object so long as the person recommended was not obnoxious to them; but when he was, they presented an unflinching opposition which compelled the Board to come to terms.

A brief retrospect of the period under review will suffice to show the force of these remarks. As early as October 1802, soon after Wellesley had expressed his desire to resign, Castlereagh fixed upon Mr. Yorke an active politician, to succeed him<sup>2</sup>. There is no evidence to show that this was made known formally or informally to the Directors. Owing to domestic impediments Mr. Yorke declined and the next person selected was Barlow. "After much consideration and consultation with Mr. Addington we both felt" wrote Castlereagh to Dundas, that Barlow was the proper person for the Supreme Government. Besides, he spoke

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<sup>1</sup> Hansard Vol. XXVI, p. 927.

<sup>2</sup> Home Miscellaneous No. 504, p. 13.

spoke of the propriety of appointing Lord William Bentinck to the Government of Madras vacated by the recall of Lord Clive.<sup>1</sup> When the political atmosphere in India became surcharged with war during the declining period of Wellesley's rule, and the French danger in Europe assumed a grave complexion, Castlereagh gave up the idea of Barlow and approached Lord Cornwallis. In a letter to the Duke of Portland in December 1804, he says, "Under a strong impression of the increased difficulty of the Trust partly from the recurrence of war in Europe and partly from the recent extension of our Indian Empire" he had "recently taken steps with Mr. Pitt's sanction for the purpose of ascertaining how far Lord Cornwallis might be disposed again to visit India."<sup>2</sup> The fact that Cornwallis possessed the confidence of the Court was an additional qualification. Barlow had, it is true, been regarded as an accomplice of Wellesley<sup>3</sup> by the Court and therefore incurred its displeasure. But these do not appear to be the main motives that guided the choice of his Majesty's Ministers. It was the search for political wisdom and military capacity that turned them

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1 Home Miscellaneous No. 504, pp. 13-14.

2 Idem, p. 126 sqq.

3 Ross. Cornwallis Correspondence, Vol. III, p. 522.

them to Cornwallis who heroically agreed to shoulder the burden.

The death of Lord Cornwallis drove the Court and the Board into a fresh duel, and this time it was a new President who threw down the gauntlet. In 1806 Pitt's Ministry was replaced by that of Grenville and Fox and at the Board, Castlereagh was succeeded by Lord Minto. On the 14 of February, Minto wrote to the Chairs asking them to appoint Barlow to the Supreme Government, observing that the "future and permanent settlement of the government of Bengal . . . must necessarily be reserved for the more deliberate consideration of his Majesty's Ministers."<sup>1</sup> Within a month however, he invited the Chairs to a conference with him and Lord Grenville, regarding the "appointment of the Governor General in the room of Lord Cornwallis."<sup>2</sup> The Chairs, Charles Grant and his colleague, informed the President that Barlow "was most acceptable to the Court of Directors; " that they did not imagine an immediate change in the Indian Government; that the Court had already sanctioned his appointment and would be shocked to hear this new proposal

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<sup>1</sup> Home Miscellaneous No. 506, pp. 217-18.

<sup>2</sup> Idem, p. 223.

proposal, and that such a change would weaken the Executive in India at a time when the work of peace was not "fully consolidated," humiliate Barlow beyond measure as he had already been "superceded" by Cornwallis's appointment and might "require his resignation of the service altogether."<sup>1</sup> As if this were not enough, they pleaded on his behalf that he was a public man who had put in twenty-six years of service and who had a "trifling fortune" and a "large family."<sup>2</sup> Also they remarked that such appointments were always the subjects of "mutual and amicable consideration and agreement."<sup>3</sup> Minto in reply stated that Barlow had only been temporarily appointed and hence there was no question of supersession; but, out of regard for his feelings the Ministers had for the time being postponed the recommendation of a successor.<sup>4</sup>

Barely two months had passed from the date of this note, when a communication came from Minto to the Chairs requesting them to bring forward in the next Court the nomination of the Earl of Lauderdale whom his Majesty's Ministers

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<sup>1</sup> Home Miscellaneous No. 506, pp. 229-33.

<sup>2</sup> Idem, p. 233.

<sup>3</sup> Idem, p. 233-4.

<sup>4</sup> Idem, pp. 241-57.



Ministers had been pleased to recommend<sup>1</sup>. He trusted to "a cheerful acceptance of the Court;" but was firmly told that the Directors had declined to revoke Barlow's appointment<sup>2</sup>. Lauderdale was a friend of Fox and Grenville, an enthusiast of the French Revolution, and one who had fervently supported Fox's Bill. Moreover, his fiscal opinions tended towards free-trade<sup>3</sup>. Hence, his appointment could not by any means be relished by the Directors. Already they had had enough of Wellesley, whom the Board had shielded and according to them with disastrous results. The consequence was, that within a month, his Majesty issued a "writ of warrant" revoking Barlow's appointment<sup>4</sup>. The writ was accompanied by a letter from Minto to the Chairman, which trenchantly expressed the clear cut formula that "it is expedient for the due administration of India, that the person entrusted with the extensive powers belonging to that distant Government should be one who possesses the cordial confidence of the Government at home . . . also, that the rank and weight and consideration  
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<sup>1</sup> Home Miscellaneous No. 506, pp. 261-63.

<sup>2</sup> Idem, pp. 266-71.

<sup>3</sup> Beveridge. History of India, Vol. II, p. 818.

<sup>4</sup> Home Miscellaneous No. 506, p. 283 sqq.

in the Metropolitan Country must add much to the authority and efficiency of those who administer great and remote provinces." "These principles" he observed, assuredly with much truth, "are certainly too fundamental and essential to be lightly renounced."<sup>1</sup>

In their Representation the Directors looked at the question as a constitutional measure and argued that if their choice were confined "to the particular successor nominated by his Majesty's Ministers" that choice would contravene the "evident meaning of the Legislature" by giving the power of appointment in the first instance to the Ministers.<sup>2</sup> Herein the Directors seem to have forgotten the precedents which were since 1800 at any rate, clearly in contradiction of the terms of ~~the~~ Pitt's India Act. In addition they ingeniously criticised the suggestion that the Governor General should possess the confidence of the Ministry by remarking that, "should every succeeding Administration use the same arrangement (argument), it might hence follow that the Governor General should be changed with every change of Administration; a practice that might be highly prejudicial to public interests."<sup>3</sup>

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<sup>1</sup> Home Miscellaneous No. 506, p. 312.

<sup>2</sup> Idem, p. 342.

<sup>3</sup> Idem, p. 343.

At this stage of the contest, Sir Francis Baring, a member of the Court, wrote a powerful minute of dissent stating that throughout the history of the Company since 1784 there had been "no instance" in which the recommendation of the Ministry had been resisted<sup>1</sup>. The mode adopted by him in attacking his colleagues is interesting and shows sound judgment.

"How are we to ascertain your sentiments about Sir George Barlow? So late as 3 April 1805 you accuse him, the second subject of the Indian Empire, of having turned the government into a "simple despotism." You found him at that time a firm supporter of war and conquest, and if not encouraging at least acquiescing in that proposition and extravagance which brought not only the Company but the Empire itself to the brink of destruction. The whole of this has been buried in oblivion." He proceeded: "We know from experience that the critical situation of our affairs abroad requires the presence of a Man of Rank and talents, for we may well remember that, under the administration of Lord Teignmouth, the bark was in danger of sinking notwithstanding his superior abilities."<sup>2</sup>  
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<sup>1</sup> Home Miscellaneous No.506, p. 383.

<sup>2</sup> Idem, pp. 390-3.

In the meantime, Lauderdale suddenly withdrew his "pretensions" induced by Fox's serious illness to spare the latter "further agitation on the subject."<sup>1</sup> The chief actor behind the scenes seems to have been not Grenville but Fox; and the moment Fox retired, Grenville felt disinclined to press the matter.<sup>2</sup> The Coalition Government existed on sufferance without a solid majority. It was therefore, suicidal to alienate the powerful East India Interests. The affair was also distasteful to Minto, who as far as can be ascertained, had acted as a mere mouth-piece of the Cabinet in which he had no seat. Under these circumstances the Ministry, to save its face, urged Minto to accept the post and the Directors agreed to his appointment.<sup>3</sup>

The attempt to force Lord Lauderdale on the Company, naturally enough, first attracted the attention of the House of Lords. In July 1806 Lord Melville moved for the production of papers concerning the transaction and observed, that the opinion of the Legislature in 1784 was decidedly for leaving the patronage of India to the Company; that the clause which gave the power of recall

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<sup>1</sup> Countess of Minto. Lord Minto in India, p. 4.

<sup>2</sup> Countess of Minto. Life and Letters of Sir Gilbert Elliot, Vol. III, p. 392-3.

<sup>3</sup> Home Miscellaneous No. 506, pp. 447-55.

recall to the Crown was only intended to negative "an improper appointment which partiality might induce the Director to make," and that it would be "greatly abused" if used for any other purpose. Since 1784, he asserted, "there was no instance of his Majesty's Ministers having exercised this power." The doctrine that none but men of rank at home should occupy the Supreme Government would surely be "strange music" to Lord Teignmouth and other distinguished servants of the Company. He appealed to Lord Grenville to bear out these remarks <sup>1</sup>.

Grenville, indeed as might be imagined, opposed the motion and in a clever and conciliatory speech, pronounced an unqualified panegyric on the advantages of the existing system of "checks and balances," a system analogous to the constitution of Great Britain, and which had "contributed materially to the benefit of the Empire." The "harmony" between the Court and the Board would be rudely broken if their correspondence were subjected to Parliamentary discussion. As for the power of recall, it had been explicitly vested in the Crown and he would most emphatically declare

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<sup>1</sup> Hansard, Vol. VII, pp. 948-56.

declare that the intention in 1784 was certainly to enable the Ministry to use it "at their own discretion."<sup>1</sup> But it was Lord Buckinghamshire who exposed the inconsistency of Melville's language with his former conduct. Although Melville might complacently disclaim authorship of the doctrine under discussion, he had during his tenure of office at the Board rigidly stuck to it. He had appointed Lord Wellesley and "done well for the public service;" he had not suffered a Company's servant to hold the reins of the Supreme Government even for a few months before Wellesley's arrival and had for that purpose sent a temporary commission to the Commander-in-Chief; and as regards Madras, on Buckinghamshire's supersession, he had followed a similar course by sending a commission to General Harris<sup>2</sup>. Lord Melville in reply declared, that he had made no rule by which such appointments were to be made; but his motion was lost without a division<sup>3</sup>.

In the House of Commons no notice was taken of that subject till the renewal of the Company's Charter. The Napoleonic Wars, the Peace of Tilsit (1807), the Continental Blockade

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<sup>1</sup> Hansard, Vol. VII, pp. 956-62.

<sup>2</sup> Idem, pp. 964-5.

<sup>3</sup> Idem, pp. 965 & 967.

Blockade, and its effects on Great Britain - these were the crucial questions that absorbed the attention of the Ministers. But on the 22 of March 1813, Castlereagh the Secretary of State for Foreign Affairs, commenced the Charter discussions by moving 11 resolutions of which the 9th made an obvious attack on the patronage of the Company. It laid down that all vacancies in the office of the Governor-General and of the Governors, as also of the Commanders-in-Chief of the Forces in India, "shall continue to be filled up and supplied by the Court of Directors. . . subject nevertheless to the approbation of his Majesty to be signed in writing under his sign manual countersigned by the President of the Board of Commissioners for the Affairs of India."<sup>1</sup>

It might seem curious that no concerted attack was made on this measure either in the Commons where it was first introduced or in the Lords where, together with other resolutions it was subsequently brought forward by Lord Buckinghamshire<sup>2</sup>. In the cataclysm of commercial interests the

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<sup>1</sup> Hansard Vol. XXV, p. 248 [Castlereagh at first moved 11 Resolutions; later two more were added making in all 13. - Hansard, Vol. XXVI, p. 555.]

<sup>2</sup> The Charter Discussions are to be found in Hansard, Vols. XXV & XXVI.

the Parliamentary representatives of the Company appear to have neglected this proposal. The reasons of this were not far to seek. Already their position was insecure. Reckless opposition on a secondary matter might endanger their primary demands and excite injurious dissensions in the House. It had been the invariable practice of the Ministry to recommend persons for high office in the first instance and the clause proposed would only legalise this practice. There had been no attempt whatever to divest the Company of its power to recall; so that, unwelcome candidates for these posts could always be recalled after they had gone to India.

It must not be supposed that because the clause did not weaken the position of the Company it had no practical result. From the point of view of Indian administration it had much merit. It eliminated the power of recall vested in the Crown - "a most invidious way" as Castlereagh had remarked in introducing it, "of exercising the power of disapproval of appointments."<sup>1</sup> So late as 1802 he had observed in a letter to Dundas, "To recall a person against whom the objection is, not that he had  
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<sup>1</sup> Hansard, Vol. XXV, p. 242.



misconducted himself but that he ought never to be sent out, is an indirect and of course, objectionable exercise of authority." In addition he had asked, "What then are the means of controul to guard against such an abuse?"<sup>1</sup> No solution for this had been found and in the Barlow-Lauderdale controversy the Crown had actually resorted to the power of recall. Such a necessity was now removed and the approbation of the Crown rightly made the qualification for higher appointments.

Grenville justified the measure as a "constitutional" recognition of the responsibility of "those who have in almost every instance for thirty years discharged the duty of selection;"<sup>2</sup> and though he omitted to mention the part played by the Directors in that duty, he was not wrong in other respects. The nearest instance in point of time had testified to the truth of his statement. The appointment of Lord Moira as the Governor-General and Commander-in-Chief had been made solely at the suggestion of the Prince Regent whose friend he was, and who, for political reasons had thought it best to send him to India as he could not be rewarded

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<sup>1</sup> Home Miscellaneous No.504, p.25.

<sup>2</sup> Hansard, Vol.XXV, p.724.

rewarded by a suitable post in the new Ministry<sup>1</sup>. The Court did not oppose the overture although it failed to express a unanimous approval<sup>2</sup>. Minto had communicated to the Company his wish that he might be relieved on the 1st of January 1814; but Moira's appointment was formally proposed by the Chairman on the 11th of November 1812 and finally confirmed a week later<sup>3</sup>.

Why it might be asked, had the Ministry failed to take over legally the complete patronage of higher appointments? The answer to this involves some vital considerations. First, it was unnecessary to claim a visible right which in practice was virtually vested in the Crown. Secondly, such a right might have been inoperative unless the Company had been divested of its power of recall. But this was impossible without a substantial reduction of its privileges. True, its monopoly of the India-trade was abolished; but that was due to the continual pressure of the mercantile classes whose activities had been crippled by the Continental Blockade. The formidable array of petitions presented by them to Parliament between  
1812-13

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<sup>1</sup> Curzon. British Government in India, Vol.II, p.87; also Webster: The Foreign Policy of Castlereagh 1812-15, p.24.

<sup>2</sup> Home Miscellaneous No.455a, p.29.

<sup>3</sup> Idem, pp.28-29.

1812-13 is by itself a conclusive proof of this remark<sup>1</sup>. Again, the movement for it had been long set in motion and had steadily gathered momentum since 1793. The Ministry was therefore, fully prepared to deal with that matter. But, as regards any fundamental administrative changes its attitude was wholly different. Daring innovations were dreaded in an age which was only just beginning to question the sanctity of established rights and institutions. The extravagance of the Revolutionary legislation in France had engendered a spirit of conservatism in the minds of statesmen. Grenville might advocate a system of revision and reform; but his voice, effective in some respects, was not universally applauded. After all, a system of checks and balances was far better if it could be smoothly worked out.

It is significant that the famous avowal - the territorial acquisitions in India were to be continued to the Company "without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same" - was not first brought forward in the shape of a Resolution in the Bill. It was later included

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See Hansard, Vols. XXI - XXVI. The "Contents" in each volume easily show where they are to be found.

included in the preamble of the Act, principally because of Grenville's convincing and masterly speech delivered in the Lords. "A manly and distinct avowal of the Sovereignty of the British Crown in India is the only sure foundation on which our government can stand - the only solid principle on which we can either discharge our duties or maintain our rights."<sup>1</sup> Otherwise foreigners might flock to India and undermine the Empire. Would the will of a "Trading Company" ruling over the vast dominion and deriving its power not from its own King, but from the "feigned authority" of a "deposed Mogul" prevent their exclusion? Never. "If" he reasoned, "we now omit to declare our right we must then negotiate for it; or if this also be neglected, we must prepare to meet the evils which recent experience has taught us to anticipate."<sup>2</sup> This impressed the Ministers and accounted for this notable inclusion in the preamble. But their own propositions were on the whole moderate. Liverpool, Eldon, Sidmouth and Castlereagh<sup>3</sup>, like the stout Tories as they

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<sup>1</sup>  
Hansard, Vol. XXV, p. 713.

<sup>2</sup>  
Idem, pp. 713-14.

<sup>3</sup>  
Liverpool - Prime Minister.  
Eldon - Lord High Chancellor.  
Sidmouth - Secretary of State for the Home Department.  
Castlereagh - Secretary of State for Foreign Affairs.

they were, believed rather in caution than in radical reconstruction; and they deliberately refrained from diminishing the political privileges of the Company.

More remarkable is the fact that even in 1833, though the Paper of Hints produced at a conference between Lord Grey the Whig Premier and Charles Grant the President of the Board, contained the proposition that the Board was to have a veto on the power of recall,<sup>1</sup> it was not finally carried into effect. The Company throughout its existence enjoyed this power and used it, at least during 1800 - 24, without confronting any irksome interference from the Ministry. The recall of Lord Clive (1803), of Lord William Bentinck (1807) and of Sir George Barlow (1812) from the government of Madras furnish the major examples.

Thus, even after the passing of the Act of 1813 the Ministry could not force its nominee on the Company if he was utterly objectionable to it. For instance, in July 1815 Lord Buckinghamshire, the President of the Board, informed the Chairs that the appointment of General Abercromby to the Presidency of Fort St George "having been expressly adopted

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Papers Respecting the East India Company's Charter printed in Asiatic Journal (New Series), Vol. X, p.400.

adopted as a temporary measure" it was time therefore to place that appointment "in the hands of a Civil Governor;" and for this, he submitted the name of Rt. Hon. Thomas Wallace one of the Commissioners for the Affairs of India.<sup>1</sup> The Chairs objected and though Buckinghamshire adverted to "the new and arduous duties" imposed on the governments in India, and the consequent increase of responsibilities thrown on the administration at Home (as to render it of additional importance that the persons placed at the head of several Presidencies abroad should be completely possessed of the confidence of his Majesty's Government,"<sup>2</sup> the Court rejected the motion of Wallace's appointment in November 1813.<sup>3</sup> The Directors, through the Chairs, informed the President that the power of appointment left to them by law was "essential" to their interests. The approbation of His Majesty necessarily presupposed the act of appointment by the Court. The law did not anticipate that the Directors were to be directed by the Ministry in making their selection; that they were to be ministerial in the act. It required "a concurrence of both to the completion of it" and had "plainly the

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1. Home Miscellaneous No. 266, p. 431-2.

2. Idem, pp. 433-8.

3. Idem, p. 441.

the effect of a mutual check." Further, however much the responsibilities abroad might have increased, and however much they might respect the judgment of the Board, "it is their duty and their right to nominate. . . a man in whom they likewise can place confidence for the due discharge of all the arduous trusts reposed on him." They therefore hoped that "another proposition may be brought forward . . .<sup>i</sup> in which the opinions on both sides may be found to unite."

The Court, it must be noted, had cause for this attitude. Thomas Wallace had in 1806 in the impeachment process of Wellesley in the Commons, vindicated his Lordship's policy. He had been for more than twelve years, a paid member of the Board, an associate of Liverpool, the Prime Minister, and hence might act as a tool of the Ministry. Buckinghamshire however, was not inclined to press the appointment. The situation indeed was suddenly changed by the arrival at home of Hugh Elliot. A diplomat of European fame, he had been recently much to his chagrin, appointed the Governor of the Leeward Islands. His restless ambitions wanted a larger prize; and being the brother of Lord Minto  
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<sup>1</sup> Home Miscellaneous No. 266, pp. 483-94.

and having powerful influence behind him, he was, without delay, proposed to the Court which readily accepted him and appointed him to Madras. The subsequent act of the Crown's approbation was done merely as a formality.<sup>1</sup>

The appointments of Elphinstone and Munro to the Governments of Bombay and Madras, did not create any friction between the Court and the Board. Canning who presided at the Board, without question, first recommended their names; but they were in complete accord with the wishes of the Court which was highly flattered by such a selection from among the Company's Covenanted servants. On Canning's retirement from the Board, the Directors thanked him for the "conciliatory manner" in which he had discharged the duties of his station, and mentioned in particular their gratification for these appointments;<sup>2</sup> and Canning in reply stated, though he believed that the highest appointments in India should invariably be filled by politicians from Home, he looked upon the selection of Munro and Elphinstone as exceptional

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<sup>1</sup> Home Miscellaneous No.455a, p.85.

<sup>2</sup> Asiatic Journal, Vol.XI, 1821, p.416.



exceptional, justified by the "peculiar circumstances" of the time. Also, he added: "with the exception of these two appointments to which the law made my concurrence necessary, I can truly say, that with respect to any nominations in your service, of whatever description, abroad or at home, I have never exercised any sort of interference."<sup>1</sup>

As in higher patronage, so in general administration, the Court and the Board rarely came to an open breach. In the period here dealt with, there was only one incident which resulted in rupture. It has already been shown how prior to 1813 the differences between the two bodies were amicably composed and settled. All the time however, a storm was brewing, slowly no doubt but surely, to burst at a favourable opportunity. In 1799 Major Hart a Commissary of Grain to the Army engaged in the siege of Srirangapatam at a time of great scarcity of rice offered to the Commander-in-Chief a large supply stating that it was his private property. The offer was accepted, but a special commission appointed soon afterwards

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<sup>1</sup> Asiatic Journal, Vol.XI, 1821, p.417.

afterwards to inquire into his conduct, found him guilty of  
 speculation<sup>1</sup>. An immense quantity of Company's rice was  
 alleged to have been lost, but no adequate explanation  
 given as to how that had happened. Only a conversation of  
 the public into private property, despite the denial of  
 the Major would seem to explain the event. The govern-  
 ment of Madras after some more enquiries suspended him  
 from the service and the Supreme Government sanctioned  
 this measure<sup>2</sup>. The Court of Directors dismissed him  
 altogether not however on the charge of speculation, but  
 on that of contravention of the service regulation which  
 forbade a Commissary of Grain to possess private rice  
 with a view to profit. The Board considered that there  
 was no sufficient evidence to warrant this act and  
 requested the Court to reconsider the subject, which the  
 Court did, and still abided by its former decision<sup>3</sup>.  
 The Board had no authority to interfere into questions of  
 dismissal, and Major Hart was accordingly struck off the  
 service.

The next step which the Court took was with  
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<sup>1</sup> Correspondence &c. on Major Hart's Case, p.53 sqq &p.62.

<sup>2</sup> Idem, pp.65 - 82.

<sup>3</sup> Idem, p.82 sqq.

the concurrence of the Board, to direct the government of Madras to pay him the full costs and charges of the rice supplied by him. But these instructions were ambiguous and did not specify whether he should be paid at a famine or ordinary rate and hence the question was referred home for precise orders. Meanwhile, in 1805 since he had been exculpated from the taint of peculation by the Company, the Major applied to it to be restored to the service and pressed for payment<sup>1</sup>. On the first point the Court saw no reason to change its previous decision; on the second, it decided to send further instructions to Madras and drafted a dispatch directing that upon his "producing satisfactory vouchers to show the prime cost of the grain, and of whom purchased, with all charges incurred thereon . . . the amount shall be paid with simple interest . . . at 8 per cent per annum."<sup>2</sup> This was written in August 1807; the Board simply shelved the matter till January 1809, when it sent back the draft with the alteration that he be paid at once without more enquiries at 1 rupee a seer<sup>3</sup>. Then

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<sup>1</sup> Correspondence &c. on Major Hart's Case, p.83.

<sup>2</sup> Idem, p.8.

<sup>3</sup> Idem, pp. 7-10.

Then followed a controversy in which the Court contended with good reason that he had presumably purchased rice in the Carnatic from 10 to 12 seers a rupee, that he had employed Company's bullocks to convey it, and that he had failed completely to produce vouchers. One rupee a seer was a famine price and far too high. The Company had in May made him a fair offer but he had imprudently rejected it. Any further reference to Madras would therefore be fruitless. Let him if he still persists, pursue legal measures to prove his case<sup>1</sup>. Nevertheless, the Board adhered to its point and ordered the altered draft to be sent without delay<sup>2</sup>. But when the Chairs in February 1809 informed the President, Robert Dundas, that they were advised that the Board's procedure was unconstitutional, it was apparently agreed to postpone the subject indefinitely<sup>3</sup>. At all events, no communication came from the Board till 1812. That year in June, Lord Buckinghamshire revived the subject and desired the Court to transmit the draft<sup>4</sup>.

In the legal battle that now ensued, the chief argument

<sup>1</sup> Correspondence &c. on Major Hart's Case, pp.10-14.

<sup>2</sup> Idem, p.15.

<sup>3</sup> Idem, pp.20-21; also Correspondence between the Court and the Board, 1813-23, p.93-4.

<sup>4</sup> Idem, p.18; also Idem, p.92.

argument advanced by the Directors was that the Board had no authority to direct the payment of any sum of money in as much as such payment in Major Hart's case must indubitably be gratuitous<sup>1</sup>. This had been found sufficient to silence the former President; but Buckinghamshire was not to be rebuffed. He was "thoroughly convinced" that the Board was acting within the law and he directed the Court to send "either forthwith. . . the said paragraphs to India or to avail themselves of the right of appealing to his Majesty in Council." If neither was done, he would be "compelled to take necessary steps."<sup>2</sup> But Charles Grant their Chairman was equally obdurate and without these necessary steps the Directors would not give in. Once more as in 1802, the clauses 17 and 18 of the Act of 1793 were sent again to the Board<sup>3</sup>; and in addition an elaborate petition was prepared to be submitted to the Privy Council<sup>4</sup>.

All this had taken up an inordinately long time and the Board was disposed to suffer no more delay. In June 1815 the Solicitor-General in the Court of King's Bench moved

<sup>1</sup> Correspondence &c. on Major Hart's Case, p.42.

<sup>2</sup> Idem, p.46; also Correspondence between the Court and the Board, 1813-23, pp.215-17.

<sup>3</sup> Idem, p.116.

<sup>4</sup> Idem, pp.124-152.

moved for a writ of mandamus against the Company, and on this arguments on both sides were heard<sup>1</sup>. The main point urged by the Company's Counsel was that the matter being one of gratuity was quite unconnected with the civil or military administration. That it was the latter and therefore within the province of the Board, none would perhaps now deny. Lord Ellenborough, the Chief Justice of the Bench, held the same view and decided that the cause was for the Privy Council to judge. The privy Council<sup>2</sup> pronounced its judgment against the Court. As a result, the Attorney General forthwith moved to make the mandamus absolute, which was done, and the Court was thus compelled to send the Board's instructions<sup>3</sup> to Madras.

Apart from its constitutional implications Major Hart's case displayed a pettiness on both sides which has hardly a parallel in the first three decades of the last century. But it was an unmistakable indication of the closer supervision of the Board in general

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<sup>1</sup> Correspondence &c. on Major Hart's Case, p.163 sqq.

<sup>2</sup> Idem, pp.223-4.

<sup>3</sup> Idem, pp.225-45.

general administrative matters. The revision and redistribution at the Board's office in 1807; the appointment as Chief Clerk of James Cumming an able and industrious person and a friend of Munro to the revenue and judicial department; the interest necessarily felt in the growing land revenue, police and judicial establishments; and above all the great zeal and vigour with which the Court began to participate in these subjects - these drew the attention of the Board to internal administration. The conquests and acquisitions of Lord Wellesley had to be consolidated. The Cornwallis system partially introduced in the new and wholly subsisting in the old territories of Bengal had been tried and found wanting in many respects. The extension of the permanent settlement in the Ceded Districts in the South had resulted in complete failure; and in spite of this, the Supreme Government was pressing for its introduction contrary to all experience, into the Ceded and Conquered Provinces in the North. The civil and criminal courts of justice in the Presidencies of Fort William and Fort  
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St George, were clogged with a bewildering amount of arrears of suits and the police, especially in the former had become inefficient. Unless therefore the system was speedily revised and altered administration might sink into decay.

The Board at first approached these problems with much caution. Between 1809-12, the main subjects in which it differed from the Court were, the practice of "writing off" outstanding balances of land revenue in Bengal and the tax on pilgrims visiting the temple of Jaganath. The Directors were strict on the first and wished to send explicit instructions forbidding the government to write off balances except in special circumstances. On the second, having been recently warned by the Vellere Mutiny (1806) they were apprehensive of interference with the religious customs of the Hindus and desirous of suppressing the pilgrim tax<sup>1</sup>. The Board cancelled these instructions, substituted their own leaving these matters entirely to the discretion of the Governor General and refused to accept the Representations of

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<sup>1</sup> Correspondence between the Court and the Board, 1801-13, pp. 523-32.



of the Court<sup>1</sup>.

From 1812 the Board's control became more minute. The new President, Buckinghamshire, had been the Governor of Madras (1794-97) and had sanctioned the Ryot-war system of revenue advocated and successfully carried into effect by Read and Munro in the Baramahal. The Fifth Report of the Select Committee published in 1812 was on the whole in favour of this system and its section on Madras administration had been drawn up by Cumming<sup>2</sup>. Both the President and the Chief Clerk were thus inclined to support the Madras system and to further its extension to the ill managed Bengal Presidency.

The first question that created friction however, related to commerce. In the Charter discussions Buckinghamshire had largely contributed to the opening of the import trade of India to the outports of Great Britain. Soon after the passing of the Act of 1813 which abolished the Company's Indian monopoly the Court drew up a draft explaining its provisions and submitted it for the Board's approval. The Board altered its language and added some instructions

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<sup>1</sup> Correspondence between the Court and the Board, 1801-13, pp. 533 sqq.

<sup>2</sup> Dictionary of National Biography.

instructions on commerce. As to the provision that required the separation of the political and commercial accounts, it observed "that the political branch should be considered as an affair of government, the commercial as a Mercantile Firm,"<sup>1</sup> and enjoined "scrupulous attention to the economy and management" of the commercial concerns adding, "You will from time to time be furnished with our orders upon this subject . . . and receive our instructions as to the detailed application of . . . funds in the purchase of Investments in India as also to the amount to be remitted to China for the purchase of Investments there."<sup>2</sup> This was eminently distasteful to the Directors. Referring to the altered draft they remarked that "they are required by it in speaking of the opening of the India-trade to use a language which indicated a warm approbation." This would serve "only to humiliate and degrade them."<sup>3</sup> The term "Mercantile Firm" was an expression "not congruous to any great commercial corporation, not contained in the new Charter, never applied to the Company . . . nor in the least necessary to elucidate

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<sup>1</sup> Correspondence between the Court and the Board, 1813-23, p. 22.

<sup>2</sup> Idem, pp. 25 - 26.

<sup>3</sup> Idem, pp. 21 - 22.

elucidate the subject."<sup>1</sup> As for the instructions on commerce they questioned the authority of the Board to direct the Government in India concerning either economy in that branch or their intentions as to future orders which they might give on it<sup>2</sup>. On this Representation, the Board agreed to change the "Mercantile Firm" into "Mercantile Transaction" but refused to alter the other instructions as "being closely connected with the Financial and Political Department;"<sup>3</sup> and the Directors after a vain protest reluctantly consented to transmit the altered orders<sup>4</sup>.

In revenue and judicial matters, it is indeed difficult to determine with precision the part played by the Board. The loss of Previous Communications and the dearth of private letters between the President and the Chairs is a great disadvantage. T.P. Courtenay observed before the Select Committee in 1832 that "an inspection of the official drafts and letters for reasons, gives a very imperfect idea . . . of the extent and nature of the superintendence and control exercised by the Board."<sup>5</sup> The Reasons, Representations and the Board's Drafts while they throw  
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<sup>1</sup> Correspondence between the Court and the Board, 1813-23, p. 22.

<sup>2</sup> Idem, p. 25.

<sup>3</sup> Idem, pp. 31-32.

<sup>4</sup> Idem, p. 33 & pp. 42-45.

<sup>5</sup> Parliamentary Papers 1831-32 Public, p. 35.

much light on the questions in which the controversy was keen, throw but a partial light on those in which the differences of opinion were not so sharp and admitted of easy accommodation. Yet they are sufficient to indicate the main lines along which the Board worked. As far as can be ascertained from them, between 1812-16 the Board desired the extension of the Ryotwar system in the Ceded and Conquered Provinces; the transfer of judicial authority in fiscal matters to the Collectors; the enlargement of the powers of Collectors acting as Magistrates; employment of the "Native Commissioners" with higher pay and wider powers to deal with petty offences; and the revival of the Panchayet<sup>1</sup>. These will be more properly noticed in the later chapters; and here it is enough to observe that during Buckinghamshire's tenure of office, the control of the Board became very pronounced "especially in the revenue and judicial departments" with but little relaxation under the succeeding Presidents<sup>2</sup>.

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<sup>1</sup> Correspondence between the Court and the Board 1813-23, pp. 160-1; also pp. 169-85.

<sup>2</sup> Parliamentary Papers 1831-32, Public, p. 35; also see the Correspondence between the Court and the Board 1813-23, p. 411 sqq.

(5) Parliament.

The supervision of the Court by the Board was supplemented by that of the Imperial Parliament. This was however indirect and variable; yet, obviously, far-reaching, as its sphere extended over both the Home Authorities on the one side and the Indian Governments on the other. Also it was characterised by two conflicting tendencies each of which served its own purpose. Throughout the period 1800-23 a minor but active section in the Commons brought up various Indian subjects for discussion and freely criticised and attacked the policy pursued abroad and sanctioned at home. On these occasions the Ministry was obliged to explain and justify its measures, so that interest was kept up in Indian affairs. Repercussions of this were also visible in the Lords. Before 1813 the discussions were frequent and centered mainly on political and commercial topics; after that year they were not so regular and were principally confined to administrative questions.

All the ministerial critics and many other

members

members expressed a fear of the extension of the Company's territories and of interference with the affairs of the Princes and generally exhibited a disregard of the actual forces which were gradually moulding the policy of the Governor General. The War in Ceylon, the Maratha Wars, the Oudh and Carnatic policy of Wellesley, were hotly debated by Creevey, Francis, Paul, Lord Folkestone and others; and each of them moved for papers which were readily granted by the Ministers save in a few cases in which secrecy was deemed requisite<sup>1</sup>. In the Lords the Earls of Suffolk and Carlisle followed a similar course though with much less effect<sup>2</sup>. The upshot of these discussions was rather to strengthen the position of the Governor General than to undermine it. For instance, in 1805 Francis in a long and vigorous speech traced the transformation of the Company from a "purely" commercial body to an "aggressive" Territorial Sovereign. He stigmatised its growing vastness of dominions, its "unquenched thirst for conquest" and its indefensible disregard of the legislative enactment of 1784 which expressly forbade the extension of territories. The authority of Parliament  
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<sup>1</sup> Hansard Vols. I to X give numerous debates dealing with these subjects.

<sup>2</sup> Hansard Vol. II, p. 105 sqq., and p. 145 sqq.

to legislate for India, he asserted "was absolutely abdicated." In addition he endeavoured as he had once endeavoured before<sup>1</sup>, to pass a resolution emphasising the specific clause against expansion<sup>2</sup>. But in vain. Castlereagh convincingly argued that "any extension of the British Empire in India was a source of policy which under no circumstances whatever should be resorted to, was a doctrine so futile and absurd and so wholly unlike the wisdom of the British Constitution that it would not stand for one moment." With regard to commercial interests being turned into territorial interests, "that was a measure necessarily resorted to; it had uniformly been the policy of France to goad England in that quarter . . . and it was her machinations which drove us to those measures." If it had been possible to keep in existence the commercial interests without territorial possessions "it would have been more politic; but in order to secure the one we were obliged to obtain the other." He concluded by justifying Wellesley's Mysore, Oudh, Carnatic and Maratha policy and the motion of Francis like similar motions

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<sup>1</sup> Hansard, Vol. I, p. 865 sqq.

<sup>2</sup> Hansard, Vol. IV, p. 225-34.

motions was lost by a large majority<sup>1</sup>.

Indeed, it was practically impossible for this section, however righteous their indignation - like that of Charles Grant who took part in several of these debates - or however acrimonious and bitter their attack - like that of Francis, Creevey and Paul - to pass resolutions of censure on the policy pursued in India. Before the establishment of the Board of Control the Ministry invariably viewed the policy of the Company's government with jealousy and failed to give adequate support to the Governor General. It is this that largely accounts for the impeachment and protracted trial of Warren Hastings. When the Ministry became a controlling partner in the Company's government, and shared the responsibilities of its affairs abroad, neither the scurrilous eloquence of a Francis nor the dogged perseverance of a Paul could succeed in bringing the Governor-General into disgrace. The lessons of the past were not lost on Francis. "I will never be connected with impeaching anybody" he confessed, "the impeachment of Mr. Hastings has cured me of that folly. I was tried and he was acquitted." Again, "Nor will I now concern myself  
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<sup>1</sup> Hansard, Vol. IV, p. 235 sqq.



in any proceedings to prosecute or censure Lord Wellesley."<sup>1</sup>

Despite the warning of Francis, Fox, Charles Grant and Sheridan<sup>2</sup>, Paul heedlessly plunged into an impeachment of Wellesley, the proceedings of which lasted for two years, 1806-8, and moved for a variety of papers which were all granted<sup>3</sup>. When he introduced his first charge condemning the Oudh policy, significantly enough, no one rose for a long time to second his motion<sup>4</sup>. W. Geary who eventually undertook that task averred that he did so not because he believed in the guilt of the Marquis, but simply in order to preserve the "dignity" of the House<sup>5</sup>. Before Paul could substantiate this charge and bring in his other charges, he lost his seat in the Commons and the matter was later taken up and actively agitated by Lord Folkestone only to meet a staunch opposition and defeat. The Oudh Charge, which alone was pushed to a division on 15 March 1808 was lost by an over-whelming majority<sup>6</sup>; and in its place, the motion of Sir John Anstruther that Wellesley was "actuated by an ardent

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<sup>1</sup> Hansard Vol. VI, p. 394.

<sup>2</sup> Hansard Vol. VI, p. 394; pp. 801-2; p. 826; p. 867.

<sup>3</sup> Hansard Vols. V to VII give all the debates and the papers moved for by Paul.

<sup>4</sup> Hansard Vol. VI, p. 859.

<sup>5</sup> Hansard Vol. VI, p. 861.

<sup>6</sup> Hansard Vol. X, p. 1147.

ardent zeal for the public service and by the desire of providing more effectually for the prosperity, the defence and the safety of the British territories in India" was carried by an equally formidable majority<sup>1</sup>.

No sooner was the Oudh Charge disposed of, than Sir Thomas Turton on a suggestion dropped earlier by Sheridan, moved on 17 May 1808 six resolutions as the basis of an appointment of a committee to enquire into the assumption of the Carnatic<sup>2</sup>. As might be expected, the resolutions were rejected and instead, was substituted a warm approbation of the conduct of Wellesley and Lord Clive<sup>3</sup>.

Nor was this all. The Governor-General received votes of thanks of Parliament for the successful prosecution of his wars. On the conclusion of the war with Tippu<sup>4</sup> and the Maratha wars<sup>5</sup>, Lord Wellesley was thanked by both the Houses; so also Lord Minto on the conquests of Mauritius and Bourbon<sup>6</sup>, and Lord Hastings on the triumphant termination of the Nepal War<sup>7</sup> and the war against the Pindarees and  
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<sup>1</sup> Hansard Vol. X, p. 1148.

<sup>2</sup> Hansard Vol. XI, pp. 315-92.

<sup>3</sup> Hansard Vol. XI, pp. 767-802.

<sup>4</sup> Cobbett's Parliamentary History, Vol. XXXIV p. 1186 sqq.

<sup>5</sup> Hansard Vol. II, p. 334 sqq, p. 369 sqq.

<sup>6</sup> Hansard Vol. XXI, p. 126 sqq, p. 131 sqq.

<sup>7</sup> Hansard Vol. XXXV, p. 232 sqq, p. 238 sqq.

the Marathas<sup>1</sup>. On these occasions the Ministers were very guarded in their speeches; they invited the House to vote not on the political but on the military conduct of the Governor-General. For what was needed then was a unanimous approbation and not merely a majority of votes. Discussions on political conduct were tedious and usually futile. It was difficult to convince all the members and prove that the wars were fought solely for defensive purposes. In addition, there was that anomalous clause of the Act of 1784 which was by several regarded with a veneration not a little embarrassing to the Ministers.

Among the minor political matters which were brought to the attention of the House, must be mentioned the Mutiny at Vellore (1807)<sup>2</sup>, the unrest in the Madras Army (1810)<sup>3</sup> and the conduct of Sir George Barlow in the latter (1814)<sup>4</sup>. Papers were moved on these subjects but no important discussions took place.

A striking aspect of the political debates in Parliament was the inability of the representatives of the  
Company

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<sup>1</sup> Hansard Vol. XXXIX, p. 760 sqq, p. 865 sqq.

<sup>2</sup> Hansard Vol. IX, p. 496.

<sup>3</sup> Hansard Vol. XVI, p. 836 sqq.

<sup>4</sup> Hansard Vol. XXVIII, p. 860.

Company to bring to book either a Board or a Governor General whom they disliked. Their influence was exerted rather to safeguard its privileges than to condemn the policy pursued against their wishes. Much as they hated Wellesley's measures they seldom attacked them in the Commons and were reluctant to take any extreme step. "It was not the practice of the Court of Directors to bring impeachments before Parliament" declared Charles Grant and truly summarised thus the sentiments of his colleagues; "The situation of the Court was a delicate one when they had to contend with persons of high rank and connections who filled the first situation in the Indian Government and supported probably as they would be by the Administration at home." In the circumstances an impeachment "must be very unpromising and inexpedient."<sup>1</sup> Again, when the subject of the Court's dispatch on Wellesley's administration suppressed by the Board was, for example, raised in the House, they refrained both from denouncing his policy as they did in their dispatch, and from questioning the authority of the Board which had substituted a dispatch  
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<sup>1</sup> Hansard Vol. VI, pp. 826-7.

of its own<sup>1</sup>. Creevey bluntly asked Charles Grant why he had failed to "come and say to the House of Commons and the Country" that the Company was driven by the Indian Government with the Board's sanction to acquiesce in measures positively fatal to its interests<sup>2</sup>. But, such a course was highly impolitic and obnoxious to its representatives whose only hope to preserve their powers intact lay in exhibiting, as far as possible a not unfriendly disposition towards the Ministry. They therefore, usually upheld the existing constitution and feared that any change would spell disaster both to the Company and to the Nation. This was, to a large extent true; but, it was also true that the Company had realised the danger of undue opposition to Ministerial measures.

Indeed, Ministerial support was essential when the Company's commercial privileges were undergoing a gradual transformation. Private Traders were becoming a menace to the Company's commerce. In 1800, Wellesley's policy of introducing India-built shipping and allowing more scope to Private Merchants had been warmly approved in the Commons<sup>3</sup> and

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<sup>1</sup> Hansard Vol.VI, p.810 sqq.

<sup>2</sup> Hansard Vol.XXIII, p.910 sqq.

<sup>3</sup> Cobbett's Parliamentary History, Vol.XXXVI, p.281 sqq.

and ultimately with some modifications, carried into effect. But the Private Traders were not content with this. From 1808 their attacks were renewed with fresh vigour. The distress of the Company was their opportunity; its growing debts their prospective assets. The appointment of the Select Committee moved by Robert Dundas the President of the Board on 11 March 1808 to consider its financial, commercial and territorial concerns<sup>1</sup>, and its petition presented on the 26 April 1808 praying that £1,200,000 due to it by the Government might be repaid and a like sum advanced by way of loan to relieve its distress<sup>2</sup> were at first followed by sporadic attacks on its monopoly. The renewed application of the Company for pecuniary aid twice in 1810<sup>3</sup> and twice in 1812<sup>4</sup> coincided with a series of petitions from Liverpool, Bristol and other commercial centres both in the Commons and in the Lords<sup>5</sup>; and the Charter discussions in 1813 deprived the Company of its Indian monopoly.

The temper of the times can best be understood by  
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1 Hansard Vol.X, pp.1071-2.

2 Hansard Vol.XI, p.68 sqq.

3 Hansard Vol.XVI, p.654 sqq, p.1017 sqq.

4 Hansard Vol.XXIII, p.478 sqq.

5 Hansard Vols.XVI to XXIII - see the "contents."

a few references. The evidence before Parliament of the distinguished Indian officers, Warren Hastings, Lord Teignmouth, Munro and Malcolm, strongly expressed the fear of unrestricted admission of Europeans into the interior of the Country and on the whole exhibited an inclination not to deprive the Company at once of its India-trade<sup>1</sup>. The prevailing feeling at home was however well expressed by Lord Buckinghamshire in his correspondence with the Chairs, dated 11 March 1813. "That the merchants of this country have a substantial claim to as much liberty of trade as they can enjoy without injury to other important national interests, cannot be departed from."<sup>2</sup> And the Government had come to the conclusion that though it was unwise to alter "the existing restrictions upon the commercial intercourse with China, and of preserving to the Company the monopoly of the Tea-trade, they nevertheless felt that the merchants belonging to the out-ports had established a claim against an absolute restriction of the import trade to the port of London."<sup>3</sup> In the Lords, Liverpool pointed out that the opening

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<sup>1</sup> Hansard Vol. XXV - see the minutes of evidence before the Select Committee of the Commons and Lords.

<sup>2</sup> Hansard Vol. XXV, Appendix p. II.

<sup>3</sup> Idem, p. III.

opening of the trade to India "promised to be beneficial to those who might engage in it, as it had been seen that an advantageous trade to India had been carried on by the Americans and by private English merchants." With respect to the China-trade, he was prepared to maintain the expediency of excepting it from the proposed scheme<sup>1</sup>.

While Parliament was thus agreed to reduce substantially the commercial privileges of the Company, it was not disposed to alter fundamentally its political privileges. In fact, no serious attack was made on the latter. In 1806 when Francis reasoned that the Company would have done well to have relinquished the sovereignty of its territorial possessions and to have confined itself to commercial pursuits, Charles Grant deprecated this "dangerous" doctrine. The East India Company was "the fittest organ by which this country can govern its Empire in the East. . . . If the Government of India were to be vested immediately in the Crown . . . the consequences. . . would be finally the loss of that country; and if the patronage

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<sup>1</sup> Hansard Vol. XXV, p. 753.



patronage of India were in the disposal of the Crown our own constitution might be overset." He exhorted the Ministers to be "extremely cautious" of encouraging any idea of altering the system<sup>1</sup>. Francis disclaimed the intention of changing "the mode now established by law;"<sup>2</sup> and curiously enough, Fox himself agreed that it was not feasible to "revert to original theories." He professed that the system was "a bad one from the beginning;" but since it had been adopted and acted upon, it was "not now to be lightly rescinded." It was far better "to put up with many inconveniences arising from the first adoption of a measure than hazard worse evils by premature and ill-considered alterations and innovations."<sup>3</sup>

Such was also the considered opinion of the Ministry in 1813. In introducing the Bill, Castlereagh remarked that the Ministers "would hesitate before they suggested anything which might change a system which had unquestionably answered all the great purposes of government."<sup>4</sup> Also, he admitted that the "patronage of a great Empire should

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<sup>1</sup> Hansard Vol.VI, p.209-10.

<sup>2</sup> Idem, p.214.

<sup>3</sup> Idem, p.214-5.

<sup>4</sup> Hansard Vol.XXV, p.228.

should not be transferred without the most ample guards."<sup>1</sup>  
 The reasons that prompted him and his colleagues to make the approbation of the Crown a necessary qualification for higher patronage and to declare the sovereignty of Great Britain over India were however different as has been noticed before.

The danger of legislating on abstract principles was clearly emphasised by Marquis Wellesley. The Union of the merchant and sovereign might be an anomaly; but it "has proved to be practically good" and "ought not to be excluded merely on account of its anomalous character."<sup>2</sup>  
 Still, he suggested that the power of the government at home over the executive power of the Company might be increased "both in strength and promptitude."<sup>2</sup>

Grenville was the only statesman who was far ahead of his age. His proposals are important not so much for their immediate effect as for their future significance. The Sovereignty of the Crown must be recognised. The political powers of the Company could be transferred to the Crown without

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<sup>1</sup> Hansard Vol. XXV, p. 233.

<sup>2</sup> Idem, p. 678.

<sup>3</sup> Idem, p. 694.

without much hazard. The higher patronage was, to a large extent, already in the hands of the Ministry. The lower patronage, indeed, if vested in the Crown must "weight down the Government." To guard against this therefore, the writers could be selected by free competition from the universities; the cadets by some fixed course of succession from the families of officers who had fallen in the public service.<sup>1</sup> Save for the first proposition the rest were discarded as impracticable.

The legislation of 1813 practically left the political privileges of the Company intact; and Parliament for the next twenty years virtually abandoned its power of making any marked changes in the system of Indian administration. Indeed, from 1813 to 1824 the nature of Indian questions debated in Parliament underwent a material change. The Indian budgets which had at first been periodically brought in and explained in the Commons were now allowed to lie on the table. The reason attributed by T.P. Courtenay for this was the lack of interest shown  
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<sup>1</sup> Hansard Vol. XXV, p. 709 sqq.

by the members in that subject<sup>1</sup>. Moreover, political and commercial matters which had hitherto occupied much attention in the House, now attracted little. The vote of thanks on Lord Hastings's wars was neither opposed nor discussed. It was intended to move for papers on Sir George Barlow's conduct in the Government of Madras in July 1814<sup>2</sup>; and they were actually moved for on Lord Hastings's Maratha War in May 1818<sup>3</sup>, and on the disturbances in Ceylon in May 1819<sup>4</sup>; but this did not provide any impressive debate.

The attention of Parliament was turned to general administrative matters both at home and abroad. In 1811 when the India Board Office's Salary Bill was brought in, Creevey though not opposed to the increase of salaries of the clerks strongly objected to the augmentation in the allowances of the President<sup>5</sup>; yet, the Bill had been passed and the Company made to pay a considerable sum to the Board's establishment. In May 1814 he renewed his attack on the President, but this time with a different object. He moved for Lord Buckinghamshire's letter to the Chairman  
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<sup>1</sup> Hansard New Series, Vol. VI, p. 1140.

<sup>2</sup> Hansard Vol. XXVIII, p. 860.

<sup>3</sup> Hansard Vol. XXXVIII, p. 721 sqq.

<sup>4</sup> Hansard Vol. XL, p. 330 sqq.

<sup>5</sup> Hansard Vol. XX, p. 309 sqq; p. 324 sqq.

on the subject of continuing pensions, particularly those of Warren Hastings and Lord Wellesley. The action of the President was clearly contrary to law, as the initiative should have come in the first instance from the Company. But the letter was explained as a private communication by Courtenay and Creevey's motion was lost<sup>1</sup>.

Still, however, the attacks on the Board were continued. Creevey had argued that the Board performed but little work and asserted that the pay of the President was excessive. In May 1816, on the vacancy at the Board created by the death of Buckinghamshire, Lord Althorp stigmatised the office as a sinecure. Castlereagh assured him that the post would soon be filled up as its duties were of a "most laborious description."<sup>2</sup> Yet again in February 1821 Joseph Hume criticised the Board in a similar strain only to receive a similar answer from Bathurst<sup>3</sup>.

The most sweeping attack was made in March 1822. In an eloquently critical speech Creevey contended that the Board in reality did little work; that the president alone in practice performed its duties; that the two paid  
commissioners

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<sup>1</sup> Hansard Vol. XXVII, p. 924 sqq.

<sup>2</sup> Hansard Vol. XXXIV, p. 778.

<sup>3</sup> Hansard New Series, Vol. IV, p. 574 sqq.

commissioners "came only to receive their salaries;" that these two should not have seats in Parliament; that the seat of the Secretary in the Commons was still more objectionable, and that his salary at all events should be curtailed<sup>1</sup>. Courtenay the Secretary rebutted all these observations by an accurate statement of facts. Since 1807 the duties and responsibilities of the Board had greatly increased. The reorganisation of its office had contributed to a minute supervision over the internal administrative affairs of India. The two paid commissioners, Lord Binning and Struge Bourne for instance, had given much help in revenue, judicial and legal matters. The Act of 1813 had imposed upon the Board the duty of protecting the interests of the Private-traders and the concerns of the ecclesiastical establishment. It is true the Commissioners did not regularly meet for the general transaction of business, but that was more efficiently done by the distribution of papers among them previous to the final disposal of them by the President. As for the presence of the Commissioners and the Secretary in Parliament he could only say that "they were

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<sup>1</sup> Hansard New Series Vol. VI, pp. 1120-30.

were there to answer all inquiries respecting the department to which they belonged and to attend to the progress of all Bills in that House."<sup>1</sup> Each one of these remarks was upheld and amplified by Canning who also explained that the increased salary of the Secretary was justified by the increase of his general duties<sup>2</sup>. Creevey's motion was thus lost and with it the last attempt to retrench the power and influence of the Board.

Besides these persistent onslaughts directed against the Crown half of the Home Government some interesting endeavours were made in other directions. The press in India claimed the attention of the Commons in 1811, 1821 and 1824. In 1811, Lord Archibald Hamilton moved for copies of all orders and regulations respecting the publication of newspapers<sup>3</sup>. In 1810, trials in Madras had been forbidden by the Government to be published. Hamilton attributed the agitation there to this cause and wished Parliament to interfere and proclaim the complete liberty of the press. Robert Dundas rightly opposed the motion as impracticable and defeated it. The relaxation of the press restrictions  
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<sup>1</sup> Hansard New Series Vol. VI, pp. 1130-41.

<sup>2</sup> Idem, pp. 1145-60.

<sup>3</sup> Hansard Vol. XIX, p. 462 sqq.

under Lord Hastings were hailed by the Radicals. In 1821 Lambton asked the House whether the rumour that it was the intention of his Majesty's Government to revive the censorship was true. Bathurst assured him of no change in policy<sup>1</sup>. But the subsequent enforcement of the censorship and the deportation of Buckingham once more aroused the controversy and a warm debate took place in May 1824<sup>2</sup>.

During these last few years the subject of Sati and Infanticide were discussed in Parliament. The Missionary societies were beginning to exert their influence on Indian social problems. In June 1821 Fowell Buxton moved for all papers on the burning of Hindu widows and deprecated its continuance under the British Government. Bathurst doubted the expediency of interference; Hume advocated its suppression by a heavy fine; Canning devoutly wished its extirpation but distrusted coercion<sup>3</sup>. In June 1823 a petition was presented by the Bedford Society to terminate this dreadful practice and its object was highly commended by Wilberforce<sup>4</sup>. In the same year several papers were moved for on the practice of Infanticide<sup>5</sup>. The way was thus

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<sup>1</sup> Hansard New Series Vol. IV, p. 553.

<sup>2</sup> Hansard New Series Vol. XL, p. 558 sqq.

<sup>3</sup> Hansard New Series Vol. V, p. 1117 sqq.

<sup>4</sup> Hansard New Series Vol. IX, p. 1011 sqq.

<sup>5</sup> Hansard New Series Vol. IX, p. 1021.



thus prospectively prepared for the beneficent legislation of Lord William Bentinck.

The activities of Parliament therefore veered from political to commercial and from commercial to administrative subjects in the period 1800-24. In the first, it was mainly characterised by a tendency, despite opposition, to strengthen the position of the Government of India; in the second, it was responsible for the abolition of the Company's monopoly of Indian commerce; in the third, it was notable for the vain attempts directed against the Board and dim yet hopeful realisation of the responsibility of purging the social evils of India.

## C H A P T E R II

## THE LAND-REVENUE ADMINISTRATION (1807-15).

(1) The Ceded and Conquered Provinces.

The dominant feature of the period 1807-13 in the history of the land-revenue administration in the Presidency of Fort William in Bengal is the unwillingness of the Home Government to acquiesce in the extension of the permanent settlement into its newly acquired territories. These territories were denominated in the Regulations as the Ceded and Conquered Provinces and Cuttack. The Ceded provinces were secured in lieu of subsidies partly from the Nawab Vizir by the treaty of 10 November 1801, and partly from the Peshwa by the treaty of 16 December 1803. The former were subsequently formed into the Zillahs or districts of Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad and Coruckpore; and the latter into the district of Bundelcund. The Conquered provinces were ceded by Daulat Rao Scindhia  
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on 30 December 1803 and constituted into the districts of Sehrunpore, Allyghur and Agra exclusive of the city of Delhi and a contiguous tract of country formed into a separate district. To these districts must be added Cuttack, originally conquered and finally ceded to the Company by the Rajah of Berar in January 1804<sup>1</sup>.

By the close of 1805 the Bengal administrative system in its essentials had been introduced into these districts; and by 1807 the Supreme Government was seriously considering the expediency of extending the permanent settlement of the land revenue. It seems remarkable that Government should have had such an unshakable faith in the system established by Cornwallis in spite of the numerous defects which it had displayed in Bengal where it had had a fair trial. Its unsuitability to the new provinces was indeed recognized by some able district collectors and their superiors<sup>2</sup>. But the Governor General and Council remained up till the close of Lord Minto's tenure of office unconvinced; and the cause undoubtedly is to be traced mainly to the "caste of the Bengal Councillor" who

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations, Vol.II, p.299 For Treaties see Parliamentary Papers - Copies of the Treaties and Engagements between the East India Company and the Native Powers in Asia (Lords) 1853.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol.I, pp.7-39. Report of Cox and Tucker gives the opinions of several of the Collectors.

who remained unchanged, "so cautious, so devoted to precedent, so fearful of alteration." "At all events" justly observed Metcalfe, "Lord Cornwallis's school must first wear out, who think that all perfection is in the Regulations of 1793."<sup>1</sup>

Fortunately, however, the Home Authorities had come to doubt the benefit of the intended measure. The imperfections of the Cornwallis system in the old dominions had impressed them with the preliminary and fundamental necessity of a survey and a record of rights. The scantiness of information about the new possessions did not permit a judicious and well-balanced decision. On Munro's return home in 1808 the Home Authorities constantly communicated with him<sup>2</sup>. His Ryotwar system was yielding favourable results in Madras and the parts of the Bombay Presidency where it had been recently introduced. If not all, might not some at least of its salient principles be extended to the North? At any rate more complete and accurate information should be first obtained; and past errors corrected by present experience. Such were the principal motives

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<sup>1</sup> Kaye. Selection from the Papers of Lord Metcalfe, p.150.

<sup>2</sup> Arbuthnot. Sir Thomas Munro, p.100; Selection from the Minutes of Munro, Vol.I, pp. cxxiv-v.  
Bradshaw. Sir Thomas Munro, p.144 sqq.  
Baden Powell. Land Systems of British India, Vol.II, p.17.

motives that impelled the Home Government to withhold its sanction to the policy advocated by the Governor-General and Council.

The origins of this policy with regard to the Ceded and Conquered Provinces, excluding Cuttack, are to be traced to the Proclamation of 1802 and Regulations XXV of 1803 and IX of 1805. Lord Wellesley, it should be remembered, was a fervent admirer of the Cornwallis system and had attempted to implant it in Madras<sup>1</sup> where the revenue system had been for the most part based on entirely opposite principles. During his Governor-Generalship<sup>2</sup> and even as late as 1813, he believed that much harm had been done by failing to follow up the policy of permanently settling the land revenues in all the British possessions in India<sup>3</sup>. The Bengal Government was in fact labouring under the delusion that what was expedient for Bengal was equally expedient elsewhere irrespective of economic conditions and land tenures. And the Proclamation of 14 July 1802 issued by the Lieutenant Governor and the Board of Commissioners in virtue of the power vested in them by the Governor-General

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<sup>1</sup> Fifth Report of the Select Committee on the Affairs of the East India Company 1812, p. 109 sqq.

<sup>2</sup> Auber. Rise and Progress of the British Power in India, Vol. II, p. 208.

<sup>3</sup> Hansard, Vol. XXV, pp. 681-2.

Governor-General declared that at the commencement of 1803 a triennial settlement would be concluded "in all practicable cases with the zemindars and other actual proprietors of the soil" at a fixed, equal, annual jumma. A similar settlement would again be made with the same persons for three more years, after the expiration of which a new settlement was to be made with them for four years. Thus at the end of ten years a permanent settlement would be concluded with the same persons, if willing to engage and if no others who had a better claim should have come forward, for such lands as might be ripe for it<sup>1</sup>. The Regulation XXV of 1803<sup>2</sup> merely amplified and explained the articles of the Proclamation adding, that from the earliest times the public assessment upon land had never been fixed, that the established usage and custom of the rulers had been to exercise discretionary authority in depriving the zemindars, talukdars and others of their possessions, whereby the proprietary right was rendered precarious, the lands impoverished, and the tenants and cultivators of the soil exposed to rapacity and oppression. In order to promote the interests of the land-holders, to enhance the value of their estates

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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol. I, pp. 146-7.

<sup>2</sup> Idem, p. 143 sqq.

estates, to induce them to encourage their under-tenants and to extend cultivation under the certainty of securing the fruits of their industry,

"the Governor-General has . . . not only directed a settlement to be immediately made with the zemindars and other proprietors of land who shall be willing to engage for the revenue of their respective estates, but has also declared that a permanent assessment shall be fixed at the end of ten years, on such lands as shall be in a state of cultivation sufficiently advanced to render it proper to fix the assessment on the same in perpetuity."<sup>1</sup>

Instead, however, of a fixed equal, annual jumma, the settlement for the first lease of three years was to be concluded at a fair and equitable annual increase.

A similar conditional promise was given to the Conquered Provinces (except Cuttack) by the Regulation IX of 1805. Two triennial settlements beginning from 1806 were to be made, followed by a quadrennial settlement. In Bundelcund the first settlement was to be formed for one

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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol.I, p. 149.

one year only for 1806, succeeded by three triennial settlements. The last settlement in both cases would be declared permanent under the same conditions as were stipulated for the Ceded Provinces<sup>1</sup>.

The policy thus formulated by Lord Wellesley was carried a step further by Sir George Barlow during his short tenure of Government. Barlow was not to be expected to question the Regulations of 1793. He might order reductions in the expenses of administration in conformity with the injunctions of the Directors; but so long as their intentions were not known, he would faithfully follow the principles inculcated by Cornwallis and Wellesley. On the other hand, the independent attitude assumed by Wellesley, who had not troubled to consult the Home Authorities on the above mentioned Regulations, was far from agreeable to Barlow's conscientious sense of obedience to his masters.

Regulation X of 1807<sup>2</sup> therefore, displays a respect for the old system, an endeavour to facilitate its extension in the new territories and a desire to learn the sentiments of the Home Authorities before  
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<sup>1</sup> Selection of Papers from the Records of the East India House, p. 153 sqq.

<sup>2</sup> Idem, pp. 162-3.



taking action. Its principal object was the establishment of an efficient control over the district collectors in the formation of the ensuing settlement of land revenue in the Ceded and Conquered Provinces<sup>1</sup>. The Board of Revenue sitting at Calcutta could not possibly ascertain the actual resources of land and supervise the conduct of Collectors in the adjustment of assessments. To guard against too high an assessment was as essential, as it was to prevent reductions of the jumma. The mistaken zeal of the Collectors might lead, as it did lead in Allahabad to fixing an assessment far exceeding the actual resources of land. The jumma to be declared permanent in consonance with the former Regulations must be moderate, equally distributed and carefully assigned to those only who have valid titles of proprietorship. All these points could be secured by the appointment of a separate temporary commission vested with the duties, powers and authority hitherto exercised by the Board of Revenue<sup>2</sup>.

It was hoped that the opinions of the Commissioners founded on actual experience would prove of the "highest importance to the future prosperity of the provinces."<sup>3</sup>  
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<sup>1</sup> Note that in the Ceded Provinces the quadrennial settlement which was to be declared permanent was to be made in 1808.

<sup>2</sup> Letters Received from Bengal, Vol. 52, Rev. Letter dated 31 July 1807, paras. 29-36.

<sup>3</sup> Idem, para. 30.

The basic principle of the arrangement was that the Commissioners should superintend the conclusion of the settlement on the spot "by proceeding according as their services may be required into the several districts."<sup>1</sup> They were provided with a suitable establishment and vested with also a part of the duties of the Board of Trade and the general control of the Mint at Farruckabad.

The appointment of the Commission was a much needed reform; but the purpose for which it was specially intended was by no means easy of execution. For the Regulation further observed that the jumma which might be assessed "in the last year of the settlement immediately ensuing the present settlement shall remain fixed for ever in case the zemindars shall now be willing to engage for the public revenue on those terms in perpetuity and the arrangement shall receive the sanction of the Honourable Court of Directors."<sup>2</sup> In addition, the foregoing rule was also declared to be in force in Cuttack under the orders and superintendence of the Board of Revenue<sup>3</sup>.

As the Supreme Government had thus specifically referred the matter to the decision of the Directors it explained to them the benefits which the country might  
experience

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<sup>1</sup> Letters Received from Bengal, Vol.52, Rev. Letter dated 31 July 1807 para. 31. See Also Section IV of the Regulation.

<sup>2</sup> Selection of Papers &c. Vol.I, p.163. Section V of the Regulation

<sup>3</sup> Idem, Sec. VI.

experience from a permanent settlement compared with any improvements which it could attain under temporary settlements. In the former case, it was asserted, the zemindars by a sense of personal interest and solicitude to provide for their families would extend cultivation and promote the general improvement of their estates. Such strong motives for industry and enterprise could be "but imperfectly felt" under engagements that secure to the proprietors the fruits of their labour only for a limited period of years. The knowledge which the zemindars possess that an increase of assessment would be required at the formation of the ensuing settlement proportioned to the increase in cultivation would restrain all ordinary exertions and impede the prospect of improvement. "No measure" Government confidently declared "can contribute so effectually to the general improvement of the recently acquired territory as a fixed and permanent settlement of the lands."<sup>1</sup>

The attitude of the Directors to these measures was singularly cautious. They readily acquiesced in the appointment of the Commission since it would secure "a more accurate knowledge of the value of the lands."<sup>2</sup> As for settling the land-revenue in perpetuity they desired it to be "distinctly understood" that it was not their intention to proceed immediately to that measure. The investigation

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<sup>1</sup> Letters Received from Bengal, Vol.52, Rev. Letter dated 31st July 1807, paras. 37-38.

<sup>2</sup> Dispatches to Bengal, Vol.LIII. Rev. Dispatch dated

investigation of the Commission must be first known and then thoroughly discussed. The territories in question had only recently come under the British sway and knowledge of them therefore must necessarily be imperfect. The long acquaintance with the resources and tenures of Bengal had ultimately suggested there the expediency of the permanent settlement; and yet many errors had been committed in the valuation of the different estates and the whole scheme had resulted in many inconveniences which a little less haste might have prevented. More accurate information must be forthcoming to warrant an irrevocable measure important in its consequences<sup>1</sup>.

The fact that, when these sentiments were conveyed to Bengal, Charles Grant, one of the original founders of the Cornwallis system<sup>2</sup>, was the Chairman, is by itself a testimony of the change that had come over the Directors; and further information as it reached them greatly contributed to strengthen their conviction against making a false or precipitous move.

The Report of the Commissioners, Cox and Tucker, submitted to the new Governor-General Lord Minto on 20 June  
1808

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<sup>1</sup> Dispatches to Bengal, Vol. LIII. Rev. Dispatch dated 27th Feb. 1810, pp. 356-60.

<sup>2</sup> Morris. Life of Charles Grant, pp. 170-1.

1808 and based on personal observation confirmed by the opinions of a majority of collectors, clearly exhibited the inexpediency and even danger of declaring the ensuing settlement permanent<sup>1</sup>. The resources of the country had not been fully developed. About one-fourth of the arable land still remained uncultivated. The refractory disposition of the powerful land-holders in many cases precluded an ascertainment of the real value of their estates. In fact adequate knowledge "either of the present state of the country or of its present means of future improvement" had not yet been acquired. Owing to the recent depredations of the enemy and the effects of droughts and famine, the population was no longer able fully to cultivate the lands. In several instances the existing assessment had become unequal<sup>2</sup>. Many of the village zemindars with whom the temporary settlements had been concluded did not possess enough capital to undertake improvements. Accustomed to annual or short leases and discouraged by unfavourable seasons, they would hardly be willing to engage for a revenue proportionate to the demands of the permanent settlement. Already a large portion of the country had fallen into the hands of farmers<sup>3</sup>, and unless  
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<sup>1</sup> Kaye Administration of the East India Company, p.238. Also Selection of Papers from the Records of the East India House, pp. 6-44.

<sup>2</sup> Idem, p. 37.

<sup>3</sup> Idem, p. 38.

proprietary rights often contested in the Courts and complicated by the Regulations, were clearly defined, a permanent settlement could not justifiably be concluded. The uncertain extent of the zemindars' alienations, the extensive wastes and the unsettled value of the currency, were equally strong objections to that measure<sup>1</sup>.

Finally, any conditional announcement might create difficulties. The land-holders did not understand the complicated structure of the government, and if the Directors, dissatisfied with the documents upon which the engagements had been formed, should eventually withhold their confirmation of them, the land-holders might suspect that they had been imposed upon and that government had no other view in holding out the advantages of permanency than to extort from them a higher revenue. The Commissioners, therefore, wound up their observations in a temperate yet decisive language. "With every previous disposition in favour of . . . a permanent settlement" they offered their "unqualified" opinion that the measure in the new provinces was unseasonable and an attempt to introduce it might result in a sacrifice of public revenue and injury to the land-holders themselves<sup>2</sup>.  
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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol.I, p.39.

<sup>2</sup> Idem.

*The Calcutta*  
 Government disapproved this report<sup>1</sup>. Henry Colebrooke, a member of the Council, had still ample faith in the permanent settlement. In his minute on the report he held that the subject repeatedly discussed in 1789-90 and 1799 and sanctioned by the Directors, required no further consideration. He conceived that "the pledge . . . solemnly contracted cannot be forfeited." "There is room to regret" he reflected, that the Commissioners instead of devising the best means for executing the measure of permanency should have deliberated on its expediency<sup>2</sup>. Though not fully agreeing with Colebrooke, his colleague, Lumsden expressed himself in favour of the fixed engagements on the conditions laid down in 1807<sup>3</sup>. In such circumstances, the obvious course for Cox and Tucker was to resign, which they did; whereupon Edward Colebrooke and Dean were despatched to the Upper Provinces to fill up the vacancy<sup>4</sup>.

Meanwhile, owing to the little progress made in compiling accounts and gathering the requisite information, the quadrennial settlement contemplated for Cuttack could not be carried out. An annual engagement was therefore made preparatory

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<sup>1</sup> Letters Received from Bengal, Vol.53. Rev. Letter dated 15 September 1808, paras. 40-47.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol.I, p. 44 sqq.

<sup>3</sup> Idem, p. 55 sqq.

<sup>4</sup> Letters Received from Bengal, Vol.53, Letter dated 15 September 1808, paras. 25-40.

preparatory to a triennial settlement which was to be declared permanent. Government anticipated great obstacles in the formation of the latter and to overcome them, as well as to establish an efficient control over the Collector in the discharge of that important duty, sent there in 1808 a temporary Commission under C. Buller<sup>1</sup>.

New arrangements were thus made to ensure the execution of the permanent settlement. But the Directors on whom the ultimate decision depended resolutely withheld their sanction. They did not object to the Buller Commission<sup>2</sup>, but expressed their genuine surprise at the far-reaching schemes evolved in Bengal. The Report of Cox and Tucker had laid bare the impossibility of building any solid system on defective and uncertain foundations. The want of knowledge of the boundaries and extent of estates, of the quantity and quality of land liable to assessment, and of the nature of proprietary tenures, in fine, "the rights and interests of both Government and subjects" called for a patient enquiry. A minute scrutiny of individual rights, a careful investigation of the local peculiarities, and a detailed survey of the waste, arable and cultivated land,- these (they considered) were indispensable

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<sup>1</sup> Letters Received from Bengal, Vol. 53. Rev. Letter dated 28 October 1808, paras. 36-43.

<sup>2</sup> Dispatches to Bengal, Vol. LV. Rev. Dispatch dated 1 Feb. 1811, pp. 112-13.



indispensable before passing an irrevocable measure<sup>1</sup>.

In this place it is only fair to note that the Directors, though disposed to order reductions of expenditure in general administration, were nevertheless prepared to incur the initial expense of a survey and record of rights. In many parts of its new territory in the South surveys had been on the whole successfully pursued; but for want of them, Bengal had been suffering acutely. An assessment based on an arbitrary standard and vague conjecture could not avoid either doing injustice to individuals or making improvident sacrifices on the part of the public. "Hence" wrote the Directors, "a Ryotwar system, though in many respects objectionable has been found highly useful in several districts of our recently acquired territories . . . in enabling us to draw forth their resources and to arrive at a knowledge of the full amount of the taxable means<sup>2</sup>.

This was, however, merely a suggestion, by no means to be applied to Northern India, if on enquiry, it should appear objectionable. It was only meant to impress on the Bengal Government "a sense of the importance" which the Directors attached to the exercise of caution in the formation of land-revenue engagements. Moreover, perpetual settlements

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<sup>1</sup> Dispatches to Bengal, Vol. IV, Rev. Dispatch dated 1 Feb. 1811, pp. 69-79.

<sup>2</sup> Idem, pp. 86-87.

settlements involved practical inconveniences. The motives with which they were concluded in Bengal, were no doubt beneficent; <sup>but</sup> ~~and~~ even supposing that they had secured the interests of the land-holders, could they be universally applied and could the interests of Government <sup>be</sup> /equally consulted? It was a time of considerable depreciation of currency in Europe; for the "last twenty-five years," England had been affected by the disease<sup>1</sup>, and in 1810 a special committee had been appointed by Parliament to diagnose its symptoms<sup>2</sup>. If a similar disease were to break out in India, would not the revenue payable in the permanently settled countries create a serious diminution in the public treasury? Further, land-revenue in India has been the main source of public income, a contribution to which Indians were thoroughly accustomed. A tax on consumable commodities would not only be more difficult to collect, but would be less easy of augmentation in a community whose wants were few and habits regulated by traditional dislike of Western luxuries. By limiting the land-revenue therefore, the State would be limiting its income "ignorant of the future extent of the public exigencies<sup>3</sup>." On these grounds a permanent settlement "either

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<sup>1</sup> Dispatches to Bengal, Vol.LV. Rev. Dispatch dated 1 Feb.1811, p.96 sqq.

<sup>2</sup> Hansard XVII, Appendix CCI sqq.

<sup>3</sup> Dispatches to Bengal, Vol.LV Rev. Dispatch dated 1 Feb. 1811, p. 102 sqq.

"either in Cuttack or any of our provinces" was for the moment at any rate, quite out of the pale of practical politics<sup>1</sup>. Let the revenues of the Upper Provinces be administered under a renewed lease not exceeding five years<sup>2</sup>.

To these cogent reasonings, Government opposed plausible, yet obviously antiquated arguments<sup>3</sup>. It is needless to enter fully into the latter, but the attitude of Government towards surveys may be examined. The advantages derived from them in the south, it asserted, could not be expected in Bengal, "Professing only a general knowledge of the measures adopted with a view to the adjustment of the assessment in the territories dependent on the Presidencies of Fort St. George and Bombay and the effect of those measures, we are . . . precluded from offering any opinion upon the expediency of Surveys made in those parts."<sup>4</sup> The experience obtained in Bengal, however, belied the benefits of such practices. Formerly recourse was not infrequently had to them in Bengal, but the chicanery and corruption of the

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<sup>1</sup> Dispatches to Bengal, Vol. LV, Rev. Dispatch dated 1 Feb. 1811 p.111.

<sup>2</sup> Dispatches to Bengal, Vol. LVII, Rev. Dispatch dated 27 Nov. 1811, pp. 127-136.

<sup>3</sup> See the arguments used by Cornwallis in the Cornwallis-Shore Controversy. Fifth Report 1812. Appendix No.5, pp.451, sqq. And Letters Received from Bengal, Vol.61, Rev. Letter dated 14 Dec. 1811.

<sup>4</sup> Letters Received from Bengal, Vol.61, Rev. Letter dated 14 Dec. 1811, para.10.

the large body of native officers necessarily employed in those operations, the exaction and injustice to which the zemindars and others were consequently exposed, and the heavy expenses with which they were attended, induced succeeding Governments to abandon them. The mode of fixing public assessment by actual measurement and computation of the produce of the land of every individual, had long been thus entirely discontinued. "We are satisfied that the most experienced and capable of the revenue officers would deem the revival of it an evil, burthensome and oppressive to the people and unproductive of any substantial benefits to the pecuniary interests of the State."<sup>1</sup> Surveys, it was urged, were "particularly unsuited" to the condition of the Upper Provinces where the lands were in general parcelled out into small properties, the joint owners of which were themselves the cultivators of the soil. A scrutiny into such estates was far more difficult than in Bengal<sup>2</sup>. Government indeed recognized that there were many inconveniences arising from a reliance on zemindari accounts and those of the Canongoes and Patwaries in the adjustment of demands for rents from ryots and tenantry and in fixing the assessment on estates. But these inconveniences, it waived aside as "light, compared with the evils" involved in the process of  
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<sup>1</sup> Letters Received from Bengal, Vol. 61, Rev. Letter dated 14 Dec. 1811, para. 10.

<sup>2</sup> Idem, para. 11.

of a survey and record of rights<sup>1</sup>.

Meanwhile the particulars of the triennial settlement at Agra had reached England. The Regulation of 1807 had sought to hasten a permanent settlement by making it directly dependent on the Court's sanction. The responsibility of the Directors had thus been materially increased. They frankly confessed that Wellesley's measures were far more reasonable than those of Barlow<sup>2</sup>; for, without regard to the state of cultivation, it was most unwise to declare any engagement permanent. Convinced of this as well as the general inexpediency of fixed settlements, they withheld their sanction and offered an interesting suggestion for the consideration of Government.

It will be recollected that the Directors had confirmed the permanent settlement in Bengal, but not, however, without due consideration and some hesitation between Cornwallis's and Shore's proposals<sup>3</sup>. In 1812 they definitely reverted to Shore's scheme. Might not a settlement be concluded for about fifteen years, giving something like a life-security to the landholders, and permitting Government  
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<sup>1</sup> Letters Received from Bengal, Vol. 66, Rev. Letter dated 19 June 1813, para. 11.

<sup>2</sup> Dispatches to Bengal, Vol. LVII, Rev. Dispatch dated 15 January 1812, pp. 305-9.

<sup>3</sup> Parliamentary Papers: Second Report from the Select Committee, 1810; see Rev. Dispatch dated 19 Sept. 1792, Appendix No. 12 (A), pp. 165-76.

at the same time to acquire the necessary knowledge and resources of the country?<sup>1</sup> "The term," they expressly stated, "should rather be too long than too short."<sup>2</sup> Also, it should be made distinct that the renewal of the lease might be subject to an increase of assessment. The land-holders would thus obtain sufficient security and the State a just participation in the growing wealth of the country. The Directors quoted the authority of Adam Smith in favour of this plan<sup>3</sup> and further observed:

"We find that the Sovereigns of India have long been in the practice not only of advancing money to the cultivators and weavers with the view of promoting the agriculture and manufacture of the country, but also of fencing the country against sudden and destructive inundations and of supplying the land in the dry season with the means of artificial irrigation."<sup>4</sup>

The task of banking rivers, of constructing and repairing canals and reservoirs had by "established usage" become a duty of Government. In Bengal the whole of the advantage  
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<sup>1</sup> Dispatches to Bengal, Vol. LVII, Rev. Dispatch dated 15 January 1812, p. 323 sqq.

<sup>2</sup> Idem, p. 330.

<sup>3</sup> Idem, p. 334 sqq.

<sup>4</sup> Idem, pp. 342-44.

of such public works had been conceded to the Zemindars while Government had incurred the trouble and expense of keeping them in order. In 1808 for instance in Bengal the phoolbundy charges amounted to 2,99,629 rupees; in 1809, 2,50,900; and in 1810, 2,57,554.<sup>1</sup> And if in other provinces as in Bengal the primary source of public income were to be permanently limited, Government would inevitably be exposed to the temptation of relaxing its zeal and moderating its disbursements in those useful directions<sup>2</sup>.

In the meantime, the Supreme Government had become aware of the imperious necessity of establishing a more stable control over Northern India. Much progress had been made in the formation of the pending settlements; yet, numerous other duties still remained to be performed. Considerable jagirs granted to individuals were about to fall in and the advantages to be derived from them depended on the care and judgment with which their future settlements were made<sup>3</sup>. The same observation was applicable to muqarari lands, the holders of which paid a fixed but light assessment<sup>4</sup>. Again, several estates held in farm since the first triennial settlement could not, without a violation of the engagements contracted

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<sup>1</sup> Dispatches to Bengal, Vol.LIX, Rev. Dispatch dated 9 September 1812, pp. 476-86.

<sup>2</sup> Dispatches to Bengal, Vol.LVII, Rev. Dispatch dated 15 January 1812, pp. 346-7.

<sup>3</sup> Letters Received from Bengal, Vol.54, Rev. Letter dated 7 April 1809, paras. 29-30.

<sup>4</sup> Idem, para.31.

contracted with the farmers, be restored to the actual proprietors until the expiry of their lease in 1812<sup>1</sup>.

The recent experience of droughts, famine and the depredations of banditti suggested that remissions and suspensions of revenue might frequently be applied for<sup>2</sup>. These were subjects demanding the utmost vigilance, as also the remission of claims to pensions, the supervision of the sale of spirituous liquors, the customs, the mint at Farruckabad, the conduct of Indian officers who were prone to acts of "embezzlement, exaction and oppression" and of the Collectors themselves exposed to "great pecuniary temptation."<sup>3</sup>

In order to secure these objects, Government in 1809 wisely declared permanent the commission temporarily appointed in 1807. It was called the "Board of Commissioners for the Upper Provinces," and Benares till then controlled by the Board of Revenue was placed under its charge. The Board of Revenue at Calcutta was simultaneously reduced from three to two members excluding the President who was a member of the Council<sup>4</sup>.

Side by side with the reform in the higher branch of revenue administration, changes were now made in the lower branch

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<sup>1</sup> Letters Received from Bengal, Vol.54, Rev. Letter dated 7 April 1809, para.32.

<sup>2</sup> Idem, paras. 37-8.

<sup>3</sup> Idem, paras. 39-48.

<sup>4</sup> Idem, paras. 49-52. See also Regulation I of 1809 - Harrington



branch also. Acutated by the motives of economy, of preventing corruption in the service, and oppression on the lesser landholders, and bringing them as far as possible in direct contact with the Collectors, a considerable reduction was effected in the Tahsildari establishments first in Bengal and then in the Upper Provinces<sup>1</sup>. The Directors sanctioned these measures without fully enquiring into their merits. In Bengal perhaps the measures were justifiable as the system there established was more simple, the zemindars being in the habit of paying their revenue direct to the sudder or district treasury. But, in the new provinces they appear to have been premature and liable to grave objection. For one thing, the size of the districts over which the collectors presided, was very large indeed; there were only eleven districts in the whole of the Upper Provinces<sup>2</sup>. The Collectors could not properly manage them without the aid of subordinate Indian officers. No doubt each collector had under him an English

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(cont. from previous page) Analysis of the Laws and Regulations, Vol.II, p.101.

<sup>1</sup> Letters Received from Bengal, Vol.51, Rev. Letter dated 22 May 1807, para. 103.  
 Ditto. Vol.53, ditto. 30 Jan.1808, paras. 50-3.  
 Ditto. Vol.53, ditto. 15 Sept.1808, paras. 48-53.  
 Ditto. Vol.54, ditto. 7 April 1809, paras. 78-9.  
 Also Reg.21 of 1806. Harrington. Analysis &c. Vol.II,p.140.

<sup>2</sup> Harrington. Analysis of the Laws and Regulations, Vol.II, p.299, also p.123.

English assistat, but according to the regulations, while the one was away on tour, the other had to stay at the sudder cutcherry<sup>1</sup> so that, the minute duties of investigating the collections of revenue and the reasons for its fluctuation devolved solely on one person. In those days of slow locomotion these duties must have been necessarily arduous and doubly so under temporary assessments in a new country, a full knowledge of which the covenanted servants of the Company did not yet possess. Corruption admittedly was not universal among the Tahsildars<sup>2</sup>; and granting this one wonders whether it was not feasible to exercise proper supervision over them and to employ them with profit as they were employed by Munro in Madras, rather than to envisage their extinction. After all, to become a Tahsildar was then the highest aspiration of every Indian in the Company's service; and the office was generally filled by respectable persons who had much influence over the people<sup>3</sup>. Fortunately the reductions in the Tahsildari establishment in the Upper Provinces were gradual and limited in extent; but they were sufficient to cause an appreciable decrease in the public revenue

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations, Vol.II, pp. 129 - 130.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol.I - Report of Cox and Tucker, p.42.

<sup>3</sup> Idem, p. 41 & pp. 42-3.

revenue.

The attitude of the Directors, pressed as they were at this period by the load of Company's debts and the necessity of seeking relief by petitions to Parliament<sup>1</sup>, was one of acquiescence in the reductions effected by the Government of Bengal<sup>2</sup>. Both were impressed with the desire of increasing the efficiency of European agency - a laudable purpose which unhappily, however, could not be duly executed save by a diminution in the size of the districts and a corresponding increase in the number of Collectors. The Directors advised Government to be very careful in sending only the most able of the Collectors to the Upper Provinces. They knew that the duties of the Collectors in Bengal were not so arduous and they suggested that a higher salary might tempt the better type of such officers to serve in the new provinces<sup>3</sup>.

The reductions in the Tahsildari establishments coincided with the conclusion of the pending settlements. It has already been remarked that engagements had been made  
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<sup>1</sup> See p. 89 .

<sup>2</sup> Dispatches to Bengal, Vol. LIV, Rev. Dispatch dated 7 September 1810, pp. 393-4.  
Ditto. Vol. LV, ditto. 1 February 1811, pp. 158-60.

<sup>3</sup> Ditto. Vol. LX, ditto. 29 January 1813, pp. 220-30.

with revenue-farmers; and this was particularly so in Cuttack. If the refractory rajahs and zemindars were either unwilling to engage, or were to be excluded, and a scrutiny into rights was to be avoided, it was indeed difficult to conceive how Government could prevent the farmers stepping in, to engage for the revenue. But the farming system had been tried in the time of Warren Hastings in Bengal and found injurious. The Directors would not now acquiesce in it. They condemned it as being oppressive to the tenantry, inimical to the resources of the country, and unprofitable to the State. They once more pressed on Government the necessity of a local survey "which was ever to form the ground-work" and which was yielding favourable results in the Ceded Districts in Madras and Broach in Bombay<sup>1</sup>.

No endeavours were made to follow this sound advice; and in this connection it might be just to enquire whether Government had the requisite machinery for the purpose. The Upper Provinces, unlike Bengal, had Canongoes and Patwarries, the district and village registers. The aid of these ancient officers, which had so judiciously been

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<sup>1</sup> Dispatches to Bengal, Vol. LIX, Rev. Dispatch dated 9 September 1812, pp. 457-64.

been utilised by Munro in Madras,<sup>1</sup> might here also have been usefully resorted to. If the Collectors or special surveyors had been put upon the task, within some years, the lands would have been measured, the rights over them ascertained, and engagements entered into with the representatives of the joint proprietors, the village zemindars or the Talukdars. The powerful Rajahs and Talukdars who had usurped the rights of the lesser landholders might have offered resistance at the outset. But could it not have been suppressed, as it was firmly suppressed by Munro in the Ceded Districts of the south?<sup>2</sup>

In any case the Bengal Government was not disposed to undertake surveys.<sup>3</sup> It, however, recognised that in view of the existence of large tracts of waste land in Sehrunpore and Goruckpore, it was there unwise to declare the settlement permanent and accordingly asked the Directors to withhold their confirmation. But as regards the other districts it still maintained that permanency would bring prosperity.<sup>4</sup>

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- <sup>1</sup> Selections from the Records of the East India House, Vol. I, p. 115 sqq. In Madras there were Potails and Curnams who rendered help to Munro.
  - <sup>2</sup> Gleig. Life of Munro, Vol. I, p. 305 sqq. Arbuthnot: Sir Thomas Munro, p. 70 sqq. Bradshaw: Sir Thomas Munro, pp. 112-13.
  - <sup>3</sup> Letters received from Bengal, Vol. 61, Rev. Letter dated 14 December 1811, paras. 10-12. Also Letters Received from Bengal, Vol. 66, Rev. Letter dated 19 June 1813, paras. 10-11.
  - <sup>4</sup> Letters Received from Bengal, Vol. 58, Rev. Letter dated 31 August 1810, paras. 31-38.

The Dispatch of the Court of Directors dated 29<sup>1</sup> January 1813 reviewed in detail the engagements concluded by the Board of Commissioners. It recapitulated with much force the various arguments against permanent settlements, laying special stress on the evils of the farming system which had been pursued in Etawah and Allyghur. "It was this system" the Directors pointedly remarked, "that ruined the Carnatic under the late Nabobs."<sup>2</sup> Also, they endeavoured to drive home the indispensable necessity of a survey and record of rights by referring to the multitude of conflicting claims to estates, that had been left for the adjudication of the Adalats;<sup>3</sup> and rather than allow the provinces to be mismanaged under farmers or zemindars whose doubtful rights if perpetuated might foster universal misery and unrest, they again offered the Ryotwar system to the serious consideration of Government. They succinctly explained its essentials and transmitted as separate numbers in the packet a large collection of Reports from the Madras Collectors and Munro's instructions issued to his surveyors in the Ceded Districts.<sup>4</sup>  
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<sup>1</sup> Dispatches to Bengal, Vol.LX, Rev. Dispatch dated 29 Jan. 1813, pp.173-316.

<sup>2</sup> Idem, p.181.

<sup>3</sup> Idem, p.193 sqq.

<sup>4</sup> Idem, pp.195-219. Also, Selection of Papers from the Records of the East India House, Vol.I, p.84-131.

The decided preference given by the Home Authorities to a direct collection of revenue from the cultivators had small effect on the Supreme Government. Under such a method it was held that the Company "must suffer enormously" if ever it was to be adopted to any extent in Northern India. The opinions of the "most intelligent and experienced" Bengal revenue officers were invoked to support this view<sup>1</sup>. The Khas system had been "nearly exploded" in the Bengal Presidency<sup>2</sup>; and there were several reasons why it should not be revived. It was impracticable for the Collectors engaged as they were with other duties, and situated at a considerable distance from the different estates to bestow that attention which was essential to supervise the actual collection of rents. Hitherto "an inconsiderable part only" of the year had been employed by them in visits to the various parts of their districts; and even on those few occasions they had found it difficult to direct disbursements, to superintend the works of public utility such as the embankments, and to conduct their numerous miscellaneous duties. If, therefore, the lands were to be held Khas, the almost exclusive management of them would

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<sup>1</sup> Letters Received from Bengal Vol.66. Rev.Letter dated 19 June 1813, para.6.

<sup>2</sup> Idem, para.7.

would be confided to Native officers who "are entirely unqualified by education and principle for the faithful discharge of a trust of that nature."<sup>1</sup> A system of that type might have been successful in other Presidencies; but then, they might have a larger European Agency, a greater number of assistants and again, "it is possible that it may ultimately be discovered as was slowly done in Bengal, that the evils of a most serious nature are absolutely inherent in Khas management and that it will be preferable to adopt the farming system."<sup>2</sup>

It is well to note that the Ryotwar System or the "Khas System" as it was termed in Bengal would have been as inexpedient and unworkable in the Upper Provinces, as the permanent Zemindarry system. Neither the single land-lord ideas derived from Bengal nor the individual responsibility of the ryots to cultivate or relinquish their estates as they liked and to pay the revenue direct to Government suited the North. Here to a large extent, village proprietary bodies existed, and the joint responsibility of these could not be superseded by the sole ownership of single zemindars, farmers or ryots.

Before the arrival of the Court's instructions, however, the Governor General and Council had gauged the strength

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<sup>1</sup> Letters Received from Bengal, Vol.66, Rev.Letter dated 19 June 1813, para.6.

<sup>2</sup> Idem, para.9.



strength of the opposition at the India House. The earlier Dispatches of the Directors had convinced them that it was of no use to persist in enforcing the Regulation of 1807. By his overwhelming sense of respectful obedience to his masters, Barlow had played straight into the hands of the Directors. If their sanction had not been made a preliminary requisite for permanency, Minto most probably would have first declared the settlement permanent and then apprised the Directors of the fait accompli. He was "entirely satisfied of the sound policy or rather the urgent necessity of that measure."<sup>1</sup> Yet, it was highly improbable that the Home Authorities knowing the glaring defects of such a measure in Bengal and impressed by the utter want of adequate knowledge of the new Provinces, would have acquiesced in the scheme of the Governor General. As it was, Minto and his Council had to force their way out from the uneasy situation into which Barlow had placed them; and they attempted to do this in an ingenious and striking manner.

They admitted that according to the Regulation of 1807 the Court's sanction was necessary; and now that the  
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<sup>1</sup> Letters Received from Bengal, Vol.53, Rev.Letter dated 15 Sept.1808, para.46.

sanction was withheld, "strictly speaking" the zemindars or other proprietors of land could have no substantial ground to complain that the public faith had been violated in not declaring their engagements permanent. But the question still remained, in what mode the Court's orders were to be reconciled with the public faith pledged in the proclamation of 1802, and the Regulations of 1803 and 1805<sup>1</sup>. In order to solve this problem they passed Regulations IX and X of 1812<sup>2</sup>, rescinding those parts of the Regulation of 1807 which declared permanency conditional on the Court's sanction and reviving the provisions of the Regulations of 1803 and 1805 which promised permanency subject to two restrictions. The restrictions were, that permanency was to be bestowed on those only who should have held possession of their lands during the whole of the term of the temporary leases and on those estates alone, in which cultivation was in an improved state<sup>3</sup>.

Having thus evaded the need of the Directors' sanction, Government wrote in October 1812 a long letter to the

<sup>1</sup> Letters Received from Bengal, Vol.64, Secret Rev.Letter dated 9 Oct.1812, paras.4 sqq.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol.I, pp.163-5.

<sup>3</sup> Letters Received from Bengal, Vol.64, Secret Rev.Letter dated 9 Oct.1812, para.9.

the Secret Committee reviewing the above-noted measures and requesting support. The Letter added, that in the Ceded Provinces permanency was to have been declared at the close of 1812, but that owing to the general insufficiency in cultivation it would have been limited in its scope. In the Conquered Provinces such a step was due only in 1815<sup>1</sup>. All the same, if the pledge were withheld, the land-holders' confidence would be shaken and their disappointment might result in discontent and general resistance to public authority. "A more powerful incitement to seek redress by combination and violence cannot be given in any country and cannot extend to a larger and more powerful class or community than injuries supposed to be done to the great body of landed proprietors."<sup>2</sup>

Such was the hint dropped to the Board of Control in order to induce it to cancel the Court's orders requiring the formation of temporary leases. But the Board at this time was presided over by Lord Buckinghamshire who had no faith in the Cornwallis system, and <sup>who</sup> ~~seems~~ seems therefore, instead of replying through the Secret Committee, to have asked the Directors

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<sup>1</sup> Letters Received from Bengal, Vol. 64, Secret Rev. Letter dated 9 Oct. 1812, paras. 10-11.

<sup>2</sup> Idem, para. 17.

Directors to draft the reply.

The Directors' reply was equally ingenious, but firm.<sup>1</sup> While concurring fully with Government that the land-holders under the Regulation of 1807 could not have justifiably complained at the withdrawal of the conditional promise of permanency, they held that even according to the new Regulations of 1812, it would still be for them to decide in all practicable cases, which lands were sufficiently improved to warrant permanency. "It is for the constituted Authorities at home, aided by the information transmitted by the Local Government to decide and by a decision in the negative, supposing even the decision to be universal in its application, it does not appear to us that the obligations of the public faith would be at all infringed."<sup>2</sup>

Thus, under Lord Minto, as indeed under his predecessors, the permanent settlement was more than a policy, it was a passion. The Bengal Government accustomed to the system hallowed by Cornwallis's name and for all practical purposes, oblivious of the principles pursued in Madras and Bombay, was thoroughly disinclined to explore new avenues to meet the new needs. But for the persistent pressure of the

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<sup>1</sup> Dispatches to Bengal, Vol.LX, Rev. Dispatch dated 16 March 1813, pp.935-1027.

<sup>2</sup> Idem, pp.977-8.

Home Authorities, the Ceded and Conquered Provinces would have been yoked to the Bengal system. The Proclamation of 1802, the Regulations of 1803, 5, 7 and 12, and above all, the letters of Government to the Directors, were directed towards that end. But the Directors would not yield in this most important matter. The Regulation of 1807 specially strengthened their hands by making permanency conditional on their sanction. And this sanction they resolutely withheld, on the ground of the necessity of caution in undertaking radical changes, the scantiness of information about the tenures and condition of the new country, and the impolicy of limiting for ever the only certain and substantial source of public income. Whatever Government might say or do, and it said and did much to further the Cornwallis system, the Court of Directors and the Board of Control refused to be hurried into blunders. They knew from the reports of numerous Collectors, the glaring defects of the permanent settlement in Bengal itself: the frequent arrears and sales of land, the distress caused to the ryots and to the public Treasury, the ever increasing accumulation of causes in the Civil Courts, and the oppression practised by the Zemindars on the peasantry. They knew that such a measure once adopted, could hardly be remedied. They knew its failure in the South; and when they saw the Ryotwar system of Munro working well in Madras and parts of Bombay Presidency, they felt that a

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like measure might also work well in the Western Provinces. In this they were no doubt mistaken; but such a mistake becomes almost trivial when it is remembered that they preferred the Ryotwar or the Khas system to that of farming, or of perpetually settling with the zemindars. At any rate they urged, with a tenacity which redounds not a little to their credit, that a survey and a record of rights (both employed by Munro in the South) were the essential data on which any solid system must be built. If this advice had been taken, would not Government within a few years, have settled with the joint-proprietors or the village zemindars and so avoided much confusion and trouble? As it was, plausible but weak excuses were made by Lord Minto and his Council - excuses which were not valid in Madras, and which possibly would not have been thought valid in Bengal itself, had not a sacrosanct faith existed there in the errors and omissions of the past.

While Government confined itself to the local experience of Bengal Proper, and paid little attention to whatever did not tally with their preconceived notions, the Home Authorities surveyed the entire field of administrative experience, not of Bengal alone, but of Madras and Bombay as well, and cautiously weighed the opinions of the subordinate officers. For instance, the Report of Cox and Tucker, which incurred the condemnation of the Governor General and Council, received

received the warmest support of the Directors. In fact, it was not only on the views of Munro, but also on this report, containing as it did, the opinion of both the Commissioners, and of nearly all the Collectors of the Upper Provinces, that the Directors formed their own policy of temporary settlements. Lord Minto and his Council assailed this policy and till the end, held that it was wrong. Indeed, this struggle between the Supreme and Home Governments is both interesting and illuminating; but it was an uneven contest. The Board of Control and the Court of Directors united in opposition and bit by bit, Government was forced to give way. The Regulations of 1812 professing to bestow permanency only on the estates sufficiently improved in cultivation, did in reality postpone it. In that year, when the existing settlement expired in the Ceded Provinces, a new engagement was made for five years, on the express directions of the Home Authorities. In Cuttack and in the Conquered Provinces too, temporary settlements were made in 1813 and 1815.

If, however, the Directors attacked the policy of Government regarding settlements, they acquiesced in efforts to improve the administration. They did not oppose the establishment of the Board of Commissioners in the Upper Provinces or the appointment of the temporary Commission at Cuttack. Both these reforms contributed to a stricter control

over

over the new acquisitions and a better supervision over the conduct of the pending engagements, which the Board of Revenue sitting at Calcutta was ill-equipped to exercise. Neither did they offer any effective objection to the partial abolition of the Tahsildari agency; they were alike impressed with the need of increasing the efficiency of the Collectors and of bringing them into direct contact with the people. As will be shown later, the Directors themselves originated this change in Bengal<sup>1</sup>. It proved to be an ill-advised measure, if not in Bengal, at all events in the new provinces, where the Collectors had not the requisite knowledge nor the opportunities to enter into the details of collection. It entailed upon the land-holders, tiresome journeys to the cutcherries; and it could only be condoned on the ground of the embarrassed state of the Company's finances and the occasional corruption among the Tahsildars.

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<sup>1</sup> See p. 141 599.



(2) Bengal, Behar, Orissa and Benares.

During the period of Minto's rule the constant preoccupation and discussion of the revenue measures of the New Provinces left little time to enquire into the problems created by the permanent settlement in the Old Provinces. In Bengal, Behar, Orissa (excluding Cuttack) and Benares the Cornwallis system had been working for more than ten years and both the Supreme and Home Governments were merely trying to minimize some of its inherent imperfections. Reforms were indeed undertaken; but some of them were ill-judged, tardy and little calculated to reach the roots of evil. So long as Government supposed that the system was good in all essentials, and dare not expose its defects to the Directors, no important suggestions could come from home. On the other hand, the Directors were not slow to detect some at least of these defects to which they proposed remedies and which they frequently reminded Government to avoid at all costs in the Ceded and Conquered Provinces.

It has already been observed that in 1807 the Board of Revenue was temporarily relieved of the business of the recent acquisitions<sup>1</sup>. In 1809 its duties were permanently

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<sup>1</sup> See p.108-9

permanently confined to Bengal, Behar and Orissa (including Cuttack), Benares being transferred to the charge of the Board of Commissioners. A change and reduction was also made in its personnel. Up till 1806 the Accountant General sat on the Board of Revenue. In that year the person occupying that double post having retired<sup>1</sup>, the Directors rightly considered that the Accountant General could not efficiently perform the arduous work of the Board in addition to his important duties and ordered the abolition of its fourth member<sup>2</sup>. The arrangement of 1809 though not based on this order, practically gave effect to it by reducing the members from four to three including the President.

This reform, founded as it was on economy, cannot be regarded as inexpedient or short sighted; for while it reduced the strength of the Board of Revenue, it was accompanied by the establishment of a new Board in the distant provinces and secured specialisation in both by a judicious distribution of labour. But the pruning knife applied to the lower branch of revenue did not fail to procure much inconvenience. The retrenchments in the Tahsildari establishments  
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<sup>1</sup> Letters Received from Bengal, Vol. 49, Rev. Letter dated 15 May 1806, para. 90.

<sup>2</sup> Dispatches to Bengal, Vol. I, Rev. Dispatch dated 24 March 1809, pp. 154-7.

in the Lower Provinces were originally carried out owing to the pressure exerted by the Directors. In October 1805, on the report of the Board of Revenue, Government definitely declared that it had not been found practicable to reduce the revenue establishments<sup>1</sup>. Notwithstanding this, the Directors again recommended the measure, asking "whether the native establishment under the Collectors may not admit of some reductions."<sup>2</sup> As a result, Lord Minto's Government reconsidered the subject and in January 1808 wrote back that the "entire abolition of the Tehsildarry establishments" was feasible both with a view of saving of expense and the elimination of the intermediary officers between the Zemindar and the Collector<sup>3</sup>. It was, however, realised that many of the land-holders who were accustomed to pay the revenue on the spot to the Tahsildar, very often objected to the obligation of paying it directly to the sadr treasury. Still, it was hoped that time would soon mend matters and relieve them from the supposed exactions of the Indian Collectors. In Bengal proper, where the Zemindars were few and

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<sup>1</sup> Letters Received from Bengal, Vol.49, Rev. Letter dated 17 Oct. 1805, paras. 70-72.

<sup>2</sup> Dispatches to Bengal, Vol. XLVI, Rev. Dispatch dated 7 Jan. 1807, p. 211.

<sup>3</sup> Letters Received from Bengal, Vol.53, Rev. Letter dated 30 Jan. 1808, paras. 50-3.

Ditto. Vol. 61, ditto. 14 Dec. 1811, paras.96-9.

and substantil, it was possible for them to remit their kists personally or through their accredited agents. This was not the case in Behar and Orissa. Here the Zemindars were numerous and small, mostly themselves looking after their estates. Long and frequent journeys to the sadr cutcherry not only hindered their occupations, but rendered uncertain their regular payments. This measure was inspired by an ill-judged, ineffective economy. By the end of 1811, the annual expenses saved only amounted to about 5600 rupees<sup>1</sup>; and by the close of 1813 the reductions made involved a saving of no more than about one lack a year<sup>2</sup>. It was only then that the Court began to entertain doubts of the utility of its proposal. The Board of Revenue had remarked that in consequence of the measure, Zemindars paying small sums of revenue would have to make "two or three days journey every month to the sudder cutcherry;" and the Collector of Behar had observed that it would take them "four days to arrive at his cutcherry" from different parts of his district. In order to obviate this inconvenience the Directors suggested the adoption of the Board's proposal, that the instalments should

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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, pp. 250-3.

<sup>2</sup> Letters Received from Bengal, Vol. 67, Rev. Letter dated 2 Oct. 1813, para. 78.

should be payable quarterly instead of monthly in cases where the assessment was inconsiderable; but since it was also apprehended that such a reduction in the number of kists might occasion an undue delay or eventual loss in the realisation of public revenue, they ordered Government to institute a thorough enquiry into the effects of abolishing the Tahsildars. But Government took no notice of this order and unhappily the Directors failed to press the matter<sup>1</sup>.

This alteration in the lower branch of revenue was accompanied by a scrutiny into the claims to public pensions and a re-adjustment of the provisions regulating them. It had been the invariable custom under the Company's Government (as it had been under its predecessors) to grant pensions to persons who had rendered meritorious services to the State. In 1808 Government deemed it expedient to establish a general rule relative to the inheritance of pensions and referred the question to the consideration of the Directors<sup>2</sup>. The Directors admitted that grants of that nature must be regulated by circumstances on which the local authorities were better qualified to decide; but they reserved to themselves

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<sup>1</sup> Dispatches to Bengal, Vol. LXX, Rev. Dispatch dated 16 June 1815, pp. 498-503.

<sup>2</sup> Letters Received from Bengal, Vol. 53, Rev. Letter dated 15 Sept. 1808, paras. 70-72.

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themselves the right of confirmation and criticism. To guard against "too great a latitude" on the one hand was as desirable as to prevent occasions for an "unpleasant exercise of power" on the other. Many grants might annually revert to Government and expediency might sometimes arise of continuing them to the heirs of the original grantees. No rule could certainly be devised to govern the conduct of Government on each occasion. All the same, some general propositions might be adhered to, in order to avoid lavishness and to achieve continuity. Services rendered to the State should constitute the only irresistible claim for pensions; in most cases pensions should be limited to the life of the grantees; in no case should they be extended beyond two or at most three lives; they should always be resumed at the expiration of the term for which they were conferred. These principles, the Directors ordered, should be "publicly promulgated" for the information of the people<sup>1</sup>. They also directed that an annual statement be transmitted to them containing a list of all gratuitous pensions, specifying the names of holders, dates and terms of the different grants and grounds on which they had been conferred<sup>2</sup>. The Regulation XI  
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<sup>1</sup> Dispatches to Bengal, Vol. LX, Rev. Dispatch dated 29 Jan. 1813, pp. 122-131.

<sup>2</sup> Idem, pp. 131-3.

of 1813 was accordingly passed with the Directors' instructions in view, which aimed at providing means of detecting fraud and securing complete information<sup>1</sup>. The Home Government never withheld its consent to pensions or charitable allowances made to deserving individuals<sup>2</sup>. In the territories immediately dependent on the Presidency of Fort William the annual total amount of these for instance - including political stipends, but excluding pensions to invalid soldiers - in 1814 was about 19 lacs of rupees<sup>3</sup>.

Alongside of these reforms some important but imperfect efforts were made to reform the evils of the permanent settlement. One of the major considerations overlooked in 1793 and 1795 was the mode in which Government was to be re-imbursed for the failure of the zemindars to pay the stipulated revenue. The practical insight of Shore had foreseen the difficulty<sup>4</sup>, but the optimistic Cornwallis had blundered into the belief that the zemindar "will provide for occasional losses from the profits of favourable seasons."<sup>5</sup>  
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<sup>1</sup> Harrington. Analysis of the Laws and Regulations, Vol. II, pp. 559-61.

<sup>2</sup> e.g. Dispatches to Bengal, Vol. LX, Dispatch dated 29 Jan. 1813, pp. 244-5.

<sup>3</sup> Harrington. Analysis of the Laws and Regulations, Vol. II, Footnote, pp. 561-2.

<sup>4</sup> Fifth Report 1812. Shore's Minute dated 18 Sept. 1789, p. 476, also, Idem, Shore's Minute dated 8 Dec. 1789, p. 478 sqq.

<sup>5</sup> Idem. Governor General's Minute dated 3 Feb. 1790, p. 484.

The Regulation of 1794<sup>1</sup> while subjecting the Zemindar to the sale of his estate on default of revenue payments, had not invested him with summary means of recovering his rent from the ryots. The result had been a continual failure of kists, a material loss to the treasury and a gigantic transfer of estates by sale<sup>2</sup>. In 1799 the situation had been relieved from the point of view of the Zemindar and the State, for the former had been empowered to distrain on the ryot's property for the recovery of rent<sup>3</sup>. This had been done at the sole expense of the ryots, hardpressed, exposed to the Zemindar's exactions and deprived of redress except in distant, costly and congested law Courts<sup>4</sup>.

Despite the facilities of collecting his rent afforded to the Zemindar, he often failed to remit his regular kists and forced Government either to put up his estate for sale or incur arrears and losses. In both these cases discretion was naturally exercised by the local authorities, the home authorities at this time merely remonstrating against any

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations, Vol.II, pp. 356-7. - Reg. III of 1794.

<sup>2</sup> Fifth Report, pp. 59-61; Hunter. Bengal Ms. Records, Vol.I, p. 96 sqq.

<sup>3</sup> Harrington. Laws and Regulations, Vol.III, p.542 sqq.- Reg. VII of 1799. Fifth Report, p.61. Hunter Ms. Records, Vol.I, p. 130 sqq.

<sup>4</sup> See p.170 .



any excesses committed. The subject of "writing off" balances aroused considerable stir during Barlow's short term of office. In the last years of Wellesley's rule balances had accumulated not only in the Zemindari lands but in the Khas mahals and in 1809 the Directors enjoined Government to exercise "great caution" in listening to the petitions of parties for remissions or recommendations of Collectors in their favour. "It must frequently be difficult for us" they confessed "to form a correct judgment of the propriety of your proceedings upon this subject."<sup>1</sup> Still, they wished to be regularly supplied with an account of "the facts in every case."<sup>2</sup> Government attributed the ultimate irrecoverable arrears to various causes; to the actual deficiencies in small estates belonging to the State; to the want of skill and industry in Zemindars which first occasioned balances and then rendered unsaleable the estates so mismanaged; to the temporary casualties of season and permanent loss arising from the encroachment of rivers; and to the difficulties attendant on the management of estates on behalf of infant land-holders and others<sup>3</sup>. To this perhaps we may add the inequalities

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<sup>1</sup> Dispatches to Bengal, Vol.L, Rev. Dispatch dated 24 March 1809. Board's Correction: margin p.111.

<sup>2</sup> Dispatches to Bengal, Vol.L, Rev. Dispatch dated 24 March 1809, p.111.

<sup>3</sup> Letters Received from Bengal, Vol.56, Rev. Letter of 30 Dec. 1809, paras. 7 & 8.

inequalities in the original assessment. The Directors were willing to admit "to a certain extent" the weight of these explanations; but they could not see how Government on the face of these evils could speak of the general prosperity of the country.

However, the Home Authorities, much as they desired, were unable to put a stop to remissions except by encouraging the sale of lands of the defaulting Zemindars - a practice which was utterly distasteful to them. Yet, by the very nature of the permanent settlement, sale was inevitable whenever the Zemindars had incurred large arrears. The purchase of the Zemindari of Bishenpore by Government and its re-sale exposed the manifold evils involved in the general process of sale. Owing to the mismanagement of the Zemindar, his estate fell heavily into arrears and the question arose whether it should immediately be sold or attached by Government and restored to order under the management of a special official. There were several objections against a sale. The disorder that prevailed in the Zemindari precluded an offer sufficient to discharge the public dues. Also, experience suggested the possibility of constant disputes between the purchasers and the members of the Zemindar's family. Generosity prompted the desire to preserve the estate for the support of an ancient family, if it could be done without much injury to the

the interests of Government<sup>1</sup>. Under these circumstances, a commissioner was appointed to Bishenpore to manage the estate. Within a short time however, his enquiries revealed that although ample resources existed for the recovery of public dues, numerous decrees on private claims had been passed against the Zemindar and that applications had been made to the Civil Courts to sell the Zemindari for the liquidation of these decrees<sup>2</sup>. Consequently the only convenient course left for Government was to put up the estate for sale and apply the proceeds after discharging the public dues to the benefit of the private creditors. Eventually Government itself bought the estate<sup>3</sup> and after reselling it at a profit<sup>4</sup>, out of compassion for the Zemindar's "distressed circumstances," granted him a monthly pension of about one thousand rupees<sup>5</sup>.

These unavoidable measures were approved by the Directors, saving the grant of large pensions to dispossessed Zemindars. A liberal provision in such cases (they thought) might

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<sup>1</sup> Letters Received from Bengal, Vol.50, Rev. Letter dated 21 Aug. 1806, para. 37.

<sup>2</sup> Idem, para. 40.

<sup>3</sup> Idem, para. 41.

<sup>4</sup> Letters Received from Bengal, Vol.51, Rev. Letter dated 7 Feb. 1807, paras. 69-71.

<sup>5</sup> Dispatches to Bengal, Vol.L, Rev. Dispatch dated 24 March 1809, p.172.

might not be improper; but considerable allowances in addition to the increasing annual suspensions of revenue, and the risks of losses by sale, might soon impoverish the treasury<sup>1</sup>. It was no doubt true that since 1798/9 there had been a gradual diminution in the arrears due to Government<sup>2</sup>. The arrears of 1806/7 for instance, amounted to less than  $\frac{1}{2}$  per cent of the jumma<sup>3</sup>. It was equally true that the sale of lands in the intervening period had shown a perceptible decline. But these alone could never be taken as the sure index of the general prosperity of the agricultural classes.

Indeed, the apparent security of public revenue had been achieved at the real distress of the ryots. As far back as September 1808 the Directors had complained of the accumulating arrears of suits in the Civil Courts<sup>4</sup>. In 1809 the Sadr Diwani Adalat was accordingly required to submit its opinion. Its proposals included a transference of judicial powers in revenue matters to the Collectors in some districts<sup>5</sup>. As a general measure, Government rejected this  
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<sup>1</sup> Dispatches to Bengal, Vol.L, Rev. Dispatch dated 24 March 1809, pp. 172-6.

<sup>2</sup> Letters Received from Bengal, Vol.54, Rev. Letter dated 7 April 1809, para. 18 - the table is given.

<sup>3</sup> Ditto. Vol. 54, ditto. para. 19.

<sup>4</sup> Dispatches to Bengal, Vol. XLIX, Judicial Dispatch dated 14 Sept. 1818, p. 904 sqq.

<sup>5</sup> Letters Received from Bengal, Vol.56, Judicial Letter dated 21 Aug. 1809, para. 10 sqq.

as inexpedient; though it considered that in the cases of arrears of rent or excess of collection, "the agency of the Collectors may be beneficially employed" and thereby the courts of judicature relieved<sup>1</sup>. In June 1812 the Directors concurred in these views and hoped that the regulations requisite for giving effect to them "when digested by the Sudder Diwanny Adawlut and confirmed by you will enable us to judge definitely of the propriety of the measure."<sup>2</sup>

Government had repeatedly examined the subject of the oppressions of the Zemindars on the ryots<sup>3</sup>. In its correspondence with the Home Authorities, however, it studiously refrained from exposing the unpleasant state of affairs. The reason for this is to be sought in the anxiety which it felt regarding the extension of the permanent settlement into the new provinces and possibly the apprehension which it entertained of the censure of the Directors. Already they had shown a strong dislike to the perpetual settlement. Its introduction into the Ceded and Conquered Provinces in 1812 depended mainly on their sanction. If effective remedies could

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<sup>1</sup> Letters Received from Bengal, Vol.56, Judicial Letter dated 21 Aug. 1809, para. 12.

<sup>2</sup> Dispatches to Bengal, Vol. LVIII, Judicial Dispatch dated 2 June 1812, p.244.

<sup>3</sup> Selection of Papers from the Records of the East India House, Vol.I, p. 209 sqq.

could be applied the evil could be removed without much clamour. These motives seem to explain the silence of the Supreme Government.

Meanwhile in June 1811, a circular was issued to the Collectors of the Lower Provinces requiring them to report their observations on the operation of the existing rules for the distress and sale of property<sup>1</sup>. It explicitly avowed that "substantial grounds exist" for believing that "considerable abuses and oppressions are committed by the Zemindars;" and the reports of the Collectors one and all confirmed this belief<sup>2</sup>. One of the judges about the same time spoke of "A general system of rack-renting, hard-heartedness and exactions through farmers, under-farmers, kutkeenadars and the whole host of Zemindarry amlah."<sup>3</sup>

Even Henry Colebrooke, who in 1808 had professed his "ample faith" in the permanent settlement, admitted that the rules devised for the protection of the ryots had been "ineffectual," having been "perverted into engines of their  
destruction

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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol. I, pp. 220-1.

<sup>2</sup> Idem, pp. 221-56.

<sup>3</sup> Dispatches to Bengal, Vol. LXVII, Judicial Dispatch dated 9 Nov. 1814, p. 323.

destruction" by the Zemindars<sup>1</sup>.

The Regulation V of 1812 based almost entirely on Henry Colebrooke's suggestions<sup>2</sup>, contained provisions regulating both the sales of the estates of Zemindars and the distraint of the property of the ryots. As the sales in the northern provinces had since recently increased and there was reason to believe that there too the ryots had suffered oppression, it was enforced throughout all the provinces immediately dependent on the Presidency of Fort William.

The Regulation rescinded the former rules by which the land-holders were precluded from granting leases or pattas to ryots for a period exceeding ten years<sup>3</sup>. Pattas could henceforth be granted for any period; and they, as also their counterparts, the kabuliyats could be couched in any form agreed on by both parties, provided they did not include arbitrary and indefinite cesses<sup>4</sup>. No person attaching lands on the part of Government or purchasing them at public sales could annul the existing leases on the grounds of collusion, without a judicial decision<sup>5</sup>. In the event of leases being cancelled the established pergunnah rates, where such existed, should

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Judicial Dispatch dated 9 Nov. 1814, p. 260.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol. I, pp. 260-6. Regulation is cited in pp. 272-7.

<sup>3</sup> Reg. 5 of 1812, sec. 2.

<sup>4</sup> Idem, sec. 111.

<sup>5</sup> Idem, sec. 4.

should determine the amount to be collected. Where no such rates existed, collections should be made at the rates payable for land of a similar description in the neighbourhood<sup>1</sup>. Tenants were not liable to pay enhanced rent unless under written engagements or notices served upon them during cultivation<sup>2</sup>.

Several rules of distraint were modified and made more lenient. Distress or sale of the ryot's possessions was declared to be illegal unless he were previously served with a written demand exhibiting the grounds on which it was based<sup>3</sup>. Ploughs and like implements of husbandry, and bullocks and cattle employed in agriculture were not to be distrained on or sold<sup>4</sup>. In addition, steps were taken to mitigate the severity of attachment and to expedite the decision of summary suits in the Civil Courts<sup>5</sup>. Judges were required to refer all such suits without delay to the Collectors for their report<sup>6</sup>. At the same time, to provide for the security of  
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<sup>1</sup> Reg. 5 of 1812, sec. 6 & 7.

<sup>2</sup> Idem, sec. 9.

<sup>3</sup> Idem, se. 13.

<sup>4</sup> Idem, sec. 14.

<sup>5</sup> Idem, secs. 15-19.

<sup>6</sup> Idem, sec. 21.



of the public revenue, Courts were debarred from annulling sales of entire estates at the instance of some of the co-sharers and the power of deciding whether to sell the whole, or particular parts of estates was vested in the Board of Revenue and the Board of Commissioners<sup>1</sup>.

These provisions in the main, undoubtedly manifested a genuine effort to bring relief to the oppressed peasantry. But they failed to take into account some important considerations. What were the pergunnah rates? These were neither definitely fixed nor ascertained, so that the Zemindars could grant pattas at whatever rate they chose to dictate. In that case, would the ryots be willing to receive the pattas? It was extremely unlikely that they would, since they too had their own interests and possessory rights to defend. But if the Zemindar could force the ryots to accept his own terms, as indeed he could, by posting up the pattas for a specified time in his catcherry - a privilege unwittingly given him - how were the ryots to seek redress? All these questions were yet to be solved. As it was, the ryots when oppressed were left with the alternative of a tame submission

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<sup>1</sup> Reg. 5 of 1812, sec. 24.

submission or a long and wearisome journey to the civil court, where ( as will be shown later) the delay amounted practically to a denial of justice<sup>1</sup>.

Both the Home Authorities and Government in fact accomplished little during 1807-13 to improve the land-revenue administration of the Old Provinces. Busily engaged as they were with the problems of the New Provinces, with the question of first rate importance whether permanency was, or was not to be introduced there, they found hardly any time to rectify the defects of Bengal, Behar and Orissa. Government indeed, affected to believe that there were no such serious defects since it obviously suited its purpose to uphold the system which it fervidly wished to extend. In these circumstances, the Directors were kept in the dark about the economic distress of Bengal until the result of the enquiry set up in 1809 reached them in 1813. Still, however, they did detect some at least of the defects and prescribed remedies. Their proposition, the elimination of the Accountant General from the Board of Revenue virtually effected in 1809, cannot be considered to have arisen solely from motives of economy. It enabled Government, as they desired, to form

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<sup>1</sup> See p.170 .

form a compact Board whose members could devote full time to their important duties. Their origination of the abolition of the Tahsildari establishments, was largely the outcome of economy which, as will be seen, was generally inculcated by them at this time. All the same, it was a measure which Lord Minto embraced with enthusiasm. His, as well as the Directors' eagerness to get rid of the intermediaries between the Zemindar and the Collector and to bring the latter into direct and intimate contact with the people, left out of account the hardships with which the lesser Zemindars of Behar and Benares were harassed by being compelled to make a monthly journey to the Sadr outcherry for paying their kists. The Board of Revenue referred to this inconvenience and the Directors began to doubt the benefits of the change. But it was too late. The enquiry which they demanded was not undertaken by Government. Their views regarding the granting of public pensions were alike judicious and equitable. They confessed that such grants could not be well regulated from England. Government should use its own discretion, but at the same time, should always aim at consistency and avoid lavishness. The rules passed in consequence worked well, at any rate, till 1825.

On the subject of writing off balances, the Directors could only warn Government to be cautious and vigilant

vigilant. But could they have done better? It was an evil principally emanating from the permanent settlement and its removal could only have been possible at the risk of encouraging another evil, the sale of land for arrears - equally obnoxious to them. While, however, they could not do away with these, they restrained Government from conferring large pensions on dispossessed Zemindars and rightly so, because that practice if adopted uniformly would not only <sup>not</sup> have had the effect of deterring the zemindars from falling into arrears and incurring sales of their estates, but it would have unreasonably diminished the public revenue. As for the distraint and sale of property of the ryots, it was an evil which had not yet been fully made known to the Directors. Still, they observed the growing arrears of revenue suits in the civil courts, guessed what it portended and waited to be informed that the Collectors, as had been proposed by the Board of Commissioners, had been invested with the necessary judicial powers. Government promised to consider this measure, but actually shelved it as being contrary to the Cornwallis Code. The Regulation V of 1812 therefore went only to the extent of requiring the judges to refer revenue suits to the Collectors for report, a tardy reform, which, we shall see, was severely criticised by the Home Authorities during the succeeding Government<sup>1</sup>.

<sup>1</sup> See p.263 sqq.

### CHAPTER III

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#### JUDICIAL ADMINISTRATION IN THE PRESIDENCY OF FORT WILLIAM IN BENGAL (1807-13).

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##### (1) Civil Justice.

The judicial system of Cornwallis established in the Lower Provinces in 1793 was, in its essentials extended to Benares in 1795 and the Ceded and Conquered Provinces in 1803-5. Before Lord Minto's arrival in India many of its latent defects had come to light; and these, during his rule caused much anxiety to the Indian as well as Home Authorities. Growing arrears of causes in the Civil and Criminal Courts demanded a speedy remedy. The jurisdiction and constitution of the Courts in many instances required a readjustment and reorganization. The appointment of additional and assistant judges suggested itself as expedient. It was also advisable to ascertain whether Collectors might not be invested with certain judicial powers. Again, the Regulations had <sup>introduced</sup> ~~instituted~~ a complicated code of Laws and a lengthy and often perplexing procedure in the Courts. Measures were to be taken to analyze and simplify them. At all events, the Company's servants should be given competent training in judicial duties.

A review and reform of that nature necessarily involved additional expenditure, and against this, a host of troubles presented themselves. The Wars of Wellesley had cost an enormous sum and although new territories had been acquired, their surplus revenue was found utterly insufficient to discharge large loans borrowed in India. Very recently, Government had funded a ten per cent. floating debt by an eight per cent. loan, and discharged two biennial ten per cent. loans of 1804 and 1805 by a new loan of eight per cent.<sup>1</sup> At home the situation of the Company was far from prosperous. Already it had exported considerable bullion to meet Indian demands and "any further supplies," as the Directors confessed, were impossible, in view of the continued pressure of the Napoleonic Wars and the consequent difficulty of marketing the Company's investment.<sup>2</sup> In 1806-7 the deficits of the three Presidencies were more than three million pound sterling.<sup>3</sup> With a revenue of fifteen million sterling, the charges thus exceeded the income, while the Indian debt stood at about thirty millions.<sup>4</sup> These unpropitious circumstances drove the Company

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<sup>1</sup> Dispatches to Bengal Vol. XLVIII, Public Dispatch dated 9 Dec. 1807.

<sup>2</sup> Idem, pp. 7-11.

<sup>3</sup> Parliamentary Papers. Second Report of the Select Committee (1810), pp. 78-9.

<sup>4</sup> Dispatches to Bengal, Vol. XLVIII, Public Dispatch dated 9 Dec. 1807, pp. 19-20.

Company to petition Parliament for aid, a request which opened up the whole question of the renewal of the Charter<sup>1</sup>.

Despite such financial embarrassments, attempts were nevertheless made to introduce reforms. From time to time the Directors recommended various measures and carefully considered the proposals of Government, and in doing this, though they closely scrutinised the probable expenditure, they never hesitated to order or adopt reforms which they believed to be necessary.

Of these, perhaps, one of the most important was the re-organisation of the Sadr Diwani and Nizamut Adalats. Up till 1801 these final civil and criminal tribunals of the Company were formed by the Governor-General and the members of the Supreme Council. In that year, Wellesley, by reason of the increasing public duties of Government, the unavoidable delays that had hence arisen in the proceedings of the Courts, the necessity of "impartial, prompt and efficient administration of justice," and the expediency of separating the Judiciary from the Legislature and Executive in the State, laid it down that the ~~Courts~~ of Sadr Diwani and Nizamut Adalats should consist of three judges; that the Chief-Judge should

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See p. 89 .

should be neither the Governor-General nor the Commander-in-Chief, but a junior member of the Council; and that the second and third judges were to be covenanted civil servants not being members of Council<sup>1</sup>.

It will be noticed that the entire separation of the Judiciary from the Executive was not yet complete. In 1805 having extended the Bengal code into the Conquered Provinces, Government deemed it requisite to take that step. It declared that like the two puisne judges, the Chief-Judge should no longer be a member of the Governor-General's Council<sup>2</sup> and supported this measure by a plausible but by no means convincing argument before the Directors. Experience (it said) had evinced that the various important duties of the Executive rendered it impracticable for any of its members to sit in the Judiciary. Adalat work as a result had been performed by only two members. This <sup>diminution</sup> distinction in the strength of the Courts was open to more than one objection. It might impair efficiency; in the event of a difference of opinion among the two judges might delay justice by making

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821) Vol. I, p. 131.

<sup>2</sup> Idem, p. 132-3.



making the decree or sentence referable to the Chief-Judge; and so long as the Chief-Judge remained a member of the Council, might interrupt the executive business of Government. <sup>Moreover</sup> However, by the existing constitution, the Governor-General in Council took cognizance of and decided upon many cases which were afterwards liable to be brought up before the Courts of Justice and in which Government itself might be a party. It was therefore "extremely desirable" that such cases should be decided by judges "entirely distinct from and unconnected with the members of the Government."<sup>1</sup>

But the Directors could see "no just reason" for the increase in expenditure and still less for the mode in which it was incurred. They were "at all times" ready to attend to the suggestions of Government for any new arrangements; but they expected that "no changes of importance" were to be made until their opinion was taken, save in those cases in which public exigencies might "render the delay inconvenient." The reform in question appeared to be undertaken more with a view to remove theoretical than practical defects. At any rate, no instance

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<sup>1</sup> Letters received from Bengal, Vol. 49, Judicial Letter dated 17 Oct. 1805, para. 47.

instance of injustice to individuals or injury to Government had been mentioned. Could not the functions of the Courts be duly administered by two puisne judges with the occasional assistance of the Chief-Judge who was also a member of the Council? The union of the two characters in this respect could hardly be detrimental as it was evident that no complaints had yet been preferred against it. On these grounds the Directors ordered Government to revert to the scheme of 1801 which had been approved by them.<sup>1</sup>

These instructions exhibit partly an aversion to the general policy of Wellesley and partly an ignorance of the actual state of affairs. His independent attitude which had so much galled the Directors was still fresh in their minds,<sup>2</sup> and coupled with this was the fact that he had not sufficiently explained the increase in the duties and responsibilities of the superior Adalats. Their conclusions therefore were in some respects untenable. Still, they had immediate effect on Barlow. On the receipt of the orders from home, he passed Regulation IV of 1807, by which the member of the Council was once more reinstated as the  
Chief-Judge

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<sup>1</sup> Dispatches to Bengal, Vol. XLVI, Judicial Dispatch dated 7 Jan. 1807, pp. 233-45.

<sup>2</sup> See p. 37 *sqq.*

Chief-Judge of the Courts; but instead of the two puisne judges as formerly, their number was now increased to three.<sup>1</sup>

Barlow, however, felt it incumbent upon him to justify the policy of Wellesley. It was, he contended, the logical outcome of the arrangement of 1801: a complete separation of the Judiciary from the Executive "in form and substance" was a wise maxim of well governed states.<sup>2</sup>

In India, it had a peculiar significance. According to the Cornwallis Code and the recently enacted Regulation VIII of 1806, on the institution of a complaint against a Collector of revenue or customs, or a mint-master, or a commercial, salt or opium agent, or any assistants of such officers, the judge, previously to calling upon the defendant should transmit a copy of the complaint to the Governor-General in Council for his orders. The Governor-General in Council after making enquiries through the Board of Revenue, or Board of Trade, or any other mode, was to determine whether the cause should be defended as a public suit by Government, or as a private suit by the person against whom it was brought.<sup>1</sup> In either case, "it must be in a high ~~degree~~ degree

<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p.133.

<sup>2</sup> Letters Received from Bengal, Vol.52, Judicial Letter dated 31 July 1807, para. 20.

<sup>3</sup> Idem, paras. 22-24.  
See also, Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p.173.

degree satisfactory" to the people that the Court by which such causes were to be tried in the last resort - for only an inconsiderable portion of them were of sufficient magnitude to be appealable to the Privy Council - should consist of judges wholly unconnected with the Governor-General in Council<sup>1</sup>.

Still more in Criminal causes was Government to be considered a party. As the conservator of the general peace of the country it had often occasion to furnish the magistrate with special instructions respecting the apprehension of public offenders, the commitment of such persons to take their trials before the regular courts of criminal justice and the conduct of the prosecution. In several of those causes the prosecution was conducted on the part and in the name of Government. Was it not proper then that the ultimate decision in such suits, affecting as it frequently did the life of the accused, be left to the judges whose minds could not have received any premature impressions from the correspondence which might have taken place previously<sup>2</sup> to the formal trial of the cause?

Thus

<sup>1</sup> Letters Received from Bengal, Vol.52, Judicial Letter dated 31 July 1807, para.27.

<sup>2</sup> Idem, para.28.

Thus upholding his predecessor's policy which he was now compelled to abandon, and which he wished the Directors to reconsider, he supported his own measure, the appointment of an additional judge, by incontestable evidence of the growing business of the Courts. He pointed out that they regularly sat on every week-day. He expatiated on the increase in the number of appeals admitted to them and the comparative diminution of their decision on such appeals.

In 1801 there were only 34 inferior courts (Provincial, City and Zillah) under their control; in 1807 there were 51. The extension of the Cornwallis system into the new provinces had resulted in a vast increase in their duties and responsibilities<sup>1</sup>.

In the face of these facts the Directors willingly sanctioned the additional appointment. As for the expediency of separating the Judicial from the Legislative and Executive powers, however, they held, not without reason, that though "theoretically just" it was "hardly ever perfectly" reducible<sup>2</sup> into practice. On the other hand, it appeared advantageous to have a member of the Supreme Council in the Superior Courts. Admittedly numerous defects existed in the administration of justice. In the new provinces it was clearly in a state of infancy

<sup>1</sup> Letters Received from Bengal, Vol.52, Judicial Letter dated 31 July 1807, paras. 29-43.

<sup>2</sup> Dispatches to Bengal, Vol.LVII, Judicial Dispatch dated 14 Feb.1812, pp.677-80.

infancy. In these circumstances, instant correction and sound supervision was highly essential. Instead, therefore, of depending solely on the periodical reports of the Superior Adalats, might it not be better to rely on the personal experience of the member of Government as well?<sup>1</sup>

Meanwhile, the business of the Superior Courts was still increasing. In January 1811, there were 198 civil and 178 criminal causes pending before them. Owing to the vigorous measures pursued against dacoity, the rate of increase in the criminal trials became very rapid, so that by the beginning of May the arrears of criminal suits swelled into 234.<sup>2</sup> To solve the difficulty Minto successively appointed two additional temporary judges to the Sadr Diwani and Nizamut Adalats and withdrew from these Courts the member of Government.<sup>3</sup> Also, he made room for more additional appointments in the future. Regulation XII of 1811 specifically declared that the Superior Courts should "in future consist of a Chief-Judge and of as many puisne judges as the Governor-General in Council may from time to time deem necessary."<sup>4</sup> The

<sup>1</sup> Dispatches to Bengal, Vol. XLIX, Judicial Dispatch dated 14 Sept. 1808, pp. 904-15. Also, Selections from the Records of East India House, Vol. II, p. 95 sqq.

<sup>2</sup> Letters Received from Bengal, Vol. 61, Judicial Letter dated 29 Oct. 1811, paras. 15-17.

<sup>3</sup> Idem, paras. 18-19.

<sup>4</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 133-4. See also, Letters Received from Bengal, Vol. 61, Judicial Letter dated 31 Dec. 1811, paras. 6-12.

The Directors readily acquiesced in the actual as well as temporary additional appointments<sup>1</sup>; but they distinctly wished it to be understood that they had consented to the withdrawal of the Councillor, not from a conviction of any harm which might result from his dual capacity, nor from a belief in the increased duties of the Executive, but wholly<sup>2</sup> from a desire to enhance the speedy trial of suits.

This was undoubtedly a genuine desire. Since 1801 they had shown much concern at the growing arrears of civil causes in the inferior courts and advised Government to undertake measures to bring relief to the suitors<sup>3</sup>. But despite some attempts at reform, the evil had continued. "The accumulation of arrears" said the Directors in 1808 "is, we believe, unprecedented in the judicial courts of any civilised government in the world."<sup>4</sup> On 1 January 1807 the total of the civil causes pending before the Sadr Diwani Adalat and the several provincial, city and zillah adalats, amounted to the large number of 121,453<sup>5</sup>. An obvious course was

<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Judicial Dispatch dated 28 Oct. 1814, pp. 147-8.

<sup>2</sup> Idem, pp. 561-7.

<sup>3</sup> Fifth Report (1812), p. 63.

<sup>4</sup> Dispatches to Bengal, Vol. XLIX, Judicial Dispatch dated 14 Sept. 1808, p. 908.

<sup>5</sup> Idem.

was to increase the efficiency of the service and to simplify the procedure in the Courts. With this view, the Directors specially recommended to the consideration of Government a paper containing various suggestions on the Indian Judicial system, addressed to the Chairs by Major James Leith, a Judge-<sup>1</sup> Advocate of the Madras Army. This paper proposed for the guidance and benefit of the judges, the publication of the judicial decisions of the Courts; the study of the civil law of Europe; the appointment of European pleaders to the Superior tribunals; the encouragement of translations of Sanskrit tracts on Hindu law; the issue of a monthly journal containing discussions on subjects of jurisprudence, extracts from well-known legal writings, and information on points of Hindu and Muhammadan law. Besides this, to suppress the widely-prevalent crime of forgery, the guilty should be liable to capital punishment, and to avoid confusion, conflict and delay in decision, a short, succinct and systematic digest of the<sup>2</sup> existing regulations should be made.

Government professed to give "every attention" to these

<sup>1</sup> Dispatches to Bengal, Vol. XLIX, Judicial Dispatch dated 14 Sept. 1808, p. 904 sqq.

<sup>2</sup> Selections from the Records of East India House, Vol. II, pp. 95-104.



these suggestions<sup>1</sup>; but what it actually did fell far short of them. Still, the reforms introduced in order to improve the instruction of covenanted servants destined for the judicial department and to regulate their promotion in the service, were not without merit. A Professor of Law was appointed in the College of Fort William to teach the principles of jurisprudence, in addition to the professor of the Regulations who was to continue his lectures as usual. It was also determined that the covenanted servants who on quitting the College might be selected in the judicial department, should be first attached to the Sadr Diwani and Nizamut Adalats as assistants to the Registers of those Courts until their services might be required in the interior of the country. Before regular appointment these officials were to be examined every six months in their proficiency<sup>2</sup> in general jurisprudence, knowledge of the Regulations and practical duties as Registers, judges, magistrates or justices of the peace. Also, a line was clearly drawn between the judicial and revenue service. Persons entering either of these services should rise in that service alone; and no deviation was to be made from this rule, except on the ground of public expediency.  
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<sup>1</sup> Letters Received from Bengal, Vol.54, Judicial Letter dated 7 April 1809, paras. 4-7.

<sup>2</sup> Idem, paras. 79-85.

The Directors highly approved these measures and applauded the division of the service into separate channels. The whole scheme they expected would, while securing a constant succession of officials "qualified by education and matured by experience," give to the courts of justice" a weight of talent, a regularity of exertion, and a general consistency of administration." <sup>1</sup> It might however be doubted how far the policy was just or feasible. The provisions for the training of the covenanted servants both in the College and outside it, under the direct supervision of the Superior Adalats, were certainly calculated to improve efficiency. But the distinct line of demarcation between the revenue and judicial service at this time was fraught with a peculiar inconvenience. For the judge and magistrate of the Cornwallis system had to decide revenue suits, disputes over the boundaries of lands, the forcible dispossessions of the ryots and various other oppressions practised by the Zemindars or land-holders. Such suits in the early nineteenth century, were numerous and difficult to decide. There was no survey, no record of rights, nor the proper means of securing credible witnesses. A fair knowledge and acquaintance gathered by personal observation of the general agricultural conditions was as essential to the Judge as it was to the Collector. And if it is remembered that the

1 Dispatches to Bengal, Vol. LVII, Judicial Dispatch dated 14 Feb. 1812, pp. 194-7.

the judge-magistrate seldom left his station to make any enquiries on the spot regarding the origin and nature of land-disputes, it might be wondered whether an experience as Collector in the initial stages of his career might not have better qualified him for the due discharge of his duties.

This reform intended to increase the efficiency of the service coincided with a futile attempt to readjust the salaries of the judges. On the separation of the judicial and revenue authorities in the Lower Provinces in 1793 and in Benares in 1795, the judge had been authorised to draw the same allowances as before received by him in the joint capacity of Collector-Judge-Magistrate. Originally fixed mainly with reference to the jumma of the Zillah, this salary was but an imperfect criterion of his duties and responsibilities. It was not based, as it should have been, on the extent and population of the district, the condition of landed property and commerce and the consequent degree of inclination to resort to the Court<sup>1</sup>. In 1793 perhaps these factors did not matter much; but by 1806, disturbed as they certainly were by the effects of the permanent settlement, they demanded consideration. At the same time the alterations made in the size of the districts appeared to invite a revision in the scale of salaries<sup>2</sup>.

Barlow

<sup>1</sup> Letters Received from Bengal, Vol. 49, Judicial Letter dated 15 May 1806, paras. 29-30.

<sup>2</sup> Idem, para. 31.

Barlow therefore proposed that the salaries of the Judge-magistrates of Buckergunge, Chittagong, Rungpore, Sylhet and Ranghur ranging from 24-26,000 rupees per annum should be increased to 26-29,000; that of Burdwan, Hooghly and Rajeshahy be reduced from 36-33,000 to a uniform 32,000. Also, since the third judges of the Provincial Courts of Appeal and Circuit for Calcutta, Dacca, Moorshidabad, Patna and Benares performed as much work as the second judges, their salaries were to be increased from 35 to 40,000 rupees per annum while those of the Registers of these Courts were to be reduced from 1,000 to 500 rupees per mensem .

That Barlow was not impelled by any motives of economy in these measures, is abundantly clear; the net reduction involved in them amounted only to the small sum of 200 rupees a year<sup>2</sup>. That he was satisfied of the "sound policy" of amply rewarding all situations of trust, he frankly avowed to the Directors. But the time chosen by him for this mode of revision, was unfortunate. With an Indian debt of 30 million pounds sterling, and a deficit of  $\frac{3}{4}$  millions in the income<sup>3</sup>, the Directors were not to be expected to lose any opportunities

<sup>1</sup> Letters Received from Bengal, Vol. 49, Judicial Letter dated 15 May 1806, paras. 32-42.

<sup>2</sup> Idem, para. 43.

<sup>3</sup> See p. 161 .

opportunities of pressing for reductions. They were prepared to agree that liberal salaries should be offered for the services of able men; "but the term liberal is relative; the scale of allowances in any state ought . . . to be proportioned to its means and you must be sensible that . . . our Indian expenditure exceeds what the standard of our income can afford."<sup>1</sup> Hence, while they confirmed the proposed reductions they withheld their sanction for the increases. The maximum salaries of the zillah and city judges, they directed, should be fixed at 30,000 rupees a year;<sup>2</sup> and Minto faithfully<sup>3</sup> carried out these orders in the Lower Provinces . It is true that this tended to equalise the emoluments of the Collectors and the judges; but the distinct line of separation drawn about the same time between their respective services eliminated the keen competition between them and so avoided the ill-effects which might have resulted from the transference of the best men from one branch of the service into another. In the new provinces the salaries of the judges remained unaltered,<sup>4</sup> the maximum being 32,000 rupees per annum ; and this was by no

<sup>1</sup> Dispatches to Bengal, Vol.XLIX, Judicial Dispatch dated 14 Sept.1808, pp.925-929.

<sup>2</sup> Idem, pp.929-35.

<sup>3</sup> Letters Received from Bengal, Vol.54, Judicial Letter dated 7 April 1809, paras.17-18.

<sup>4</sup> Idem, para.18.

no means undesirable since the pick of the service were assuredly needed there for the due establishment of settled order.

The same pressure of economy that wrecked Barlow's plan for re-adjusting salaries hindered in some degree, the re-organisation of the jurisdiction and personnel in the zillah and city courts. In this respect, however, Barlow might be held primarily responsible as the principal changes were made by him on the strength of a general lecture on retrenchments delivered by the Directors. The annexation of the city jurisdiction of Moorshidabad to that of its zillah court, involving as it did the complete abolition of the European and the partial reduction of the Indian establishment<sup>1</sup>; the abolition of the fourth judgeship which had as a special case been added to the Provincial Court of Dacca<sup>2</sup>; the incorporation of the northern division of Seharunpore with that of its southern division<sup>3</sup> - these were measures<sup>4</sup> mainly founded on economy. The Directors approved them, as well

<sup>1</sup> Letters Received from Bengal, Vol. 49, Judicial Letter dated 15 May 1806, para. 26.

<sup>2</sup> Idem, para. 28.

<sup>3</sup> Ditto. Vol. 50, ditto. 21 Aug. 1806, paras. 31-34.

<sup>4</sup> Dispatches to Bengal, Vol. XLIX, Judicial Dispatch dated 14 Sept. 1808, p. 924. Also, Dispatches to Bengal, Vol. LIII, Judicial Dispatch dated 27 Feb. 1810, pp. 380-1.

well they might, since no material objections were mentioned by Government. But the separation of the judicial and revenue authorities in Cuttack<sup>1</sup>; the revival of the court of civil jurisdiction in Calcutta<sup>2</sup>; the substitution for the Political Agent in Bundelcund of a Judge-magistrate<sup>3</sup>; these showed that necessary reforms were not neglected. The Directors did not object to them, save in the second mentioned instance, and then with much reluctance<sup>4</sup>.

No great changes in the civil jurisdiction of the inferior courts were made during Minto's administration. The major question that confronted him was how to lighten the load of arrears of civil suits in the several Courts. The Directors had noticed this with grave concern and to facilitate decision and appeals recommended a simplification of procedure and an avoidance of unnecessary repetitions and amplifications in the records<sup>5</sup>. Government took steps to secure these objects. The different courts were informed of the instructions of the  
Directors

1 Letters Received from Bengal, Vol.49, Judicial Letter dated 17 Oct. 1805, paras. 69-73.

2 Ditto. Vol.49, ditto. 15 May 1806, paras.11-15.

3 Ditto. Vol.51, ditto. 22 May 1807, paras.28-9.

4 Dispatches to Bengal, Vol.XLIX, Judicial Dispatch dated 14 Sept. 1808, pp.917-9.

5 Idem, pp.905-7. Also pp.914-16.

Directors through the Sadr Diwani Adalat<sup>1</sup>, and in addition an important Regulation was passed in 1810 (Regn.XIII) to hasten the business and procedure of the Provincial Courts. The existing rules required that two of the three Judges of these appellate tribunals should be present to hold a Court or to pass orders or judgments. But recently, owing to the extension of their jurisdiction (Regn.XIII, 1808) - causes not exceeding in amount or value 5000 rupees previously appealable to the Sadr Diwani Adalat had been made referable to the Provincial Courts in the first instance - their work had greatly increased<sup>2</sup>. It was therefore declared that a single judge was competent to hold the regular sittings of the Courts; to admit or reject appeals "on the ground of delay in information or other default;" to pass orders respecting the admission of evidence, examination of witnesses, and "all other points connected with the trial of the suit;" to commit or hold to bail for trial before the Court of Circuit witnesses guilty of perjury, and to receive all miscellaneous petitions. And although consistently with the spirit of justice he was not authorised to reverse or alter the decisions of the judges,  
assistant

<sup>1</sup> Letters Received from Bengal, Vol.54, Judicial Letter dated 7 April 1809, para. 7.

<sup>2</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p.111.



assistant judges or Registers of the Zillah and city courts until he had obtained the opinion of one or both of his colleagues, he was empowered to correspond on all matters with the subordinate and superior courts and with the Governor-General in Council<sup>1</sup>. Another salutary change was also made. Formerly the Provincial Court was held "three days in the week or oftener as the business shall require it;" in future it was to be held daily, except on Sundays and established holidays; and if any circumstance should prevent a daily sitting for two successive days, "the same shall be reported for the information of the Sudder Diwanny Adawlut."<sup>2</sup>

Alongside of these reforms Minto resorted to other methods to relieve the congestion of causes in the civil courts. In 1803 Wellesley had appointed assistant judges in the Lower Provinces and empowered them to decide original suits or appeals from the decision of Registers referred to them by the Zillah and City judges<sup>3</sup>. Since their verdicts were considered final or appealable to the Provincial Courts as if pronounced by their immediate superiors (the Zillah and City judges) they must have played a not unimportant part. In 1805 the

<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 111-113.

<sup>2</sup> Idem, p. 114.

<sup>3</sup> Idem, 1st edition, Vol. I, p. 98. Also, Fifth Report (1812), p. 64.

the experiment had been extended in the new provinces, so that Minto could point out precedents in support of his policy. But there were now three new factors to contend with; the policy of Barlow, the state of the finances and the attitude of the Home Authorities. In 1806, the apparent progress made in the reduction of causes pending before the judges of the city of Benares and the districts of Behar and Dacca, had enabled Barlow to abolish the office of assistant judge at those stations<sup>1</sup>. In December 1807 the Directors had in a masterly manner fully reviewed the precarious condition of Indian finance and inculcated the necessity of all practicable re-trenchments in administration<sup>2</sup>. Yet, Minto could think of no immediate and effective remedies but those applied by Wellesley. In 1809 he appointed assistant judges at Chittagong, Jessore, Jaunpore, and Nuddea, and wrote homethat he was "averse from" additional like appointments "solely on the ground of expense."<sup>3</sup>

The Directors fully acknowledged the gravity of the situation and sanctioned his measures not without, however, expressing their "earnest hope that you will not be induced to extend it further."<sup>4</sup> On 28 April 1809 Government had signified

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- 1 Letters Received from Bengal, Vol.49, Judicial Letter dated 15 May 1806, para. 9.
  - 2 Dispatches to Bengal, Vol.XLVIII, Public Dispatch (separate Finances) dated 9 December 1807, p.3 sqq.
  - 3 Letters Received from Bengal, Vol.56, Judicial Letter dated 21 Aug.1809, para.2. Also, ditto. Vol.54, ditto. 7 April 1809, para. 89.
  - 4 Dispatches to Bengal, Vol.LVIII, Judicial Dispatch dated 2 June 1812, pp.236-9.

signified an intention to suspend the mission of assistant judges to some stations until arrears in others should have been cleared away; implying a design to employ the same persons as assistant judges successively in different districts where the occasion for them might be urgent. The Directors developed this plan and propounded some practical suggestions. A sufficient number of assistant judges should be set apart, at the disposal of the Sadr Diwani Adalat to be dispatched to whatever station required their services. From the opportunities which would thus be afforded to them they would acquire much local knowledge which would qualify them for the more important situation<sup>1</sup> of the Zillah or City Judges; while the handsome rate of salary fixed for them - 1000 rupees per mensem - would make their offices objects of laudable competition to the Registers<sup>1</sup>. Government adhered to these views but appointed additional assistant judges at Moorshidabad, the 24-Pergunnahs, Sarun, Goruckpore, and Burdwan<sup>2</sup>.

It is well to note that the assistant judges were employed merely as a temporary expedient. The moment<sup>the</sup>

<sup>1</sup> Dispatches to Bengal, Vol. LVIII, Judicial Dispatch dated 2 June 1812, pp. 239-43.

<sup>2</sup> Letters Received from Bengal, Vol. 65, Judicial Letter dated 30 Jan. 1813, para. 10.

the reduction of undecided causes was brought "within reasonable limits" their services were discontinued as at Sarun, Jaunpore and Midnapore. This was done mainly on the ground of economy; both the Directors and Government were unwilling and indeed could not readily multiply the number of Assistant judges. But unless they were extensively and permanently employed, it is difficult to see how arrears could ever be got rid of; for the disease - and such it seemed - was neither intermittant nor sporadic; in almost every Zillah, save in a few jungle mahals, it steadily and persistently spread and with the growth of time grew in virulence. If on January 1, 1807 the pending civil suits, before all courts, were 121,453, on January 1, 1813, they amounted to 142,406; an increase of nearly 21000 in spite of the various means<sup>1</sup> adopted for speedy trials.

In these circumstances, was it not possible to criticise the Cornwallis system itself? The assistant judges had been appointed as additional aids to the Zillah and City judges; and the latter had failed to cope with the arrears of civil causes chiefly because of their double capacity of judge and magistrate. In consequence of the drastic measures directed

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<sup>1</sup> Dispatches to Bengal, Vol. LXVIII, Judicial Dispatch dated 9 Nov. 1814, pp. 309-11.

directed against dacoity, their police and criminal duties, although partially discharged by joint and assistant magistrates, had been still rapidly increasing<sup>1</sup>. In a valuable report dated 1 March 1812 the Superintendent of Police for the Lower Provinces had depicted in detail the diverse inconveniences that had arisen from the union of the civil-judgeship with police-magistracy<sup>2</sup>. The second judge of the Court of Circuit for the Division of Dacca had observed that in spite of the incessant and exclusive attention bestowed by the judge-magistrate of Sylhet on the "discharge of his foujdarry duty . . . the arrears in that department are here most uncommonly heavy"<sup>3</sup>. The Directors were profoundly struck by such remarks. "It is impossible", they said, "in an extensive community for a single person to administer these two departments (civil and criminal) with regularity and dispatch. So long as the present system shall continue there must be a constant accumulation of arrears in the several courts, which will no sooner have been cleared away by the labours of an assistant judge, than<sup>a</sup> the evil will again recommence<sup>h</sup>

<sup>1</sup> See p.214-15.

<sup>2</sup> Dispatches to Bengal, Vol. LXVI, Judicial Dispatch dated 12 Oct. 1814, p.12-13.

<sup>3</sup> Ditto. Vol. LXVI, ditto. pp. 63-4.

recommence the instant of his removal to another station."<sup>1</sup>  
 To them, the "necessity" of separation of the office of  
 magistrate from that of the civil judge appeared imperative;  
 and as will be shown later their choice for the former office  
 fell on the Collector.

Meanwhile the disputes between the land-holders over  
 their titles to estates and their boundaries, constantly  
 resulting in violent affrays and forcible dispossession, were  
 attracting attention. The Superintendent of Police for the  
 Western Provinces, Mr. Guthrie, in his report of 21 February  
 1811, had referred to the "frequent occurrence of affrays on  
 account of the disputed possession of land or crops."<sup>2</sup>  
 Mr. Fortescue, the Judge and Magistrate of Allahabad, who had  
 made a special study of the subject, had pointed out that the  
 evil was wide-spread, that in his Court alone there were 244  
 such suits and that even upon a most favourable computation  
 it would take him no less than three years to dispose of  
 them.<sup>3</sup> Two courses were open as effective cures: to refer all  
 these disputes whether they involved violence or not to the  
 magistrate for his immediate summary decision; or to refer  
 them

1 Dispatches to Bengal, Vol. LXVI, Judicial Dispatch dated  
 12 October 1814, pp. 13-14. Also, Idem, p. 62. Also,  
 Dispatches to Bengal, Vol. LXV, Judicial Dispatch dated  
 30 Sept. 1814, pp. 547-53.

2 Dispatches to Bengal, Vol. LXV, Judicial Dispatch dated  
 30 Sept. 1814, p. 522.

3 Idem, p. 531-2.

them in the first instance to arbitration. In June 1812 Government had wisely abandoned the first project put forward by the Superintendent, apprehending that it would virtually have the effect of drawing almost all claims for landed property into the criminal courts and of encouraging the parties not to institute a regular suit in the Civil Court to establish a "legal and permanent" title, but to prefer by fiction a criminal charge for forcible ejection<sup>1</sup>. Yet the summary process before the magistrate was precisely what the person aggrieved often invited. For this he had merely to commit a breach of peace and that was easily and willingly done when dispossessed of property and driven to seek redress by the only other alternative of a long and tardy process of a civil suit. Still, however, the Directors fully realised the perilous consequences of making every land dispute a suit for the magistrate to decide and favoured the second project of arbitration propounded by Mr. Fortescue.

The existing rules empowered the Civil Courts to refer to arbitration causes concerning disputed accounts, partnerships, debts, bargains and contracts<sup>2</sup>. In these should be

<sup>1</sup> Dispatches to Bengal, Vol. LXV, Judicial Dispatch dated 30 Sept. 1814, pp. 524-5.

<sup>2</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, p. 74.

be now included claims to landed property. The arbitrators, chosen as usual by the parties, should proceed to the spot in litigation attended by the village putwaries, and the pergunnah canongoes (where such existed) with a writer to record the proceedings and the award. It was essential that the entire superintendence as well as the original receipt of the application for arbitration should be transferred from the Judge to the Collector of the district. Independently of the leisure which the revenue compared with the judicial officer possessed, the connection subsisting between the Collector, the canongoes and the putwaries; the superior means he had of ascertaining the eligibility of the arbitrators; and generally the many channels of his information, the nature of his enquiries and the special line of his official duty constituted him the fittest person to assist and control arbitration. Moreover, this mode would guarantee public revenue, secure speedy justice to the parties, minimize breaches of the peace and relieve congestion in the Civil Courts<sup>1</sup>.

Prior to the arrival of these instructions from home, Government on its own initiative had provided certain remedies

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Dispatches to Bengal, Vol.LXV, Judicial Dispatch dated 30 Sept.1814, pp.533-46.



remedies. Regulation VI of 1813 encouraged parties in suits respecting land to have recourse to arbitration and took steps<sup>1</sup> for carrying the awards of the arbitrators into due execution. But it had made the mistake of entrusting the control of the whole process to the civil judge instead of to the Collector as was deemed necessary by the Directors. The Directors, however, did not remain silent. They doubted the policy of Government, adduced several arguments in support of their views and sent some important suggestions and orders. Since these come more properly under Lord Hastings's administration,<sup>2</sup> they will be treated of in a subsequent chapter.

A pause may here be made to assess in brief the influence of the Home Government on the administration of Civil Justice. Throughout the period 1807-13 the Company could not<sup>easily</sup> shake off its financial fetters. ~~fortuitously~~. While the effects of Wellesley's wars were still embarrassing it and the Indian territorial debt and deficit were, by the standards of the time, still enormous, the Napoleonic Wars had robbed it of its European commerce, and the onslaughts on its privileges in Parliament had undermined and menaced its position.

<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, p. 76 sqq.

<sup>2</sup> See p. 263 sqq.

position. In this storm and stress, no wonder the Directors preached retrenchment in order to better their prospects and to strengthen their case before the nation. At the same time, however, they never lost sight of the defects of the judicial administration and were ever vigilant and ready to adopt or propose reforms.

Their refusal to acquiesce in the increase of the salaries of the judges; their willingness to confirm the reductions involved in the reorganization of the Zillah and City Courts; their hesitation to alter the constitution of the Sadr Diwani Adalat and to multiply the number of assistant judges - all these can be partly traced to the motive of economy. But could the Directors be wholly blamed for this? They recognized that the salaries of the judicial officers must be liberal; otherwise a solid and incorruptible system was out of the question. But was not 30,000 rupees a year a sufficient incentive to good service? So long as the distinct line of separation was drawn between the revenue and judicial departments they saw no danger of a transference of the best men from one branch of the service into another. Again Government had raised no objection to the whittling down of some inferior courts and annexing them to others. Where, however, a necessity of their increase was evident, no opposition was offered by the Directors. Their attitude to the reorganisation of the Sadr Diwani Adalat was at first in some respects

respects necessarily ill-considered; but that was mainly due to the independent line of action taken up by Wellesley and his failure to apprise them of the need for revision. There was also another salient factor which influenced their views. Almost from the very outset, they held that, while it was impossible to dissociate completely the executive from the judicature, it was highly expedient to retain a member of the Supreme Council in the Superior Court. His experience, they thought, might facilitate a prompt correction of the imperfections of the judicial system. They compelled Barlow to revert to the scheme which had their approval. Yet, when he appointed an additional judge and explained the need for the new office, they readily confirmed it. In fact even the reversal of their scheme effected by Minto, and his appointment of two additional judges, as also his provisions for additional like appointments in the future, received their sanction.

This was solely because of their anxiety to reduce the growing arrears of causes. They did not mince words in deploring this defect; still less did they relax in their efforts to urge upon Government the imperious necessity of speedy reform. To increase the efficiency in the service, to simplify the procedure in the Courts, to facilitate appeals, - these were the cardinal points upon which they insisted. And

Minto's

Minto's reforms based on them and carried out in the College of Fort William, in the Provincial Courts, and in the inferior tribunals, fell far short of the Directors' expectations. Though Government described its measures in glowing terms, the Directors restrained their praise and cautiously weighed them and suggested improvements. The extension of the principle of appointing assistant judges did not wholly meet their wishes; nevertheless they did confirm such appointments. In the beginning, it is true, the motive of economy was here visible; but in the later stages they came to doubt the benefits of the reform. They noticed the still increasing civil causes; they considered that the judge unless divested of his magisterial duties - which also were increasing - could not properly perform his civil functions even with the aid of assistant judges; and they eventually veered round to the sound conviction that the system could be set right only by investing the Collectors with the charge of the police. In this respect the Home Government was laying down a principle contrary to the system devised by Cornwallis and much disliked by the existing administration, but which was afterwards to be adopted. And further it proved to be more conscious than the Governor-General in Council of the capacity of its inferior servants. Similarly in the matter of the land disputes their opinions were equally sound; the Civil Judge confined to his Sadr station

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and seldom acquainted with the manners and machinations of the people was not so competent as the Collector to direct and control arbitration. Here too, as will be shown later, the policy of Cornwallis was to be reversed by a reform originating with the Home Government on a consideration of the reports and advice of the district officials.

(2) Criminal Justice and Police.

During Barlow's and a considerable part of Minto's rule, the Home Authorities did not feel themselves sufficiently confident to propound any permanent reforms in criminal justice and police. In the first place, the imperfect nature of the documents at their disposal precluded such ventures; as late as 1811 the reports of the judges of circuit were not only irregularly supplied to them but were deficient in information. "Some of them not at all touching on the subject of the  
police

police and . . . not in a few instances . . . these reports were not regularly made, or, if made, withheld from record on your judicial consultations."<sup>1</sup> In the second place, the Bengal Government introduced a variety of measures mostly tentative in character and therefore enjoining a cautious deliberation before final rejection or adoption. These factors account for the comparative silence and inaction of the Directors until about 1812. After that year, the fuller reports of the circuit judges and of the new superintendents of police; the more exhaustive Letters of Government; and their own enquiries pursued in England by a circulation of queries on the Indian judicial system among the Company's servants who had retired or come home on leave<sup>2</sup>, enabled them to pronounce with precision what was actually needed in the way of solid reform.

It must not, however, be supposed that because prior to 1812 the Directors displayed an attitude of circumspection, they were unaware of or unconcerned with the increasing enormities of crime. On the other hand, many of the reforms made by Government involving for instance, a prompt  
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<sup>1</sup> Dispatches to Bengal, Vol.LVII, Judicial Dispatch dated 8 Nov.1811, pp.116-8.

<sup>2</sup> See p 317.

and severe punishment for perjury, revision of the establishments of police, employment of Zemindars with police authority, received preliminary consideration at home; while those that were specially undertaken by Government, the appointment of Superintendents of Police and of joint and assistant magistrates did not incur the Directors' opposition. Indeed, the prevalence of perjury, dacoity and banditry of Kozaks or mounted horsemen, called for vigorous and speedy measures. The existing machinery of criminal justice and police proved in many respects as ineffective as it was unworkable. It required overhauling and readjustment; and in doing this, if some mistakes were at first made, they were ultimately set right and the net results achieved showed a material improvement.

One of the major problems handled by Government, had repeatedly attracted the attention of the Directors. By Muhammadan law persons convicted of perjury, subornation of perjury and forgery were sentenced to various and in some instances inadequate punishment on the strength of the futwas<sup>1</sup> of the law officers of the Courts. In 1802, and 1804-5-6 the Directors deplored this defect and demanded a swift remedy combined with "the most rigorous punishment of a crime so hurtful

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 343-4.

hurtful to society."<sup>1</sup> In 1804 the second judge of the Patna Court of Circuit in particular had observed, that the evil had risen to such a pitch of "shameless audacity" that a total distrust of testimony in the courts was the consequence. No rank, no caste, he said, was exempt from the contagion. To cite one instance: a Zemindari diwan, a brahmin who had given circumstantial evidence and sworn to the nature, number and perpetrator of wounds on two of the cutcherry omlah who, he alleged, had been murdered, had "scarcely blushed" when these two men were produced alive and perfectly unhurt in court. The only extenuation he could plead was that, if he had not sworn as directed by his master, he would have lost his employment.<sup>2</sup> This incident proved to the Directors the degree in which such crime could perplex and baffle the proceedings of the courts, instil distrust into the minds of judges as to the validity of testimony in every case, and make them investigate the character of the witnesses more closely than that of the criminals.<sup>3</sup> Perjury, of course, could not be easily wiped out; but in 1807 in conformity with the

<sup>1</sup> Dispatches to Bengal, Vol.38, Judicial Dispatch dated 30 June 1802, p.31 sqq. Also, Judicial Dispatches to Bengal, Vol.I, pp.5, 31, 96-97.

<sup>2</sup> Parliamentary Papers (April 1813), No.4, p.424.

<sup>3</sup> Idem, p.425.



the views of the Directors, Government took steps to reduce it. Regulation II of 1807 defined the sentences to be passed by the Courts of Circuit upon persons convicted before them of wilful perjury, subornation of perjury and forgery; declared such offences not bailable except in special cases; and expedited the trial of the guilty.<sup>1</sup>

Another regulation made by Barlow and carried out by Minto, owes its origin to pressure exerted from home. The reason of the Directors' insistence on all practicable retrenchments in administration has already been explained.<sup>2</sup> In 1805 and 1806, having noticed the growing judicial and police charges the Directors recommended a revision of those establishments with a view to reduction. Government wrote back that the "tranquil state" of the Upper Provinces admitted some reductions in the police and that it had ordered enquiries to be made on that subject.<sup>3</sup> The result of those enquiries was an abolition of the Tahsildari establishments. It has previously been seen how the revenue services of the Tahsildars had been gradually dispensed with.<sup>4</sup> In Benares  
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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 344-5.

<sup>2</sup> See p. 161 .

<sup>3</sup> Letters Received from Bengal, Vol. 49, Judicial Letter dated 15 May 1806, para. 50.

<sup>4</sup> See p. 123 & pp. 141 & pp.

and the Ceded and Conquered Provinces, the Tahsildars acted as the officers of police, under the magistrates, and received for the performance of those duties a commission of  $1\frac{1}{2}$  per cent. on their actual revenue collections in addition to the 10% commission given to them for their revenue duties under the Collectors. It was now urged that this system, which was not followed in Bengal, was highly inexpedient.<sup>1</sup> The inefficiency of the subordinate police officers maintained by the Tahsildars; the difficulty of bringing these officers under the proper control of the magistrates; the frequency of alterations in the Tahsildari jurisdictions in consequence of some of the estates composing them becoming 'huzoory' under the option given to the land-holders of paying the revenue direct to the Collector's treasury; the impossibility of securing compact local jurisdictions so essential for good police - these factors induced Government to do away with the services of the Tahsildars altogether. By Regulation XIV of 1807 police duties were taken from the charge of the Tahsildars and huzoory land-holders and entrusted, subject to the control of the zillah and city magistrates, to the Cutwals in Sadr police divisions and to the Darogahs in the mufasil police divisions. Provision was also made for the establishments of

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<sup>1</sup> Letters Received from Bengal, Vol. 52, Judicial Letter dated 31 July 1807, paras. 86-90.

of the darogahs and cutwals.<sup>1</sup>

Minto gradually introduced these measures into the different districts of the Western Provinces<sup>2</sup> and informed the Directors that the advantages of the new system must be estimated, not by the expenses with which it might be attended, but by the more effectual protection of the country from robbery by open violence and the security of the zemindars, farmers and peasantry from exactions "on the part of a class of officers (Tahsildars) who have frequently employed their influence to the worst purposes."<sup>3</sup> This was indeed true; but the real reason that made him thus describe the effects of the new arrangements was that their expenses in the beginning exceeded those of the old system. In spite of this, however, the Directors after carefully considering the representations of the zillah magistrates, the courts of circuit and the Nizamut Adalat, acquiesced in the new system, leaving to "more mature experience" the proof of those advantages which Government expected.<sup>4</sup>

A similar attitude of caution was shown by the  
Directors

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 461-4.

<sup>2</sup> Letters Received from Bengal, Vol. 53, Judicial Letter dated 15 Sept. 1808, paras. 27-33. Also, Ditto Vol. 54, ditto. 7 April 1809, paras. 86-90.

<sup>3</sup> Ditto. Vol. 54, ditto. 7 April 1809, para. 91.

<sup>4</sup> Dispatches to Bengal, Vol. LX, Judicial Dispatch dated 23 Feb. 1813, pp. 530-35.

Directors to the project of conferring police authority on the zemindars. In 1800 Government had re-invested the landholders in the jungle mahals with the management of the police and proposed to extend this plan throughout the Bengal provinces.<sup>1</sup> The Directors rightly held that though the proposition had received the support of the "several departments of service" and promised to utilise to advantage the local power and influence of the zemindars in the suppression of crime, it was open to serious objection. It would greatly strengthen the position of the zemindars already possessing perpetual rights of landed property and make them a possible danger to the State; it would give free license to their known inclination to connive at depredations against the neighbouring districts; and above all, it would enable them to oppress with ease their own ryots. In the jungle mahals where the zemindars were small, the scheme might, as it did, work well under the watchful eye of the magistrate; but, if extensively employed, it might spell trouble and even disaster. At all events, the Directors enjoined, the subject should be "thoroughly investigated before we deliver our final opinion upon it."<sup>2</sup> This was written in 1802; and until 1807 Government, apparently deterred by the reasoning of the Directors, did not attempt

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<sup>1</sup> Letters Received from Bengal, Vol. 40, Judicial Letter dated 5 Sept. 1800, paras. 15-26.

<sup>2</sup> Dispatches to Bengal, Vol. XXXVIII, Judicial Dispatch dated 30 June 1802, pp. 21-8.

attempt to execute its plan. In that year, however, being alarmed at the formidable outburst of dacoitry and banditry, it passed Regulations XII and XIV for Bengal and the Western Provinces, by which it was made possible to select zemindars and other principal persons as Ameen of police and to confer on them by a sanad, concurrent authority with the darogahs.<sup>1</sup>

This experiment proved a complete failure. Not only was it found inadequate to preserve public peace, but it was soon discovered that the land-holders in many cases abused their powers and would not work in unison with the darogahs because of the latter's lower social status.<sup>2</sup> As a result the regulations remained a dead letter and were quietly buried in 1810.<sup>3</sup>

A like project, short-lived, equally well-intentioned and ill-judged, was embodied in Regulation IX of 1808. To stimulate the exertions of the community to curb crime was unquestionably laudable; but to prevent such exertions from being perverted was a matter of no small difficulty. The persistent activity of the dacoits and *kazaks* suggested that the seizure of their sirdars could be best secured by conferring  
suitable

<sup>1</sup> Fifth Report, p. 72. Also see Appendix No. 12, p. 614.

<sup>2</sup> Idem, Appendix No. 11, p. 578.

<sup>3</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, p. 541. Also Fifth Report, p. 72.

suitable rewards on those who afforded active assistance in bringing the offenders to punishment, and prescribing pains and penalties for those who neglected to give their assistance. The Regulation was based on the successful attempts of the magistrate of Nuddeah "in obtaining the aid and co-operation of the zemindars and almost every description of people to an extraordinary degree," as was explained by the circular orders of the Nizamat Adalat.<sup>1</sup> The mochulcas or the penal engagements taken in conformity with these orders were of three classes; those from the zemindars, those from the mundels or principal persons in each village, and those (accompanied with security) from the ryots.<sup>2</sup> The Directors conceived that this system, being "consistent with the Hindu form of Government," must have been "readily and generally" approved by the people. They even suggested that in consonance with the same principles a regulation might be passed to the effect that the losses sustained by the ravages of dacoits should be made good by the zemindars or village headmen, and directed that local authorities be consulted on the question.<sup>3</sup>

Before

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<sup>1</sup> Nizamut Adawlut Circulars, Vol. I, pp. 28-9. Also Letters Received from Bengal, Vol. 56, Judicial Letter dated 21 Aug. 1809, para. 21.

<sup>2</sup> Nizamut Adawlut Circulars, Vol. I, p. 48.

<sup>3</sup> Dispatches to Bengal, Vol. LVIII, Judicial Dispatch dated 2 June 1812, pp. 257-61.

Before the arrival of these instructions, however, Government was obliged to discontinue the mochulcas. It found that two out of every three of these penal engagements were taken from the ryots and others not by the magistrates but by zemindars and mundels; that their use was attended with "abuse and extortion;" that on the whole it was expedient to avoid employing the zemindars and mundels in police.<sup>1</sup> To the suggestion of the Directors that such persons might be made responsible for plundered property, two valid objections were raised by Government. The "greatest evil" which the country had latterly experienced was from the incursions of the banditti from Nepal, from the territories of the Nawab Vizir, and from some of the inferior and frontier states. These sudden attacks were frequently made in bodies so large that the zemindars and villagers were powerless to contend with them. Even in ordinary cases of dacoity committed by persons residing within the limits of the Company's dominion, material obstacles appeared to arise to the new proposal on account of joint rights in landed property.<sup>2</sup>

Was

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<sup>1</sup> Nizamut Adawlut Circulars, Vol. I, pp. 48-9. Also. Letters Received from Bengal, Vol. 65, Judicial Letter dated 30 Jan. 1813, para. 87.

<sup>2</sup> Letters Received from Bengal, Vol. 65, Judicial Letter dated 30 Jan. 1813, para. 88.

Was it, after all, advisable to invest the Tahsildars or Zemindars with police authority? Apart from the objections already indicated, there were several other drawbacks. The Tahsildars in the New Provinces acted in the double capacity of revenue and police, receiving their orders from and accounting for their conduct to a double set of officials, the Collectors and the magistrates. In those days, revenue was of such a primary consequence that anything which came in competition with it was likely to be put aside. For this reason the Collectors nominated the Tahsildars; for this reason, as well as for the fact that he had normally nothing to do with the police, it might be expected that his great object would be to appoint effective revenue subordinates. But the dual functions of the Tahsildars often clashed, and police work, being their secondary duty, suffered in the conflict. Further, the increase in revenue work could always be made a plausible excuse to the magistrate for neglect and inattention to police duties;<sup>1</sup> while on the other hand, the magistrate invariably pinned to his station owing to his heavy duties as civil and criminal judge, had neither the leisure nor the means to ascertain the truth in such cases. In fact, he was ill-fitted to

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<sup>1</sup> Fifth Report. Appendix No. 11, p. 579.



to exercise a due control over the lower ranks of the police. The obvious and effectual method of surmounting the difficulty was to place the Tahsildars in every district under a collector-magistrate and to separate the civil judge-ship from the magistracy. But that would have involved a fundamental violation of the Cornwallis Code, for which Government was not prepared.<sup>1</sup> As for the scheme of investing the zemindars with police powers, it was an experiment bound to result in failure. Before the Company had secured Bengal, the zemindars indeed possessed a degree of power and influence nearly proportionate to their property; in military, civil and fiscal matters, if not by recognition, at any rate by prescription, they were practically supreme. In police, they had the usual establishment of guards and village-watchmen; they had the aid of their numerous servants who were at all times liable to be called out for the preservation of order; they had their officers employed in the collection of the sayer or impost duties at the gunges, in the bazars and at the hauts, who possessed authority to maintain the public peace.<sup>2</sup> The dismissal of a great majority of these officials consequent upon the Cornwallis Regulations;<sup>3</sup> the dismemberment of the zemindaries

<sup>1</sup> See p. 350 *seq.*

<sup>2</sup> Fifth Report, p. 71.

<sup>3</sup> *Idem*, p. 71.

zemindaries by the inexorable operation of the Sale Laws<sup>1</sup>; and the still further sub-division of property engendered by the existing Regulations,<sup>2</sup> these not only rendered unsubstantial <sup>but</sup> and unstable and uncertain the power and influence of the zemindars. Added to this, there were zillahs in which few of the zemindars or farmers of any respectability resided on their own estates<sup>3</sup>; so that, their police authority had to be delegated to their agents or under-farmers, generally uncontrolled and frequently open to temptation. The only possible way to induce the land-holders to use their influence was by negative methods; to punish them and hold them responsible for every robbery committed with their connivance. And that happily was done.<sup>4</sup>

The next set of measures introduced by Government and sanctioned by the Home Authorities exhibit a consistency and determination destined to secure substantial benefits. The activities whether of dacoits, *kazaks*, *bhadaks* or thugs were not and could not be considered confined to specific districts; addicted to predatory habits, these hardened criminals  
wandered

<sup>1</sup> See p. 146 *Sqg*.

<sup>2</sup> e.g. Fifth Report. Appendix No. 11, p. 574; also Regulation 7, 1810, and Regulation IX, 1811.

<sup>3</sup> e.g. Fifth Report. Appendix No. 11, p. 564.

<sup>4</sup> Fifth Report. Appendix No. 12, pp. 613-14.

wandered from district to district, as local or temporary circumstances suggested,<sup>1</sup> In southern Bengal, in particular, the country, intersected by rivers and abounding in woods and wastes, afforded the dacoits the quickest means of escape from place to place. The consequence was that, after a magistrate had watched their movements and almost matured his plans for their apprehension, those plans were entirely frustrated by the flight of the offenders to another district, where he could issue no orders to the darogahs and their subordinates whose aid was so imperatively requisite; where his immediate officers, instead of obtaining assistance and co-operation, experienced "every possible" obstruction; and where, in short, he had no influence or authority. Hitherto therefore, while the exertions of an energetic magistrate had cleansed his own district of such crime, the neighbouring districts had become hot-beds of atrocity. For instance, when active measures were taken to suppress dacoity in Nuddeah, many of the principal dacoits fled from this zillah to Hooghly, Burdwan, and even as far as<sup>to</sup> Backergunge about 150 miles away, there to pursue their hereditary profession of "robbery rape . . . and murder."<sup>2</sup> In order to facilitate the arrest of  
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<sup>1</sup> Fifth Report. Appendix No. 12, p. 607.

<sup>2</sup> Idem.

of such offenders, it was now deemed essential, in addition to the persons holding the joint offices of the justices of the peace for the city of Calcutta and magistrates for the 24-Pergunnahs, to appoint a covenanted servant of the Company to "the office of the justice of the peace for the city of Calcutta, magistrate of the 24 Pergunnahs and Superintendent of Police;" to invest him with concurrent jurisdiction with the magistrates of the districts in the division of Calcutta, Moorshidabad and Dacca; to require those magistrates and all persons acting under them to support his officers in the execution of the warrants issued by him; to authorise him to correspond publicly or secretly with the officers in any department, communicate immediately through the Judicial Secretary with the Governor-General in Council, and act under such instructions as might be transmitted for his guidance by Government. At the same time, he was to be considered under the general authority of the Nizamut Adalat, and upon any point not expressly provided for by the regulations or by the orders of Government, guided by the instructions of that Court.<sup>1</sup>

Regulation X of 1808 which embodied these principles  
received

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol. I, pp. 545-6. Also, Letters Received from Bengal, Vol. 54, Judicial Letter dated 7 April 1809, paras. 72-8.

received the cordial confirmation of the Directors. It was, they judged, "undoubtedly" a reform which "gives a new character to the whole system of the police establishment." In countries more advanced or under more definite and circumscribed forms of Government, concurrent jurisdictions might be viewed with jealousy; but in Bengal, the increase of crime had made them inevitable, so that the peaceable part of the populace instead of viewing the extension of the police powers with suspicion, would "hail it as a token of the salutary vigour of our Government."<sup>1</sup>

Indeed, the success of the experiment clearly shown during 1808-9-10 induced Government to extend it to the Western Provinces. Here the banditry of the Kozaks and the "assassinations" of the "nefarious race of criminals," the thugs, were alarmingly rampant<sup>2</sup>. In 1808 the Patna division, apparently because of its comparative quiet, had been left out of the charge of the Superintendent. In 1810, however, by Regulation VIII of that year it was annexed to his jurisdiction and a separate Superintendent of Police was appointed for the divisions of Benares and Bareilly (comprising the Western Provinces) with the like powers of his prototype in Bengal. The

1 Dispatches to Bengal, Vol.LVII, Judicial Dispatch dated 14 Feb. 1812, pp.788-94.

2 e.g.Letters Received from Bengal, Vol.56, Judicial Letter dated 21 Aug.1809, paras.46-65. Also, Dispatches to Bengal, Vol.LXV, Judicial Dispatch dated 30 Sept.1814, pp.465-92.

The primary object of these officers, it was further stated, being the apprehension of all classes of dangerous criminals, they should from "time to time proceed to the several zillas or to any of the cities . . . within the limits of their respective jurisdictions as they themselves deem necessary or proper or as the Governor General in Council may direct."<sup>1</sup>

The benefits of these reforms cannot be doubted; and as in the case of Bengal, so in that of the Western Provinces, the Directors readily gave them their sanction. But what now struck them most was the inefficiency of the magistracy as originally constituted by Cornwallis and the consequent possibility of diminishing its cost. Already, as has been noticed before, the salaries of the Judge-magistrates in the Lower Provinces had been fixed at the maximum of 30,000 rupees per annum<sup>2</sup>. Since then the police establishments had considerably swelled the general judicial expenditure<sup>3</sup>; and the Directors argued that there was no reason why it might not in some measure be curtailed. Moreover, the Superintendent of Police in Bengal had only been awarded a salary equal to the maximum salary fixed for the Judge-magistrates, exclusive,<sup>it</sup>

1 Harrington. Analysis of the Laws and Regulation (1821), Vol. I, pp.546-7. Also, Letters Received from Bengal, Vol.58, Judicial Letter dated 24 Nov.1810, paras.77-88.

2 See p.176 .

3 Dispatches to Bengal, Vol.IX, Judicial Dispatch dated 23 Feb.1813, pp.583-601.

it is true, of his travelling allowances. But in the Western Provinces, mainly because the Judge-magistrates' maximum salary was 32,000 rupees per annum, Government had granted a salary of 35,000 to the Superintendent in addition to travelling allowances. The Directors ordered that the pay of the Judge-magistrates and the Superintendent in the Upper Provinces be reduced to the rate current in Bengal<sup>1</sup>. Government professed to consider the subject, but actually shelved it indefinitely.

While the appointment of the Superintendents of Police was a judicious reform, contributing, as the Directors accurately judged, to enlarge the means of information on the state of the police and to infuse vigour and activity into the general magistracy, a complementary measure, the employment of 'goindas' and 'girdwars' or spies was open to several serious objections. It is true that the Superintendent of the Lower Provinces and a few of the magistrates had derived much help from these secret agents<sup>2</sup>. Set to discover the haunts of the dacoits, to watch their movements and to mix with them whenever necessary in order to obtain precise intelligence of their operations and designs, the spies could afford prompt and

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1 Dispatches to Bengal, Vol.LX, Judicial Dispatch dated 23 Feb.1813, pp.601-10.

2 Fifth Report, p.74.

and efficacious aid to the magistrate in apprehending and convicting public offenders. At the same time, however, they could become an instrument of extortion and oppression<sup>1</sup>. Like some of the magistrates, the Directors were "tremblingly alive" to this danger. Mr. Earnest, the magistrate of Hooghly, had conclusively shown that the 'goindas' might become a terror to the honest man as well as to the criminal. A large number of persons had been arrested on their report and had lain in prison for an indefinite period for lack of positive proof on which they could be brought to trial. Between the visits of the Court of Circuit to the Zillah of Nuddea in November 1808 and May 1809, of the 2071 persons who were in jail, no less than 1828 had been arrested on mere suspicion as "bad-mashes" men of bad character. Of these, only 44 were convicted before the Court of Circuit, while 68 were acquitted by that Court; 369 were released by the magistrate, but the rest remained in custody without having been examined<sup>2</sup>. At Goliparah, in the zillah of Hooghly, these "unprincipled" spies had been guilty of plunder, extortion and other acts of barbarous cruelty for which they were afterwards tried and punished<sup>3</sup>. "An agency of this description" declared the Directors "as long as it is necessary

1 Fifth Report, Appendix No.12, pp. 614-17.

2 Dispatches to Bengal, Vol.LXVI, Judicial Dispatch dated 28 Oct.1814, pp.495-508.

3 Idem, pp.508-10.



necessary to be used" and it should be used in special circumstances alone, "cannot be employed too cautiously." It was "absolutely requisite" that its abuses and irregularities should be peremptorily dealt with by the magistrates and the Superintendents of Police <sup>1</sup>. Government appears to have adhered to these instructions <sup>2</sup>; at any rate, the protests made by some of the district officials against the espionage system subsided within a short time.

Meanwhile, a violent agitation at Benares resulting from the introduction of a novel impost, a tax on houses, vividly brought home to Government the need of an adequate European control over the subordinate police <sup>3</sup>. The Benares magistrate had been utterly unable to cope with the situation and obliged to call in military help. The disturbance was quelled, but the fact remained that he could not effectively handle or control the police in cases of emergency. Indeed, even in normal times in Benares as in other cities and zillahs, the primary duty of perpetually hearing civil and criminal causes left little time for the Judge-magistrates to supervise duly the

1 Dispatches to Bengal, Vol. LXVI, Judicial Dispatch dated 28 Oct. 1814, pp. 510-18.

2 Letters Received from Bengal, Vol. 72, Judicial Letter dated 7 Oct. 1815, para. 117.

3 Ditto. Vol. 58, ditto. 24 Nov. 1810, paras. 101-6.

the conduct of the darogahs<sup>1</sup>. It was becoming increasingly evident that an active surveillance over the lower ranks of police was necessary. "It cannot in my judgment be too often or too strongly inculcated," reported the able and experienced Judicial Secretary, Mr. Dowdeswell, in 1809, "that there can be no police in the country unless the magistrates will from time to time visit the different thanas, listen with their own ears and see with their own eyes, instead of depending on the reports of officers entirely unworthy of confidence or trust."<sup>2</sup> For this purpose, and also to lighten the judicial work of the judge-magistrates, the appointment of distinct magistrates and assistant magistrates appeared the only possible solution. Furthermore it was deemed advisable to adopt additional measures to track down the dacoits, kazuks and thugs. The concurrent jurisdiction of the Superintendents of Police had yielded substantial results. Could not the magistrates of some of the crime-ridden zillahs be invested with similar power? The assistance given by Mr. Blaquiére, the Superintendent of Police for the Lower Provinces, particularly to the magistrates of the districts of Nuddea, Jessore, and Backergunge; the successful exertions of Mr. Elliot, the magistrate of Nuddea, in the district of Burdwan; and of Mr. Pattle the  
magistrate

1 Letters Received from Bengal, Vol. 58, Judicial Letter dated 24 Nov. 1810, para. 106.

2 Fifth Report, Appendix No. 12, p. 611.

magistrate of Rajeshahy in Mymensing - such were the practical examples of the benefits which the creation of joint-magistrates might secure <sup>1</sup>.

Regulation XVI of 1810 therefore provided for the appointment of separate magistrates, assistant magistrates and joint-magistrates. Magistrates with no civil duties could be employed in zillahs or cities in addition to the judge-magistrates; and any magistrate could be invested with concurrent authority as joint-magistrate "in any contiguous or other jurisdiction or jurisdictions or any part thereof." The assistant and joint-magistrates were to receive the support of the several zillah and city magistrates and their subordinate officials in all processes issued by them. In general, the assistant magistrates were to be subordinate to the zillah and city magistrates; but no appeal was to lie from the decisions of the former to the latter. The Governor General in Council reserved to himself the discretion of placing part of the police under the "immediate control" of joint <sup>2</sup> or assistant magistrates.

Government wrote home that these arrangements were not

1 Fifth Report, Appendix No.12, p.610.

2 Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p.655 sqq.

not intended to be carried out at once and that only at Benares and the 24-Pergunnahs were assistant magistrates already appointed. This was warranted by the increasing business, the extent of the city jurisdiction, and the frequent absence of the magistrate of the 24-Pergunnahs in executing his duties as the Superintendent of Police. Still, however, it made clear that the vast extent of some of the districts, the heavy duties of many of the judge-magistrates, and the small number of these officials, demanded the employment of more assistant-magistrates<sup>1</sup>.

The Directors, who had confirmed the concurrent jurisdiction of the Superintendents of Police were not likely to object to the plan of joint-magistrates. Nor were they opposed to the project of appointing distinct magistrates. In fact, they were themselves about to<sup>1</sup> suggest the separation<sup>2</sup> of the dual functions of the judge-magistrates. But could not magisterial duties be more appropriately entrusted to the Collectors? This was the question they wished to consider. And as for the appointment of assistant magistrates, though they approved the scheme on general grounds they feared that if, as was contemplated by Government, it was to be extensively employed

1 Letters Received from Bengal, Vol.58, Judicial Letter dated 24 Nov.1810, paras.104-6.

2 See p.350.

employed in the near future, it would be very costly and hence for the moment at any rate, ill-advised<sup>1</sup>. Government, therefore, made few appointments under its regulation, but those actually made must have brought no small relief to some at least of the unwieldy cities and districts.

If the Directors were indisposed to venture on an extensive employment of assistant magistrates, they were most anxious that Government's reforms, whether comprehensive or limited, should be well-founded, after a careful consideration of the opinions of the local officials. One ill-judged measure, based on inadequate enquiries yet sufficiently dangerous to threaten the peace of the country and to foster corruption in the lower police, elicited a pointed warning from them. In 1810 Government mainly on the strength of the report of a single district officer, laid down a rule by which, in the Upper Provinces, armed horsemen were required to register their horses and to wear badges inscribed with their master's name; and such of them as were unlicensed were to be arrested and their arms confiscated (Regulation II of 1810). This was solely directed against the Kozaks (mounted thieves) who were sheltered by the zemindars. It expressly laid down that  
merchants

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1 Dispatches to Bengal, Vol. LX, Judicial Dispatch dated 23 Feb, 1813, pp. 674-8.

merchants or others travelling on horseback were not to be apprehended. But it overlooked some important considerations. How was registry to prevent the Kazuks from pursuing banditry when they had only to take off their badge and resume it on meeting a police officer?<sup>1</sup> Again, the rule for the seizure of horses and arms gave great latitude to the ill-paid and venal darogahs, drawn mainly from the lower classes, to harass and oppress peaceable horsemen. It was liable to become a weapon of extortion more especially in places far distant from the residence of the magistrate, where an unoffending person would rather choose to give up his horse or pay a bribe to be allowed to proceed unmolested, than have to defend his property at the inconvenience of a long journey to the foudari Court, in which it might be difficult for him, for want of ready means of proof, to clear his character from false charges trumped up against him.<sup>2</sup>

The immediate effect of the Regulation was to create troubles. <sup>ny</sup>Some of the land-holders refused to register their horses; and the magistrates sought to compel them to do so. A petty zemindar at Allighur shut himself up in his fort and fired on the thanadar who, agreeably to the orders he had received, had proceeded to take down the number and description of

1 Dispatches to Bengal, Vol.LXII, Judicial Dispatch dated 20 Oct.1813, pp.570-3.

2 Idem, pp.573-7.

of the horses belonging to the zemindar and his dependents; and one of the burkundazes was dangerously wounded. To make a prompt example, the acting deputy magistrate resolved to declare the zemindar and his adherents rebels, and, without any reference to Government, succeeded at the cost of some lives in driving the zemindar from his fort, which was forthwith destroyed. On this, two neighbouring zemindars who had given shelter to fugitives and expressed their indignation at such conduct, were likewise declared rebels, defeated, and driven across the Jumna, where they found refuge with the hostile Rajah of Bhartpur <sup>1</sup>.

Such was the injurious outcome of the Regulation which the Directors criticised at length and severely reprobated. They held that the district officials should have been consulted before taking action. They were surprised that Government had neglected this imperative duty <sup>2</sup>; and still more, that the Nizamut Adalat should have known nothing of the measure. They declared that the men on the spot and the men most likely to judge best the utility of reforms must be previously given an opportunity to express an opinion on them. Otherwise

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1 Dispatches to Bengal, Vol.LXII, Judicial Dispatch dated 20 Oct.1813, pp.582-9.

2 Idem, pp.578-81.

Otherwise, "it is but reasonable to infer that your proceedings must be constantly exposed to those inconveniences and frequent alterations from one system to another which are the natural consequences of erroneous, immature and ill-judged plans and must have a necessary tendency to increase the size of your already voluminous code."<sup>1</sup> The Directors enjoined a radical modification or abolition<sup>2</sup> of the regulation. Before the arrival of these instructions,<sup>3</sup> however, Government had already been obliged to repeal it.

Cautious as were the Directors in adopting any permanent or far-reaching changes, they were much concerned to reorganize and re-adjust the existing system of criminal justice and police. They recognized that it had many defects and anomalies, recommended different measures for its revision, approved a great deal that was done by Government, and still felt that something more was necessary to achieve better results. The wide-spread evil of perjury received their early attention and the reform undertaken by Government for its suppression owed not a little to their pressure. That they hesitated

1 Dispatches to Bengal, Vol.LXII, Judicial Dispatch dated 20 Oct.1813, pp.603-9.

2 Idem, pp.600-2.

3 Harrington. Analysis of the Laws and Regulations (1821), Vol.I, see footnote to p.403.



hesitated to encourage the fertile experiment of employing assistant magistrates, which in criminal matters might have materially lightened the work of the judge-magistrates, is no doubt true. But that was not because they were insensible to the increasing duties of the Judicial Officers or to the increase of crime itself, a fact obvious to them from the various means adopted to check it, but because the experiment threatened to become more costly than the finances of the Company at that time could bear. Moreover, they were becoming increasingly aware that a remedy was needed to cure the congestion in the district courts. If the judge-magistrates were divested of their magisterial duties, would not their labours be considerably diminished, and would they not have sufficient leisure to hear the civil suits which also were falling into arrears? It was this consideration, big with future possibilities, that monopolised their thoughts. In this connection it is well to remember that although in 1810 the Governor-General in Council made provision for the appointment of separate magistrates, this change was principally intended as a police measure and never meant to supersede or subvert the scheme of judge-magistrates. Government, indeed, wished to preserve intact the essentials of the Cornwallis system, and only to supplement it where expedient. Whereas the Home Authorities were disposed to question these essentials

themselves

themselves. To invest the Collectors with the magisterial powers, as will more fully be shown later, seemed to them the only right and effective policy.

While, however, no great changes were actually made in criminal justice, important steps were taken to stem the tide of serious crime. A sudden out-burst of dacoity and banditry, due to famine and economic distress, to the unsettled condition of society, and to the victorious wars of Wellesley which had deprived of employment a host of military retainers, threatened to throw the country into chaos. Political peace enabled Minto to frame and introduce numerous reforms in police administration, some ephemeral but others eminently fruitful and lasting. In these the share of the Directors was neither meagre nor unimportant. They commended the appointment of the Superintendents of Police as giving a new direction to the entire system, infusing vigour and activity into the magistracy, and enlarging the channels of information of Government. Nor did they under-estimate the allied measure of setting up joint-magistrates. Both these reforms initiated by Government went a long way to abate the virulence of dacoity and ~~kazuky~~. The records from 1811 onwards display a remarkable decrease in violent crime which in 1807, 8 and 9 was clearly at its zenith. But though the Directors justly eulogized these measures, they would not accept without question  
whatever

whatever measures Government proposed. They originated the abolition of the Tahsildari establishments, and though they did so for motives of economy, yet, short-sighted as the motives may appear, their result was nevertheless wholesome—the elimination of divided responsibilities, the creation of compact local jurisdictions, and the reduction of corruption in the lower police. They objected to the project of conferring police authority on zemindars or influential persons as far back as 1802 as being likely to become a danger to the state and a terror to the ryots. For a time, Government, apparently convinced by these arguments, refrained from executing its plan; and when in 1807 it did execute it, calculating on a false principle that what had worked well in a few of the jungle-mahals would work well in the whole of the Bengal Presidency, it was obliged to abandon it after a short trial for precisely that reason stressed by the Directors, the oppression of the peasantry. The sturdiest opposition was offered in England to unwise measures such as the ill-controlled and extensive employment of spies, or the ineffective but baneful licenses to armed horsemen. Above all, the Directors inculcated the sound maxim that all reforms to be stable and successful should be founded on a mature consideration of the opinions of the several district officials and their immediate superiors. Indeed the Directors paid much attention to the reports

reports of sub-officials, finding in them the best arguments for approving or criticising the proposals of the Government itself.

## C H A P T E R IV

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THE LAND REVENUE ADMINISTRATION IN THE  
PRESIDENCY OF FORT WILLIAM IN BENGAL  
(1814-22).

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The period 1814-22 is one of great legislative activity in the land-revenue history of both the old and the new provinces of Bengal. In many respects it offers a sharp contrast to the rule of Lord Minto, heady, obstinate, impatient of contradiction and counsel. What were the rights of the ryots and what rents did they pay to the zemindars or others; what were the relations of the land-holders with their under-tenants and peasantry and how far those relations could be systematised or corrected; what were the rights of Government over wastes and lands held on invalid or illegal tenure and by what mode could they be secured; what again was to be the proper procedure in the settlements of revenue and with whom were they to be made, - these, and a host of other subsidiary questions had received scant attention from Minto and his Council. Indeed, an implicit faith in the Cornwallis system precluded all consideration of such problems; for it left the peasants at the mercy of the zemindars

zemindars and required little activity in the Collectors who lacked the means and powers to safe-guard the interests of the peasants or the state.

If, however, Government had failed to grapple with the evils of the permanent settlement, the Home Authorities had fortunately begun to insist on their redress. The fervour with which they resisted the extension of permanency in the Ceded and Conquered Provinces and demanded a survey and record of rights, has already been noticed. And though their suggestions produced little under Lord Minto, under Lord Hastings they frequently bore fruit. A refreshing spirit of enquiry, born of a recognition of the existing defects and contributing to a steady revival and readjustment of administrative machinery, and policy, gradually pervaded the rule of the new Governor-General.

The credit for this renovation must be largely attributed to the persistence of the Home Authorities. Lord Hastings was vigilant and receptive of new ideas. His Revenue Minute of 21 September 1815 shows not only what a Governor-General can learn by personal observation, but also how much he can benefit from the experience of the local officials<sup>1</sup>. But his activities in the field of general

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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol.I, pp. 403-35.

general administration were distracted by political upheavals, and so great was the inertia of the "Cornwallis caste" of the Bengal Council that without external impetus its conservative influence smothered the proposals of the Governor-General, damped enthusiasm in the Collectors, and prevented progress. Here it was, that the Home Authorities came to the rescue. They studied the opinions of the subordinate officials, encouraged investigation, pressed numerous matters on the attention of Government and thereby exposing defects, paved the way for reforms.

(1) Reorganization of the administrative machinery.

The Directors were from the first concerned with the ascertainment of the real resources of the country, the detection of frauds practised by the land-holders on Government, and the removal of the oppressions under which the ryots suffered. In the old provinces of Bengal there was hardly anything to throw light on those subjects so vitally important to the public welfare. Cornwallis had abolished the Canongoes and abandoned the Patwaries to

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the zemindars<sup>1</sup>. These record keepers of the district and village had rendered useful service in the hey-day of the Mogul Empire; the former protected the interests of the state while the latter looked after the interests not only of the zemindars but of the ryots as well. Their records when well-kept, were a repository of very valuable information; a complete history of the zemindaries comprehending the land in cultivation and waste, the revenue paid to Government, the rent demanded from every ryot, the expenses of cultivation and various local usages and customs<sup>2</sup>. It was true that in 1800 a regulation was passed directing the preparation of pergunnah registers of land according to certain prescribed forms. In some measure its object was to supply the place of the Canongoe records, but this was so imperfectly done as to be useless<sup>3</sup>. In fact, the elimination of the Canongoes left the Patwaries exclusively under the control of the zemindars and their accounts were all made up to serve their masters' purpose. So that the Regulation VIII of 1793 which required the zemindars to appoint

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<sup>1</sup> Fifth Report, p. 28. Also, Baden-Powell. The Land System of British India, Vol. I, p. 678.

<sup>2</sup> Hunter. Bengal MS. Records, Vol. I, pp. 59-60. Also, Ramsbotham. Studies in the Land Revenue History of Bengal, p. 3 sqq.

<sup>3</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, pp. 268-9. Also, Fifth Report, p. 29.



appoint one Patwari to each village, to deposit in the Diwani Adalat, the Collector's catcherry and the principal catcherry in each pergunnah, a list of such officers and the nature of their duties, to notify every three months to the Judge and the Collector the vacancies that might occur and the persons appointed to fill them, was ill-calculated to repair the loss<sup>1</sup>. In the new provinces the Canongoes and the Patwaries were still maintained<sup>2</sup>; but their work was neglected and not duly supervised.

The revival and modification of these ancient offices in Bengal was originally suggested in 1811 by Mr. Dowdeswell, then the acting President of the Board of Revenue<sup>3</sup>. The Governor-General and Council, however, took little notice of the subject till it was repeatedly brought before them by the Directors. In January 1813, even before they had perused Mr. Dowdeswell's Minute, the Directors demanded that the "primary" object of the Collectors if it had not yet been done, was "to place the office of Curnam or Patwarry on an efficient footing."<sup>4</sup> In the next two years

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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, p. 273 sqq.

<sup>2</sup> Fifth Report, p. 28.

<sup>3</sup> Selection of Papers from the Records of the East India House, Vol. I, p. 171.

<sup>4</sup> Dispatches to Bengal, Vol. LX, Rev. Dispatch dated 29 Jan. 1813, p. 104 sqq.

on  
 years they seized the suggestion of Mr. Dowdeswell and  
 fashioned it into a redoubtable argument.

"We have often had occasion to regret the suppression of the office of Canongoe" they wrote in 1814, "persuaded as we are, that though the records of it are not to be entirely depended upon, yet, the minute information they contain respecting the rents and revenues and other matters connected with the concerns of cultivation, is exceedingly useful in duly conducting the fiscal administration of an Indian country."<sup>1</sup> They fully enumerated the duties and advantages of this office, quoting from a report of the Collector of Bhaugulpore dated as far back as 1787, and ordered its re-establishment in Bengal, Behar and Orissa. Nor did they fail to emphasise the need of a revision of the office of Patwari. If the Patwaries were made the servants of the State, they would facilitate the decision of land-suits in the Civil Courts, guard against the diminution of public revenue, and protect the ryots from exactions. It was indeed essential that the office of Patwari should be strengthened and secured; "for without the information derived from village records, not only is that of Canongoe  
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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, p. 260 sqq.

in a great measure nugatory but the Government must ever remain in darkness as to mofussil affairs."<sup>1</sup>

By the time these instructions could reach India, a fresh set of monitions had been prepared at the India House. The Despatch of 6 January 1815 is a bitter denunciation of the policy so far followed by Government in the new provinces. Mr. Dowdeswell might, as he did, suggest that the Patwaries had been placed there on a sound basis. But little reference was made to their accounts in "the reports of the Collectors which we have hitherto examined." To this, the Directors ascribed the "want of insight so clearly manifested and so frequently confessed" into the nature and principles of assessment. They could hardly ascertain from the Collectors' reports whether the rents of the cultivators were defrayed in kind, whether Government was paid in coin, what portion of the crops and what money payments of the ryots went for the support of the village establishments and how far those contributions or "petty collections" were appropriated to their legitimate objects<sup>2</sup>. All these, and many more points could be illumined, if the Patwaries were placed

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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, p. 268 sqq.

<sup>2</sup> Ditto. Vol. LXVIII, Rev. Dispatch dated 6 Jan. 1815, pp. 398-400.

placed under the sole control of the Collectors. By the existing rules, the Collector was empowered to call on the Patwaries for only a particular kind of accounts; and even this he could not do effectually. He had to issue a written notice to them specifying the accounts needed; and in case they should neglect to attend with their books within the time fixed, he had not the power to enforce appearance. Instead, he had to refer the circumstance through the Government pleader to the Zillah Court and await developments<sup>1</sup>. Did not Sir John Shore in his Minute of 18 June 1789 remark that he strictly conceived the Patwaries "to be the servants of the State and responsible to it for their trusts?" "In this light" said the Directors, "they have ever been considered under every Native Government and have formed a necessary link in the chain of permanent public functionaries." Let them therefore be placed under the "direct control" of the Collectors and let the Collectors, "at all times and for any purposes connected with the administration of the revenues, have the readiest and fullest access to their records and be empowered effectually to command it." Several extracts

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<sup>1</sup> Dispatches to Bengal, Vol. LXVIII, Rev. Dispatch dated 6 Jan. 1815, pp. 400-4.

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extracts from public documents were cited to support the reconstruction of this office, which, in the Peninsula (they significantly pointed out) had never been suffered to exist under any other "actual" control than that of the Collectors<sup>1</sup>.

This vivid exposition of the defects, this solicitude to safeguard the rights of the peasantry and the public, this enthusiasm to erect a stable system on indigenous institutions, produced a profound effect on Government. Lord Hastings and his Council admitted the force of all the observations of the Directors. Cornwallis had abolished the Canongoes on the ground that regular courts of justice had been established for the adjudication of private rights; but the means of obtaining the facts to enable the Courts to arrive at just decisions had been for the most part, absolutely beyond their reach. If abuses existed in the discharge of the duties of that office, the aim should have been reform, not annihilation. So also, the Patwari office was now "almost nugatory" in Bengal and quite imperfect in the new provinces. "We shall spare no pains for the

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<sup>1</sup> Dispatches to Bengal, Vol. LXVIII, Rev. Dispatch dated 6 Jan. 1815, pp. 405 sqq.

the re-establishment of both those institutions." The instructions of the Directors were referred to the Revenue Boards and it was hoped that in a short time, the necessary reforms could be introduced<sup>1</sup>.

These hopes, however, were not quickly realised. Several obstacles presented themselves. It was a difficult and delicate task to transmute so suddenly, the tools of the zemindars into the instruments of the State. The matter demanded deep consideration. At the same time, the establishment of the Canongoes appeared to be a preliminary requisite for the enforcement of an efficient control over the Patwaries. Now the Canongoes, as far as their constitution was concerned, were, in the Ceded and Conquered Provinces, already under the direct supervision of the Collectors<sup>2</sup>. In the old territories they had to be created anew; and for this purpose, any sweeping enactment, embracing in its fold the whole of the provinces of Bengal, Behar, Orissa and Benares, threatened to entail a large expenditure. The best course, therefore, was to proceed step by step. In some of the districts of Behar and Benares there still lingered the families of the old Canongoes. They subsisted

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<sup>1</sup> Letters Received from Bengal, Vol. 72, Rev. Letter dated 7 Oct. 1815, paras. 14-15, also para. 24.

<sup>2</sup> See Regulation IV, 1808.

subsisted on rent-free lands formerly granted to them in lieu of money wages. As these lands could be conveniently resumed and the proceeds applied for the support of the new officers, and as the Board of Revenue and the Board of Commissioners, the one sitting at Calcutta and the other stationed at Bareilly, were unable to exercise due control over Behar and Benares, a special Commissioner was sent there with the full powers of the Boards<sup>1</sup>. Having thus prepared the ground, Regulation II of 1816 was passed, establishing the office of Canongoe in every pergunnah of the districts of Shahabad, Tirhoot, Sarun and Behar. They were to be selected and appointed by the Collectors, paid fixed salaries, considered as no longer enjoying hereditary office, required to compile accounts according to certain prescribed forms, and subjected to penalties in the event of failure to deliver up the papers demanded by the Collectors<sup>2</sup>. Similar measures were shortly introduced in Cuttack, Ramghur, Bhaugulpore, Purneah and Benares<sup>3</sup>.

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<sup>1</sup> Letters Received from Bengal, Vol. 75. Rev. Letter dated 1 Nov. 1816, paras. 3-31. See also Regulation I, 1816. Regulations of Bengal, Madras and Bombay, 1813-1824, 1816 p. 5.

<sup>2</sup> Regulations of Bengal, Madras and Bombay, 1813-24, 1816, pp. 6-7.

<sup>3</sup> Regulation V, 1816 and Regulation II, 1817. Idem, 1816, pp. 9-11; 1817, p. 5.

Also, Letters Received from Bengal, Vol. 77. Rev. Letter dated 4 July 1817, paras. 78-83.

Ditto. Vol. 78, ditto. 12 Sept. 1817, paras. 54-7.

In this connection it is well to remember that Government sedulously avoided appointing Sadr Canongoes. Their revival would have meant the setting up of an intermediary agency between the Collector and the Pergunnah Canongoes. In Cuttack, for instance, the Collector suggested the revival of the office in the old families. But his proposal was rejected as highly inexpedient, tending to relax his supervision over the Pergunnah Canongoes and Patwaries<sup>1</sup>.

The establishment of the office of Canongoe in Behar, Benares and Cuttack was followed by a consideration of the vexed question, the reform of the Patwari office. In strict conformity with the instructions of the Directors, the Board of Commissioners proposed that the Collector should make the selection and appointment of the Patwaries and that he should pay them fixed salaries from collections made either from the zemindars or ryots as the custom obtained<sup>2</sup>. The Commissioner for Behar and Benares, however, argued that much inconvenience would result if those small salaries were disbursed at the Collector's outcherry, at a great distance from the residence of the Patwaries. He therefore deemed it  
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<sup>1</sup> Letters Received from Bengal, Vol. 78, Rev. Letter dated 12 Sept. 1817, paras. 54-7.

<sup>2</sup> Idem, paras. 62-65.



necessary to declare their right to receive the same salaries from the same persons as before, with an immediate remedy by the Collector should the salaries be withheld. He further recommended a penalty on unauthorised persons discovered, after a certain date, acting as village accountants<sup>1</sup>. The Board of Revenue made no important remark on the subject. But the Sadr Diwani Adalat raised some doubts. If the Patwaries were to be made public servants avowedly with a view to protect the interests of the ryots, should not the zemindar be allowed, and would he not secretly at least appoint his own private accountants to look after his own interests?<sup>2</sup> Government found it impossible to escape the implications herein involved, except by leaving the selection of the Patwaries, according to custom, to the zemindars and seeking at the same time strict control over the nomination, duties, and dismissal of these officers. It was apprehensive of any "irritating innovation" that might instil suspicion and distrust in the zemindars, and of taking upon itself the task of collecting the Patwari allowances from the numerous land-holders and ryots. Those collections, it thought, might bear

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1 Letters Received from Bengal, Vol. 78, Rev. Letter dated 12 Sept. 1817, paras. 66-7.

2 Idem, paras. 68-73.

bear the appearance of a cess or tax and provoke mis-understanding and unrest especially in the permanently settled country<sup>1</sup>. To control the appointment of the Patwaries so as to ensure the employment of proper persons, their due subordination to the Collectors, the regular transmission of accounts and all other information, and to secure their payment by rules "as definite as the nature of the case would admit and interfering as little as possible with the established usage," - such, therefore, were the points envisaged by Regulation XII of 1817<sup>2</sup>. It laid down that every village should have a Patwari. His nomination should rest with the zemindar or land-holder, subject to the confirmation of the Collector. If the Collector should raise objection to the person selected, the zemindar was to nominate another. The removal of the Patwari to be valid, should receive the sanction of the Collector; but the Collector on the other hand, could dismiss him on any just complaint from the ryots or the under-tenants. Every Patwari should perform certain specified duties and should be paid in the "same mode as he is now paid, whether in money or grain or in land or in any other local manner." The Collector could compel such regular payments

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<sup>1</sup> Letters Received from Bengal, Vol. 78, Rev. Letter dated 12 Sept. 1817, paras. 74-94.

<sup>2</sup> Idem, paras. 95-101.

payments by fine and summon the Patwari whenever necessary, and require him to produce any accounts or information. Omission, neglect, fault or fraud in the duties of the Patwari were to be severely punished<sup>1</sup>.

Having introduced these rules in the Ceded and Conquered Provinces, Behar, Benares and Cuttack, where the office of Canongoe had already been established or secured, Government proceeded with the extension of like measures in the Lower Provinces. In this, the greatest difficulty consisted in the inexperience of the Collectors in all matters connected with the Canongoes, a logical sequence of the Cornwallis system. Experience had taught that even in Behar where the families of old Canongoes or their immediate descendants survived, the persons selected from them had required much instruction about the nature of their duties. Indeed, their discovery, selection and tuition had been a "work of much labour and research," demanding accurate knowledge of the details of past revenue business. In Bengal, where the office of Canongoe had long disappeared and the Collectors were ignorant of its functions, Government felt it "altogether hopeless" to entrust them with the completion of the  
arrangements

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<sup>1</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1817, pp. 14-19.

arrangements. To depute an experienced special official from district to district for that purpose, appeared therefore to be the best course<sup>1</sup>. By this process, the re-establishment of the office of Canongoe and the modification of that of the Patwari was carried out piece-meal during a considerable period; at first, in Midnapore and Hidgallee (Reg.<sup>n</sup> XIII, 1817)<sup>2</sup>, then in the Twenty Four Pergunnahs, Nuddea, Jessore, Dacca-Jelalpoore and Backergunge (Reg.<sup>n</sup> I, 1818)<sup>3</sup>, and finally, throughout the remaining part of the province of Bengal (Reg.<sup>n</sup> I, 1819)<sup>4</sup>.

In what light, we may ask, did the Directors appraise these measures? They did not object to the slowness with which Government had undertaken them. Neither did they demur to the special means by which the reforms were effected. On the other hand, the temporary appointment of the Commissioner to Behar and Benares, which by now had been succeeded by a Commission of two members, and the deputation of an experienced official to the several districts of Bengal, received their

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<sup>1</sup> Letters Received from Bengal, Vol. 81, Rev. Letter dated 30 July 1819, paras. 48-58.

<sup>2</sup> Regulations of Bengal, Madras and Bombay (1813-24), 1817, p. 19.

<sup>3</sup> Idem, p. 5.

<sup>4</sup> Idem, 1819, pp. 5-6.

Also, Letters Received from Bengal, Vol. 81, Rev. Letter dated 30 July 1819, paras. 62-72.

Ditto. Vol. 85, ditto. 16 March 1821, paras. 3-15.

their approbation<sup>1</sup>. The questions that concerned them most were the extensive resumptions of the rent-free lands of the ancient Canongoes, the creation of the somewhat anomalous position of the Patwari, and the declared incompetence of the Collectors. If on the principle that there was no reason to continue the old families of Canongoes in possession of rent-free lands, resort was had to large and indiscriminate resumptions, great harshness and misery was bound to result. Cases might exist in which it would be proper that a payment should continue even after the service to which it was first annexed was no longer required. Regulation IV of 1808 might subject the lands held by the Canongoes in the Ceded and Conquered Provinces, to resumption. "But, we do not conceive that the rule which was then followed ought to govern in future as a precedent." "We require that not only all reasonable claims of right should in those cases be respected, which is justice, but that the considerations of humanity should meet with their due share of attention."<sup>2</sup> Regarding the alteration of the Patwari office, the Directors still

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<sup>1</sup> Dispatches to Bengal, Vol.85, Rev. Dispatch dated 12 July 1820, pp. 154-68.

<sup>2</sup> Idem, pp. 168-84.

still held that, nothing short of making it entirely subservient to the Collectors would provide a real remedy.

"The choice, the pay, and the superintendence" of the Patwaries should have been entrusted<sup>1</sup> wholly to the Collectors."

Compromises were dangerous when the interests and happiness of the entire body of peasantry were involved. However, since the rules had been passed, no violent changes need be made in them at once. They were sound on many points. "But the immediate dependence of the Patwari upon the zemindar which you have allowed to remain, is a source of evil against which it will require a peculiar degree of vigilance to guard."<sup>2</sup>

But could this vigilance be expected from the Collectors, strangers to the new system and to any method of minute investigation, particularly in the permanently settled country? Additional expedients therefore, must be employed. The examination of the Patwari papers enjoined in general terms, should at least take place once a year; should, wherever possible, be done by the Collector himself, and where done by any other responsible revenue official, should be fully reported to the Collector. It should take place in the presence of the persons fully acquainted with the facts, before the ryots of every village concerned.

Unless

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<sup>1</sup> Dispatches to Bengal, Vol.85, Rev. Dispatch dated 12 July 1820, p. 192.

<sup>2</sup> Idem, pp. 193-206.

Unless, therefore, "the Collectors effectually descend to details, you will never obtain accurate information . . . and . . . we are equally convinced that, unless you prescribe specific details, the Collectors will never undertake them, but will continue to perform the duties of their office in that summary and superficial way of which there is too much reason to complain."<sup>1</sup>

It is impossible not to be struck by the thoroughness with which the Directors themselves descended to details in order to hammer out and strengthen the reforms. That the zemindar would be offended by any plan calculated to deprive him of the advantage of defrauding the State and oppressing the ryots, was only too well known to them; and they admitted that in the duties prescribed to the Canongoes, provisions of considerable efficacy had been made to detect such frauds. Still, however, they saw "very little" in those duties which had "any tendency" to afford protection to the ryots. Further, as the office of Canongoe was to make the accounts of the Patwaries useful, they commanded that the greatest care should be taken by the Collectors to see that the Patwari accounts contained "all the requisite points of information and that it is

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<sup>1</sup> Dispatches to Bengal, Vol. 85, Rev. Dispatch dated 12 July 1820, pp. 208-19.

is true information." No heady enthusiasm, must ever be allowed to relax the closest supervision of Government.

"There is only one other precaution which we think it necessary to impress upon you, that of not over-estimating the effects of any instruments of Government which you may be led to employ. This is an error, into which those who have difficult objects to accomplish naturally fall; and you appear to have fallen into it."<sup>1</sup>

This mixture of severe and wholesome paternal advice was taken with good grace by Government. Although no changes in the existing Canongoe and Patwari offices were made, the remarks of the Directors were sent to the Revenue Boards for consideration with special orders to report on the type of accounts and records actually kept by the Canongoes, their completeness and accuracy, their utility as exhibiting the interests and properties attaching to land, the rates and rent, the rights and privileges of all classes of the agricultural community. The Boards were required to suggest improvements if it appeared to them that the Shirasthas of these officers were defective either in their records not containing all the requisite points of interest, or in the want of security for the

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<sup>1</sup> Dispatches to Bengal, Vol. 85, Rev. Dispatch dated 12 July 1820, pp. 219-25.



the truth of the information contained in them, or in the true accounts not being accessible for ready reference<sup>1</sup>. An enquiry was also made into the resumptions of the rent-free lands of the Canongoes and a number of ancient families were restored to their old possessions<sup>2</sup>.

The reinforcement of the Canongoe and Patwari offices was only one of the many contrivances by which the Home Authorities wished to ascertain and record the rights of the ryots and other agricultural classes. No subject more perplexed the Directors, and none was more unwelcome to Government for it conflicted with all attempts immediately to introduce a permanent settlement <sup>in the New Provinces</sup> in Bengal. The Directors' insistence had not much effect under Lord Minto, or what little effect it had, was illcalculated to yield substantial results, because Lord Minto and his Council were thoroughly wedded to old ideas. It had considerable effect under Lord Hastings primarily because it was ruthless and persistent, and secondarily because it fell on a Government slow indeed, but not altogether impervious to new ideas. One of the major reasons why the Directors recommended the Ryotwari in lieu of the Zemindari or the Farming system was, that they desired to eliminate the oppressions

<sup>1</sup> Letters Received from Bengal, Vol.87, Rev. Letter dated 1 Aug. 1822, paras. 4-7.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol.III, pp. 36-52.

oppressions of "the intermediary class of renters . . . admitted between Government Collector and the Ryots." From 1815 onwards they reverted to the subject of safeguarding the rights of the under-tenants and the peasantry with a tenacity as notable as it was irksome to Government. In the Upper Provinces they pointed out, very little was known of the rights of the various descriptions of land-holders and of the nature of the tenures by which property was held. Here, as in Bengal, the Patta Regulation had been allowed to remain "a dead letter." Their main point was "that the rights of the individuals shall not be infringed;" and to secure this, every effort should be made to ascertain and record them. Such in short, were the preliminary but peremptory instructions conveyed in the Despatches of 6 January and 17 March 1815<sup>1</sup>.

Government answered in the same year (7 October 1815) that although there were "but too strong grounds to believe" that the ryots were frequently "subjected" by the zemindars and others, and although it was true that the existing institutions "are very imperfectly calculated to afford them . . . protection, . . . yet, their rights, considering the questions abstractedly, do not appear to us by any means enveloped in . . . obscurity."<sup>2</sup> Upon a totally theoretical basis, it then explained

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<sup>1</sup> Dispatches to Bengal, Vol. 68, Rev. Dispatch dated 6 Jan. 1815, pp. 278-304.

Ditto. Vol. 69, ditto. 17 March 1815, pp. 55-98.

<sup>2</sup> Letters Received from Bengal, Vol. 72, Rev. Letter dated 7 Oct. 1815, para. 9.

explained that the resident ryots throughout the province of Bengal "had an established permanent, hereditary right in the soil," which they cultivated so long as they paid the rents justly demanded from them, and that their rents were determined not by the arbitrary will of the zemindar but by the specific engagements contracted "between the parties or their ancestors, or in the absence of such engagements, by the established rates of the pergunnahs or other local divisions."<sup>1</sup> It could discover no incompatibility in the relative rights of the zemindars and the ryots. It refused to acknowledge that they were in practice at variance with each other. "The cottager in England may have rights, but they do not necessarily oppugn those which are inherent in the proprietor of the estate." Again: "Each party has his rights, but rights differing materially in their nature and degree; both perfectly consistent with each other as long as avarice or other bad passions do not instigate the zemindar to oppress his ryots."<sup>2</sup>

Here indeed, was the weak point of the whole contention. Apart from the question of rendering prompt redress to the ryots in cases of injustice, how was it possible to find out

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<sup>1</sup> Letters Received from Bengal, Vol. 72, Rev. Letter dated 7 Oct. 1815, para. 9.

<sup>2</sup> Idem, paras. 10-11.

out whether the zemindar was oppressing the ryots or not, so long as these rights were not known? This question was ignored, perhaps deliberately, by Government which had ample faith in the newly enacted Patta Regulation. For it immediately asserted that the restrictions imposed by Regulations XLVI of 1793 and XLVII of 1803, prohibiting the grant of pattas for any term extending to more than ten years were "fundamentally erroneous." Their tendency appeared to limit those rights which the peasants possessed in a much more extended sense "by virtue of the constitution of the country itself." They might have been dictated by a cautious policy; without them, the public revenue might have suffered if the zemindars had been allowed to let the lands to farm or to grant dependent taluks for an indefinite period at a reduced jumma. With respect to the ryots, however, they were now held to be unwise, and as they had already been removed by Regulations V and XVIII of 1812 in the old provinces, nothing further appeared necessary to Government than that they should likewise be abolished in the new provinces<sup>1</sup>.

This facile belief in the compatibility of theory and practice, in the good faith of the zemindars and in the law

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<sup>1</sup> Letters Received from Bengal, Vol. 72, Rev. Letter dated 7 Oct. 1815, paras. 12-13.

law of natural adjustment of economic conditions, received a rude shock from England. The Directors mercilessly knocked the bottom out of every argument employed by Government. And they set about doing this with a characteristic zeal and comprehensiveness. It was abundantly clear to them that the rights confirmed by the permanent settlement on the zemindars were not intended to trench upon the rights of the resident ryots and others. The Minutes of Lord Cornwallis and Shore had made this point perfectly obvious. In addition, Regulation I of 1793 (sec. 8) had explicitly reserved to Government the duty of protecting the under-tenants and the peasantry. The prohibition of abwabs declared by Regulation VIII of 1793 was a patent instance of Government interference in the relations between the zemindars and the ryots<sup>1</sup>. Asserting the validity of the State intervention in such matters, the Directors next criticised the insufficiency of past practice. The Patta Regulation had been consistently distorted by the zemindars, inas-much as it "too often happens that the quantum of rents which they (the Ryots) pay, is regulated neither by the specific engagements nor by the established rates of the pergunnah, or other local divisions in which they reside, but by the arbitrary will of the zemindar."<sup>2</sup> Numerous extracts from

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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Dispatch dated 15 Jan. 1819, pp. 53-81.

<sup>2</sup> Idem, pp. 82-4.

from public documents were cited in support of this fact. But the documents which they deliberately resuscitated with a view to drive home to Government the seriousness of the situation, were the Minutes of the Governor-General himself, dated 21 September and 2 October 1815 on the Revenue and Judicial Administration. These Minutes, they emphasised, "unequivocally confirm the truth of all the information of which we were previously in possession, respecting the absolute subjection of the cultivators of the soil to the discretion of the zemindars."<sup>1</sup> And if the plight of the ryots in Bengal was servile, that of the village zemindars in the Upper Provinces was in no way better. Had not Lord Hastings observed that these village zemindars "appeared to be in a train of annihilation and unless a remedy is speedily applied, the class will soon be extinct?" They expressed genuine regret at having acquiesced in the brusque way in which Cornwallis had shelved the subject of the record of rights, and paid a glowing tribute to the sound policy pursued in that direction by the recently departed Indian statesman, Warren Hastings.

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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Dispatch dated 15 Jan. 1819, p. 84 sqq.

For the Minutes, see Selection of Papers from the Records of the East India House, Vol. I, p. 403 sqq., and Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), p. 139 sqq.

They eulogised the vain endeavour of Shore who had insisted that during the term of the Decennial Settlement the relative rights of the zemindars, talukdars and ryots should be rendered definite and precise, and still more, they admired the prophetic insight of Warren Hastings who had so truly declared:

"It is the zemindar's interest to exact the greatest rent he can from the ryots, and it is as much against his interest to fix the deeds by which the ryots hold their lands and pay their rents to certain bounds and defences against his own authority. The foundations of all such work must be laid by the Government itself."<sup>1</sup>

On this unassailable principle he had proposed to collect the copies of the existing pattas and to ascertain the pergunnah rates of the different districts. He had appointed the Committee of Investigation in the teeth of virulent opposition in the Council, by his casting vote (1776)<sup>2</sup>. But, no sooner had its work begun, than an order had come from England

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<sup>1</sup> Dispatches to Bengal, Vol.LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 102-26.

<sup>2</sup> Firminger. Introduction to the Fifth Report, p.cccxi sqq. Note also, that Warren Hastings established the post of the Superintendent of the Khalsa Records in 1774; the office was abolished in 1781.- Ramsbotham. Studies in the Land-Revenue History of Bengal, pp. 54-6.

England for its discontinuance. It was under similar feelings that the Board of Revenue in 1786 had recommended the creation of the office of Chief Sheristhadar<sup>1</sup>. In this instance, too, the short-lived office occupied by James Grant, had been abruptly abolished by Lord Cornwallis. If only "the policy of Mr. Hastings had not been departed from, or if a stop had not been put to the further prosecution of Mr. Grant's labours," there would have been no cause to lament "that the happiness of the most numerous and industrious class of the community has hitherto been so imperfectly attained, and that, instead of maintaining their rights, we have not even ascertained what they are."<sup>2</sup>

A parade of regrets, however, spontaneous, loses much of its effect if it is not brought into relief against a sombre background. And for this, materials were not wanting to the Directors. They examined the foundations of the very rules on which Government had built its faith and proved conclusively that they were both uncertain and insecure. Was it not much more important for the security of the ryots to have ascertained what the legitimate rates of the pergunnah were

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<sup>1</sup> Cambridge History of India, Vol.V, pp. 431-2.

<sup>2</sup> Dispatches to Bengal, Vol.LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 126-33.



were and to have caused a record of them to be carefully preserved, than to have merely enjoined the exchange of agreements between them and the zemindars, "leaving in total uncertainty, the rules by which such engagements were to be formed?"<sup>1</sup> To have taken the rates at which the ryots were assessed by the zemindars at the time of the permanent settlement as the maximum of future demands, would no doubt, have had the effect of perpetuating the subsisting abuses and oppressions; "but it would at least have fixed a limit to them." Those rates might have been ascertained from the Canongoe and Patwarí accounts, had those offices been well maintained. But the Canongoes having been abolished and the Patwaries abandoned to the zemindars, the only safeguards left to the ryots were the Patta Regulation and the Courts of Justice. The former, as it did not define what the pergunnah rates were, was quite inadequate to protect their interests against illegal encroachments, even had it been generally acted upon. The latter could not avail much in cases of disputes where there was no data on which to decide, even had the courts in other respects been competent to settle questions of that nature. The distraint vested in the zemindars by Regulation VII of 1799 eventually led to the  
passing

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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 148-55.

passing of the Regulation V of 1812, which also, unhappily, did not explain what the pergunnah rates were<sup>1</sup>. Nor was this all. It was founded on the assumption that it was far better to abrogate most of the laws in favour of the ryot and to leave him under no other protection for his tenure than the specific terms agreed upon by him and the zemindar and embodied in the patta. It took for granted that the zemindars and the ryots had reciprocal wants and as such, their mutual necessities must drive them to amicable adjustment. This fallacious doctrine the Directors riddled with remarks pointedly and profusely made by various public officials, including the Governor-General. It is sufficient to quote the views of Lord Hastings, as stated by the Directors:

"This reciprocity is however not so clear, that the Zemindar cannot do without the tenants, but that he wants them on his own terms and that he knows that, if he can get rid of the hereditary proprietors who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting the men of his own; and that such is the redundancy of the cultivating class that there will never be a difficulty of procuring ryots ready to engage on terms just sufficient to ensure bare maintenance."<sup>2</sup>

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<sup>1</sup> See p. 156.

<sup>2</sup> Dispatches to Bengal, Vol. LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 154-72.

In the face of such remarks, the revised Patta Regulation was justly held by the Directors to have been "the very reverse of beneficial."<sup>1</sup>

With a profound sense of grief the Directors realised that it was a gross mistake to have described the zemindars with whom the permanent settlement had been concluded, as the actual proprietors of the land. This view had taken no account of the possessory rights of the ryots, and out of it had grown the most misleading habit of "considering the payment of the Ryots as rent, instead of revenue." These terms had introduced much confusion into the subject of land tenures and lent a "specious colour" to the pretensions of the zemindars in their relations with the peasantry, as if they, the zemindars, were the actual proprietors of the land, as if the ryots had no permanent interests in the soil. Not only the zemindars, but also the Jagirdars had utterly annihilated the rights of the ryots; and there was too much reason to believe "that the rights of the villages must be in the same manner affected where the settlement is formed by the Government for one village, only with a person called the 'Proprietor'!"  
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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 172-6.

Could not these dangerous terms, without creating any discontent or unrest, be gradually avoided in future? At all events, the rights of every class, from the zemindar downwards, must be accurately ascertained, defined and recorded<sup>1</sup>.

Before describing the direct effect of these elaborate instructions of 15 January 1819, it may be well to trace the attempts made by Government to secure the points stressed by the Directors in 1815. The Governor General and Council were not indeed, careless of the protection of the peasantry. We have already seen with what perseverance they undertook the reorganization of the Canongoe and Patwari offices. It was the difficulty and vastness of the task and the lack of confidence in success where "all preceding Governments have failed"<sup>2</sup> and not the unwillingness to redress wrongs, that actually barred the way of progress. Thus, although in October 1815 in its correspondence with the Home Authorities, Government expressed its entire confidence in the patta Regulations of 1812, within a couple of years, in a notable instance it endeavoured to systematize the relations between  
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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 177-203.

<sup>2</sup> Letters Received from Bengal, Vol. 79, Rev. Letter dated 17 July 1818, para. 147.

the zemindars and the ryots. To its order that the rates payable by the ryots should be fixed, the Board of Commissioners in Behar and Benares replied that such an act would not only be arduous but "questionable" as it "may affect the permanent interests of both the Government and public." They asserted that the prosperity of the country would be best enhanced by annulling all the prescriptive rights of the resident ryots. This astounding proposition, founded as it was on the pure hypothesis that the zemindars were a provident and productive class and the ryots the very reverse, encountered the severe reprobation of Government. Its basis was "altogether at variance with the acknowledged principles of human nature." The characteristic indolence and imprudence of the peasantry were the necessary results of their abject condition and "so long as the rights of that class shall remain unprotected, the British Government must be considered to have fulfilled very imperfectly the obligations which it owes to its subjects." The Directors highly commended this conduct as, also, similar instructions issued by Government to the Collectors engaged in the temporary settlements of the new provinces<sup>1</sup>.

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<sup>1</sup> Letters Received from Bengal, Vol. 79, Rev. Letter dated 17 July 1818, paras. 146-9. And Dispatches to Bengal, Vol. LXXXVIII, Rev. Dispatch dated 9 May 1821, pp. 676-724.

In 1817 an important step was taken by Government to implement the Canongoe and Patwari reforms. The necessity of reorganizing the business of registration in the several collectorships appears to have been originally suggested by the acting Collector of the Twenty-four Pergunnahs in his report of 27 February 1817. The Board of Revenue communicated this report to Government on 18 March of the same year. The Collector had remarked that the record offices throughout the country were in a "most lamentable state of irregularity, frequently nothing more than a vast collection of forgeries." "I am confident" he had commented, "that in every district collusion exists between the zemindars and the native record-keepers."<sup>1</sup> Government forthwith decided to appoint new officials designated district Registrars to each of the collectorships. They were to receive a handsome pay of about 200 rupees in the new provinces and 100-150 rupees in the old; to arrange and make digests of the records, particularly those of the Canongoes; and to provide any applicant for a small fee with extracts from the public documents<sup>2</sup>. At first, Registrars were appointed to the two collectorships of Bareilly and

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<sup>1</sup> Dispatches to Bengal, Vol. LXXXVIII, Rev. Dispatch dated 2 May 1821, pp. 377-80.

<sup>2</sup> Letters Received from Bengal, Vol. 77, Rev. Letter dated 4 July 1817, paras. 103-5.

and Farruckabad<sup>1</sup>; but later, the plan was extended to almost all the other districts<sup>2</sup>. Its object was quite in conformity with the Directors' instructions of 1815; to procure and preserve an accurate register of the existing tenures and rights and of all transfers and alienations of landed property. The Directors therefore, very much approved it, but at the same time warned Government that the Registrars must be strictly supervised<sup>3</sup>.

All this was done prior to the arrival of the exhaustive instructions from England of January 1819. Their immediate outcome was a comprehensive scheme launched by Government embracing the whole of the Presidency of Fort William. On 17 March 1820 it was resolved to constitute Record Committees in every district, consisting of the judge and collector with the zillah and city 'Register' as secretary, and at the head station of the Court of Circuit, the senior judge of that court. These district Record Committees were to be superintended by a Presidency Record Committee, composed of the junior member of the Board of Revenue, the fourth judge of the Sadr Diwani Adalat, the secretaries of Government in

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<sup>1</sup> Letters Received from Bengal, Vol. 78, Rev. Letter dated 29 Oct. 1817, paras. 125-30.

<sup>2</sup> Ditto. Vol. 79, ditto. 17 July 1818, paras. 87-89.

<sup>3</sup> Dispatches to Bengal, Vol. LXXXVIII, Rev. Dispatch dated 2 May 1821, pp. 377-411.

in the Judicial and Territorial Departments and the Superintendent and Remembrancer of Legal Affairs<sup>1</sup>. Till 1823, the duties of these committees were mainly confined to the preparation of the <sup>e</sup>mohal and district registers of landed estates<sup>2</sup>. Within a short time of their establishment, the recently appointed Registrars were placed under them<sup>3</sup>.

Government anticipated so much from this extensive scheme that Madras and Bombay were invited to consider its adoption<sup>4</sup> and the Directors expected it to supply an efficient control over the business of recording the rights of the different classes of the rural community<sup>5</sup>.

But were these rights ascertained and secured? There is no doubt that in the new provinces the Canongoe and Patwari offices threw light on many a topic touching the interests of both the agricultural classes and the State. They were particularly serviceable when temporary settlements were being made, when past engagements formed with doubtful  
land-holders

<sup>1</sup> Letters Received from Bengal, Vol. 85, Rev. Letter dated 16 March 1821, paras. 16-27. Also Dispatches to Bengal, Vol. XCV, Rev. Dispatch dated 18 Feb. 1824, pp. 908-11.

<sup>2</sup> Letters Received from Bengal, Vol. 87, Rev. Letter dated 1 Aug. 1822, paras. 8-12.

<sup>3</sup> Ditto. Vol. 85, ditto. 16 March 1821, paras. 29-31. Also ditto. Vol. 87, ditto. 1 Aug. 1822, paras. 142-50.

<sup>4</sup> Ditto. Vol. 85, ditto. 16 March 1821, para. 28.

<sup>5</sup> Dispatches to Bengal, Vol. XCVII, Rev. Dispatch dated 10 Nov. 1824, para. 45.



land-holders could be corrected and new ones made with the rightful owners. Up till the close of Lord Hastings's term of office, Government bore testimony to this fact. But in the old provinces these offices do not seem to have been very useful, because of the difficulty of uprooting the customary collusion with the zemindars, and possibly also, because of the lack of vigilant control<sup>1</sup>. In these circumstances, is it not tempting to imagine that if the Patwaries had been made entirely dependent on the Collectors, as the Directors desired, they would have rendered a better account of their duties? Such a complete change, admittedly, would not have been easy, but it would assuredly have been worth the trouble. The Patwari accounts were of the greatest value, forming the basis of Canongoe records, the chief source from which Government could learn anything of the economic condition of secluded villages. If the zemindars would not acquiesce in the change, they should have been forced to do so for the sake of the welfare of the whole body of ryots. The next measure, the appointment of Registrars, was undertaken mainly to provide an accurate digest of the Canongoe records; and this was on the whole

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<sup>1</sup> Baden Powell. Land Systems of British India, Vol. I, p. 679, see also footnote.

whole performed successfully. The superimposition of the District and Presidency Record Committees over the Registrars meant not only a centralization of control but a provision for intelligent guidance. It was a wise method by which the experience and knowledge of both the revenue and judicial officers were combined and directed to secure a record of rights. Until 1823, however, the Record Committees were chiefly engaged in making the village and <sup>e</sup>mal registers showing the malguzari and lakhiraj lands. Any attempts "to form a general record of ryots' holdings and of the detailed information regarding them" were postponed for the future. To ~~scrutinize~~ a mass of materials, to detect frauds and mal-practices and to correct them, these were objects which the Record Committees, as yet, had not attempted; indeed, even if they had, it is doubtful, in view of their novelty and the arduous duties of the persons who composed them, if not in Bengal at any rate in the new provinces, whether they would have successfully accomplished these tasks. The Home Authorities, naturally enough, persistently pressed Government to formulate a record of rights and hoped speedily to learn of its completion. But no record had as yet been formed; none could be formed within a short time by the existing machinery; and, in fact, none was formed for a generation to come. Several other measures introduced by Government for this purpose

purpose will be more appropriately described while discussing the policy of settlements; but it may be well to notice here, that the Governor General and Council frankly felt uncomfortable at the pressure from England. The following quotations are sufficient to illustrate the point:

"It may naturally seem an easy thing to ascertain what is payable and what is paid by the ryot, and so the matter strikes you; but when we state that in a single district Bareilly it is calculated that there are 33,740 ryots occupying about 840,000 fields, we need not surely enlarge on the difficulty of securing proper records of individual tenures in the face of all the impediments which ignorance, prejudice, violence, fear and fraud combine to raise."<sup>1</sup>

And again,

"The only chance of success is to be found in caution and perseverance; and we beseech you to believe that though the objects you desire are not accomplished so rapidly as you may expect, the delay is not to be ascribed to any want of anxious consideration and enquiry into the means most likely to lead to their accomplishment."<sup>2</sup>  
Intimately

<sup>1</sup> Letters Received from Bengal, Vol.87, Rev. Letter dated 1 Aug. 1822, para. 13.

<sup>2</sup> Idem, para. 14.

Intimately interwoven with the subject of record of rights was the problem of providing a prompt settlement of the disputes respecting titles to land and rent between the zemindars or land-holders, the under-tenants and the ryots. It has already been indicated, how Lord Minto's Government had prescribed an imperfect remedy for such disputes, leaving the aggrieved party to seek redress in the distant and congested civil courts<sup>1</sup>. The Home Authorities on the other hand, maintained from the first that no cure was so speedy and certain as the establishment of Mal Adalats, the transference of all revenue suits into the courts of the Collectors. There was indeed plenty of cause for this conviction. The judges of the Sadr Diwani Adalat had in 1809 pronounced that such a delegation of judicial authority to the Collectors "would be highly expedient." A similar opinion had been expressed by Government itself in its Letter of 21 August 1809; "the agency of the Collectors" might in that way be "beneficially employed" and the Courts of Civil Judicature "relieved from a great deal of labour."<sup>2</sup> In 1813 the Directors had circulated in England a number of queries on revenue and judicial administration and the answers of several experienced Company's servants

<sup>1</sup> See p. 185 599.

<sup>2</sup> Dispatches to Bengal, Vol. LXVII, Judicial Dispatch dated 9 Nov. 1814, pp. 445-9. Also Letters Received from Bengal, Vol. 56, Judicial Letter dated 21 Aug. 1809, para. 12.

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servants had decidedly favoured that method<sup>1</sup>. Above all, the much respected Munro, then in England, had strongly recommended it. All this time, however, while the civil courts were overburdened with revenue suits, the ryots were suffering under flagrant breaches of contract and dispossession of property.

On 9 November 1814, the Directors wrote a powerful dispatch urging the feasibility of conferring the requisite judicial powers on the Collectors. The measure though not novel or inconsistent with former practice under the Company and the Moguls, was none the less at variance with the existing system planted by Cornwallis, which enjoined a distinct separation of the revenue and judicial authorities<sup>2</sup>. It was professedly not the intention of the Directors to depart "essentially" from the Cornwallis Code; but there were, they argued, "very grave and solid reasons"<sup>3</sup> why it might be contravened in this special case. In the engagements made by the zemindars or under-tenants with the ryots, the demand was required to be clearly and expressly defined, and if more than the dues so specified were collected, the offending party was liable

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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol. II, p. 1 sqq. Also Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, p. 450.

<sup>2</sup> See the Minute of Lord Cornwallis dated 11 Feb. 1793 in the Second Report of the Select Committee (1810), Appendix No. 9 (A), pp. 107-25.

<sup>3</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 450-52.

liable to be sued in the Zillah Court. Now Cornwallis himself had observed that previously to 1793 the rights and nature of the tenures of the zemindars and different description of under-tenants and actual cultivators of the soil were regulated by the "vague term usage;" that this usage varied in almost every district; that as precedent might be pleaded in justification of every species of exaction, a petition in such cases to the courts of justice would have been quite nugatory, as the judge for want of established rules would have been at a loss for guidance and Government would have been distracted by numerous references on which it was equally disqualified to decide. These factors, he remarked, had in 1787 led to the strengthening of the jurisdiction of the Collectors over revenue causes, by the order that all complaints of oppressions and exactions should be cognizable by the Collectors<sup>1</sup>. The Directors held that the observations of Cornwallis were still applicable to the Bengal Provinces; for, the Patta Regulation of 1793 had not only not been strictly enforced, but found useless to protect the ryots<sup>2</sup>.

If precedents were needed to make the change, in  
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<sup>1</sup> Second Report of the Select Committee (1810), Appendix No.9 (A), p.111.

<sup>2</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 457-64.

two instances at least, even in the Cornwallis system, the rule of separation of the fiscal and judicial powers had already been violated. Regulation VIII of 1794 had empowered the zillah judges to refer to the Collectors for report and adjustment any accounts connected with the decision of suits concerning contracts, debts, exactions and like matters formerly cognizable in the revenue Court. The zillah judge, it is true, might set aside the decision of the Collector; but there was no gainsaying the fact that the former was guided by the opinions of the latter. The increased necessity since experienced for the aid of the Collectors in the adjudication of causes as to arrears of revenue due by the ryots had resulted in the Regulation V of 1812 which, instead of leaving to the zillah judge the option of referring suits to the Collector had required him to refer all suits for his report, and this with a view to summary proceedings.<sup>1</sup>

To the Home Authorities these rules appeared ill-calculated to secure ready means of redress. That could only be done by a provision which on the one hand should enable the zemindars by a prompt and summary process to realise their dues from the ryots and so fulfil their engagements with the State

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 464-70.

State, and on the other hand which should extend facilities for the protection of the ryots from the exactions of the zemindars. "We are strongly inclined to think that by bringing this two-fold object under the bona fide cognizance of the Collectors, subject to the revisal of the regular courts of justice by way of appeal in cases of sufficient importance, both descriptions of our native subjects would be greatly benefited." The topic being important, the Directors desired that the opinions of both the Judges and Collectors as well as of the Sadr Diwani Adalat, be taken upon it. They also directed that boundary disputes between the zemindars or land-holders recently made cognizable by arbitration under the Judges be likewise brought under the Collectors<sup>1</sup>.

No one can fail to discern in these instructions a blow aimed at one of the pillars of the Cornwallis System, - the distinct separation of the revenue and judicial authorities. And it was formidable, because of the glaring evils to be remedied. Regulation VII of 1799 by enabling the zemindar to put the property and possessions of the ryots under distraint and sale, had resulted in universal misery. As before indicated, this

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 471-88.



this had been relentlessly brought into the lime-light by the investigations of 1809<sup>1</sup>; and subsequent experience had only confirmed its truth. An example was afforded by the report of Mr. Blunt, the Superintendent of Police in the Lower Provinces, <sup>dated</sup> ~~in~~ 15 June 1811. In order to find out what description of complaints were most prevalent, he had exposed in his cutcherry tent at Rungpore, a small village, a box for petitions - a practice enjoined by the orders of 1772; and of some hundreds of petitions thus preferred, by far the greatest portion had related to matters of rent and exactions. He observed: "a ryot can entertain little hope of redress against the oppressions of a zemindar or a temporary farmer, when there are ... two thousand civil suits pending for trial before the Munsiff."<sup>2</sup> As for a suit in the court of the zillah judge, the ryot could hardly contemplate such proceedings, since they involved not only expense but delay - never less than three years - and frequent tiresome journeys. "What we have here quoted" the Directors urged, "(and much more might have been quoted from your records equally strong and conclusive), relates to the very feeble protection which the present provisions of the Judicial Code have afforded, or can in

<sup>1</sup> See p. 152 *sqq.*

<sup>2</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, p. 326 *sqq.*

in the nature of things afford, to the ryots against the injustice and extortions of the zemindars."<sup>1</sup> The Collectors were the most natural and efficient instruments for deciding revenue causes. They had more leisure than the judges, more familiarity with village matters, and being nearer and more easily accessible to the ryots, and unhampered by any formal rules of regular procedure, they would distribute prompt justice to the parties. "A multitude of disasters can be averted by the timely and charitable interposition of the revenue officers."<sup>2</sup>

At the outset, Government seemed infected by this enthusiasm. On 19 August 1815 it replied: "We are likewise of opinion that it would be extremely desirable to revive generally the Mal Adalats, or tribunals for the trial and decision of disputed claims between land-lord and tenant and between all persons from the Sudder Malguzar to the cultivator of the soil." These institutions, it admitted, were formerly of the "greatest utility" and that they might again be rendered "highly beneficial." They would facilitate the collection of rents by the zemindars, protect the ryots from exactions, and relieve the courts of justice "from a part of  
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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 339-40.

<sup>2</sup> Idem, pp. 482-7.

business which at present presses so heavily on many of them." The subject was referred to the several Revenue Boards and the Sadr Diwani Adalat<sup>1</sup>. But, in fact, the magnitude of the alterations which it involved in the established system, gradually began to weigh with Government. And though the Revenue Boards upheld the proposal, nothing was done for a considerable time. On November 1, 1816 Government still awaited the report of the Sadr Diwani Adalat<sup>2</sup>.

The Directors, however, were not to be easily put off. In January 1819 they once more pressed their previous instructions in a much more decided language. They dwelt on the "incapacity" of the zillah courts to afford protection to the peasantry and cited the authority of the Board of Commissioners in support of the Mal Adalats. The Commissioners had testified that the decision of such courts would be not only prompt and free of expense, by the exclusion of all technical pleadings and professional vakeels, but that the "supervision of the controuling Boards (meaning the Board of Revenue and the Board of Commissioners) unembarrassed by the formality of regular appeal would tend to establish fixed principles, to prevent

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<sup>1</sup> Letters Received from Bengal, Vol. 71, Rev. Letter dated 19 Aug. 1815, paras. 3-4. Also Letters Received etc., Vol. 72, Rev. Letter dated 7 Oct. 1815, para. 15.

<sup>2</sup> Ditto. Vol. 75, ditto. 1 Nov. 1816, paras. 32-35.

prevent a deviation from them, and maintain uniformity of decision." The whole of the Revenue Department, they had asserted, had "a clear and direct interest" in the maintenance of good faith between landlord and tenant, "and the Revenue Department alone can, generally speaking, acquire a competent knowledge of the subject." The Directors repeated that they were perfectly aware that their orders of 1814 envisaged a fundamental change from the Code of 1793; and now as then, they argued that however correct the separation of revenue and judicial powers might be in theory, it was nevertheless "practically inapplicable to our Indian system," in which it had never been acted upon in the past. A most material impediment in the way of administering justice to the people had lain in the "rigid" principles on which the Cornwallis system had been enforced; and it was a wonder to the Home Authorities that successive Governments should so long have hesitated to retrace the steps originally taken<sup>1</sup>.

But Government, still, to a large extent, clung to the old ideas. The result was that, as far as the Old Provinces were concerned, it did little to invest the Collectors with judicial powers except that it caused circular orders to be issued

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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Rev. Dispatch dated 15 Jan 1819, pp. 210-24.

issued, requiring the judges to refer to the Collectors for report and adjustment as many of the revenue suits as possible<sup>1</sup>. As to the New Provinces, however, the insistence of the Directors was not without much effect. There, some special rules were introduced in 1822 which not only invested the Collectors with authority to decide all revenue suits in the first instance while actually engaged in making settlements, but envisaged the establishment of Mal Adalats even in normal times. As these reforms are closely connected with the subject of settlements, they will be more appropriately discussed elsewhere<sup>2</sup>.

(2) Reorganization of the administrative policy.

Two vital questions claimed attention almost throughout Lord Hastings's reign; the recovery of wastes and the resumption of illegal or invalid grants of land. In 1811  
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<sup>1</sup> Sudder Diwani Adawlut Circulars, Vol. I, part I (1795-1827), 1819, pp. 40-42.

<sup>2</sup> See p.307 sqq.

Lord Minto had laid down some rules for the latter in the Ceded and Conquered Provinces and Cuttack where the settlements were temporary. There, the lands held free of assessment under invalid or illegal title had been declared resumable by the revenue authorities, in the first instance, leaving the defendant an appeal to the regular courts of justice<sup>1</sup>. But even in this limited sphere, very little, in fact, had been done. As for the resumption of such lands and the greater question, the recovery of wastes in the Lower Provinces where the settlement had been made permanent, Government was really apprehensive of taking any step. It considered that measures in that direction might contravene the permanent settlement. In these circumstances, but for the bold and judicious policy inculcated by the Home Authorities, it is doubtful, whether the ill-gotten gains of the zemindars particularly in the vast tracts of the Sundarbans - the chief source of the supply of fuel to Calcutta - would have been resumed by Lord Hastings and his Council.

Not that the Company's servants were blind to this evil. In October 1811, Mr. Dowdeswell, before relinquishing his seat at the Board of Revenue, had suggested that the  
permanent

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<sup>1</sup> See Regulation VIII, 1811.

permanent settlement, "that monument of wisdom, justice and moderation of the British administration" had, since 1793, failed to prevent vast encroachments of the zemindars. Large parts of the Sundarbans, of the territories on the borders of Chittagong and other frontier districts, of the extensive forests and of the land cast up by river silt, had become private property and a perpetual source of disputes and serious affrays between the zemindars. He professed not the "slightest design" of infringing the principles of the permanent settlement. He was for giving the entire benefit to the zemindars of the lands "which may have been or may be reduced to cultivation within the ascertained boundaries of their estates." But he maintained that the principle could not be extended to vast illegal acquisitions<sup>1</sup>.

Instead of attacking this important subject at once, Government, bent on introducing permanency into the New Provinces, wrote Home that, "whatever opinion may be entertained on that point in regard to Bengal, no objection can in our judgment exist to deriving an increase of revenue from the gradual cultivation of the wastes in the Ceded and Conquered Provinces which are the immediate property of the State." For this

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<sup>1</sup> Selection from the Records of East India House, Vol. I, pp. 172-3.

this it only appeared necessary to declare while bestowing permanency, that the land-holders should be entitled to all the benefits arising from the cultivation of any wastes within the limits of their estates; but that, if they brought any lands under the plough beyond those limits, they should be liable to the payment of additional revenue on a separate assessment<sup>1</sup>.

It was all very well to promise that the blunders made in the Old Provinces would not be committed in the New. The Directors, however, could not be conquered by blandishments. Not only did they peremptorily forbid permanency to be extended, but they insisted on a correction of the errors which it had already introduced. "It is certainly desirable" they urged, that Mr. Dowdeswell's suggestions "should undergo the most serious and deliberate consideration." All lands not alienated by Government at the time when the permanent settlement was concluded, ought to be regarded as the property of the State. Much enquiry and circumspection was doubtless necessary for a just application of this principle, especially in the lands gained by alluvion, whether from a recession of the sea or a deviation in the course of rivers. "The utmost degree of care must

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<sup>1</sup> Letters Received from Bengal, Vol. 66, Rev. Letter dated 17 July 1813, paras. 33-7.



must be taken to prevent any misapprehension of a design on the part of Government to infringe the condition of a compact to the maintenance of which our faith is pledged."<sup>1</sup>

Such was the firm yet judicious language in which the Directors outlined their instructions of October 1814. It displayed on the one hand, a legitimate desire of resuming the just dues of the State, while on the other hand, it clearly evinced the need of avoiding injury to the individuals. The Directors added, that the geographical survey of the Sundarbans recently ordered by Government would have to be reinforced by a "more detailed survey" in order to adjust the assessment to the productive powers of the soil. To the "details of such a survey the natives would, under proper instructions, be rendered fully competent." It was also inadvisable to expose the reclaimed lands to public sale "by which means it would fall into the hands of the Calcutta Bunyans." Where practicable the settlement should be made with the actual occupiers and confined to the lands already brought under cultivation, while at the same time, "every reasonable encouragement should be held out" to cultivate the lands still remaining waste. A stipulation

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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Rev. Dispatch dated 28 Oct. 1814, pp. 282-92.

stipulation exempting wastes from assessment for a few years after they were cleared and cultivated, would operate as an encouragement to industry without compromising the permanent interests of Government<sup>1</sup>.

The Governor-General and Council promised to give "every possible attention" to these orders and sent them to the Board of Revenue for report<sup>2</sup>. The immediate result was the appointment of the Commissioner to the Sundarbans (Regulation IX of 1816)<sup>3</sup>.

Meanwhile the enquiries of Lord Hastings during his tour through the Upper Provinces suggested, that there were large tracts of land held under invalid tenure in Bhaugulpore which might yield considerable public revenue. A member of the Board of Revenue was therefore sent to make further investigations in that district, and when he was recalled, it was placed under the Commissioner for Behar and Benares<sup>4</sup>. By Regulation XI of 1817, the Commissioner was authorised to assess all these lands in the mode in which the Board of Commissioners

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<sup>1</sup> Dispatches to Bengal, Vol.LXVI, Rev. Dispatch dated 28 Oct. 1814, pp. 292-4.  
<sup>2</sup> Letters Received from Bengal, Vol.72, Rev. Letter dated 7 Oct. 1815, para. 24.  
<sup>3</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1816,p.14. Also Letters Received from Bengal, Vol.75, Rev. Letter dated 1 Nov. 1816, paras. 50-8.  
<sup>4</sup> Letters Received from Bengal, Vol.75, Rev.Letter dated 1 Nov. 1816, paras. 59-66.

Commissioners were, in 1811, empowered to do in the districts under temporary settlement<sup>1</sup>. It was thus made possible for the first time to resume invalid or illegal grants in the permanently settled districts of Behar and Benares, while special measures were being introduced to reclaim the wastes in the Sundarbans and its contiguous districts in Bengal.

The right of Government to the revenue from lands not included in the boundaries of the permanently settled estates in the Sundarbans, the 24 Pergunnahs, Nuddea, Jessore, Dacca-Jelalpore and Backergunge, was defined as required by the Directors in Regulation XXIII of 1817. All churs (islands) formed since the decennial settlement, and, generally, all lands gained by alluvium or alteration in the course of rivers, as also lands held under certain pattas from the Collectors but not brought under assessment at the time of the permanent settlement, were now declared resumable. The Collectors and the Commissioner for the Sundarbans were to make careful enquiries, summon the patwaries of the zemindars for the production of any papers, and in case the lands should appear liable to assessment, forward their proceedings to the Board of Revenue. If the Board agreed to resume them, the  
 Collector

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<sup>1</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1817, pp.13-14. Also Letters Received from Bengal, Vol.77, Rev. Letter dated 4 July 1817, paras. 106-111.

Collector or the Commissioner should state this decision to the zemindars and then resume the lands. Persons who thought themselves aggrieved were at liberty to institute a regular suit against Government in the Zillah Court within a period of six months<sup>1</sup>.

The next move<sup>made</sup> by Government was the extension of these rules to the entire Presidency with such modifications as were needed to provide a greater security to the landholders. And it was prompted by many reasons. As in Bengal, in Behar and Benares also the zemindars had made vast encroachments. Again, questions had arisen in regard to the lands held free of assessment under invalid grants, the rules for the resumption of which had appeared in some respects defective. Those especially dealing with the Collectors' enquiries had seemed insufficient to secure "such a degree of care and regularity as might guard them against any serious error in the judgments formed by them and as might afford to the individuals a proper opportunity of bringing the merits of their case fully to issue before the Collectors and the Boards." In some instances, there was reason to regret, that the  
Collectors

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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1817, pp. 93-7. Also Letters Received from Bengal, Vol. 78, Rev. Letter dated 29 Oct. 1817, paras. 34-57.

Collectors had made resumptions on evidence much less decisive than they might actually have obtained. Government, consequently, had been cast in suits in which a more rigid regularity on the part of the Collectors would have secured a successful issue. At all events, it had appeared equitable to give the parties, where resumptions might be adjudged by the revenue authority, an opportunity of contesting those judgments in the regular courts before they were actually dispossessed of their lands<sup>1</sup>. All these points were secured by Regulation II of 1819<sup>2</sup>. Important as they were, we need not enter into their provisions. They were identical with those of the Regulation XXIII of 1817, save that they were applicable to a wider area and to both the wastes and illegal grants and ensured a better security to the land-holders.

The Home Authorities naturally encouraged these various measures intended to enforce their instructions. But they never lost sight of the essential consideration that Government, by its zeal or by its neglect, might infringe the rights of individuals. The significance of this will be easily recognized, if it is remembered that the permanent settlement had not defined the boundaries of the zemindaries.

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<sup>1</sup> Letters Received from Bengal, Vol. 81, Rev. Letter dated 30 July 1819, paras. 3-21.

<sup>2</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1819, pp. 7-16.

While therefore, the zemindars could advance pretensions to the waste-lands as being included in their estates, the Collectors, armed with judicial powers, could not only disallow those pretensions, but contest even the legitimate claims of the zemindars<sup>1</sup>. It was this anxiety to secure justice to the land-holders that lay at the root of the Directors' unwillingness to approve fully the Regulation XXIII of 1817. That Regulation was based on the principle that the Collectors should not apply to the courts of justice, that they should, in the first instance, decide the causes themselves, leaving it to the party dispossessed to seek a remedy in the courts. "That is to say, you have done neither more nor less than transfer that hardship arising from the delay of the courts of justice which you deemed intolerable in your own case, from yourselves to the opposite party." Further: "We must not allow ourselves to suppose, still less to act as if we supposed, that the injury sustained through the delays of the courts of justice, is a greater injury to us than it is to the individuals. Every rational consideration must lead us to the opposite conclusion. The loss of an estate affects the individual more deeply than the non-acquisition of a hundred is capable of affecting the Government."<sup>2</sup> It might be contended that, in the

<sup>1</sup> Dispatches to Bengal, Vol. 87, Rev. Dispatch dated 21 March 1821, pp. 645-67.

<sup>2</sup> Ditto. Vol. 88, ditto. 2 May 1821, pp. 551-6.

the cases in which resumptons were made by the Collectors, the opposition would seldom be well-founded; that if the Collectors enforce their claims only through the courts, they would be under the exigency of prosecuting a suit for every claim; while that, if they do so by their own authority, leaving the parties to re-claim through the courts, only a few would sustain a hardship worthy of regret. But there was another side to the whole question; "with the loss of property,

the suffering party may have lost the means of applying for justice."<sup>1</sup> The Directors therefore reasoned that a method recommended by Mr. Deane, the late Commissioner of Behar and Benares, of constituting a special judge who was to tour from district to district and decide causes brought forward by the Collectors, would at once avoid arbitrary seizures, expense and delay<sup>2</sup>.

It was a scheme well worth a trial. But its need was lessened by the Regulation II of 1819 which allowed the zemindars to retain their lands under due security, until their appeals to the Zillah Courts from the judgments of the Collectors were decided against them. So the Directors approved this Regulation, not, however, without emphasising, as they had previously emphasised, the necessity of careful enquiry by

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<sup>1</sup> Dispatches to Bengal, Vol. LXXXVIII, Rev. Dispatch dated 2 May 1821, pp. 557-8.

<sup>2</sup> Idem, pp. 560-72.

by the Collectors. "Much difficulty will, we apprehend, be experienced in carrying this measure into effect in consequence of the claims which whether justly or unjustly will be set up." The uncertain data on which the decennial settlement was formed and the general want of definition of what constituted an estate, would make it difficult to bring any precise evidence to determine, whether a zemindari included a particular portion of land or not. A work of that nature must be done "cautiously and equitably" as it might easily produce alarm and excite odium against Government. "On the other hand, the rights of the State ought not to be abandoned so long as it may be practicable to maintain them." Hence the necessity of "the line of demarcation between the lands included and not included in the permanent settlement."<sup>1</sup>

An interesting experiment in resumptions emerged mainly out of the solicitude of the Home Authorities. The island of Sagar at the mouth of <sup>the</sup> Hooghly had been long lying waste. Government had, indeed, proposed to bring it under cultivation but <sup>had</sup> actually done little towards that end. In 1815 the Directors urged action<sup>2</sup>. In 1817 they were informed that their

<sup>1</sup> Dispatches to Bengal, Vol. XCIV, Rev. Dispatch dated 11 June 1823, p.206 sqq. For further information on Resumptions see a separate Revenue Dispatch of the above-mentioned date (11 June 1823), pp. 113-204.

<sup>2</sup>

Dispatches to Bengal, Vol. LXX Rev. Dispatch dated 16 June 1815  
paras 48-9.



their instructions, that the lands should be leased under an adequate security and a light assessment, had been sent to the Board of Revenue for report<sup>1</sup>. On this, they suspected delay and ordered (29 October 1817) that the causes which had "frustrated" or "retarded" the project should be further investigated. "It would be satisfactory to us that Sagar should be brought into a highly improved state as the benefits of it would be great in various ways. We hope to receive a successful prosecution of measures for that purpose."<sup>2</sup> It was not till 1819, however, that an efficient plan was launched. A society of Europeans and Indians was then formed, with a joint-stock subscription of 2,50,000 rupees, and to it was transferred the greater part of the island, subject to several conditions. It was to hold Sagar for a period of 30 years free of assessment, at the expiration of which it was to pay a revenue at the rate of 4 annas per bigha on "all lands capable of being rendered fit for cultivation." It must engage to clear not less than 25,000 bighas during the period of 5 years from 1 January 1819 and not less than 1,00,000 bighas within 10 years from that date. After that time, if upon measurement

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<sup>1</sup> Letters Received from Bengal, Vol. LXXVII/Rev. Letter dated 4 July 1817 paras 21-4.

<sup>2</sup> Dispatches to Bengal, Vol. LXXVIII/Rev. Dispatch dated 29 Oct. 1817 para 9.

measurement it should appear that the specified extent of land had not been cleared and cultivated, Government could cancel the original grant and substitute a fresh one with similar conditions for twice the quantity of land brought under cultivation. Further, Government could at any time, after the expiration of the first 11 years, either on the failure of the Society or on the "occurrence of extraordinary mortality," cancel the grant, subject to remunerating the Society for expenses incurred. The grant could also be resumed if the Society manufactured or helped to manufacture illicit salt, thereby infringing the Government monopoly. The subscribers and those holding under them were to be subject to the general rules applicable to zemindars. But, with a view to "secure a greater regularity and an accurate record of all individual estates which may hereafter be created," Government deemed it proper to fix specific rules in regard to the transfers and partitions of individual landholdings<sup>1</sup>.

The success of this enterprise of clearing and cultivating wastes depended largely on the application of the necessary capital under European skill. When it started, the Society consisted of 130 members of whom 36 alone were Indians. It made good progress during the remaining years of Lord Hastings' rule and Government indulged in the anticipation that

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<sup>1</sup> Letters Received from Bengal, Vol.81, Rev. Letter dated 30 July 1819, paras. 22-43.

that, "as cultivation extends . . . almost the whole of the island will fall under the Natives." The scheme, indeed, was well conceived. The Directors pronounced it on the whole "laudable," but severely rebuked Government for having delayed it so long after their "repeated instructions."<sup>1</sup>

The subject of surveys links up resumptons on the one hand and the settlements on the other. It has been seen how surveys had been urgently demanded by the Home Authorities during Lord Minto's rule and how, up till the close of 1813, Government had denied their utility<sup>2</sup>. Under Lord Hastings, though their value was recognized, for a long time nothing effectual was accomplished, and when at last something was done the Directors' instructions were but partly enforced. On 6 January 1815 the Directors again strongly recommended surveys in the New Provinces. Surveys and other statistical reports drawn up by some of the ablest of the Madras revenue officers, they said, had put very precious facts in their possession. "A valuable map of the information concerning the actual condition and the probable resources of the territories dependent on the Presidency of Fort St. George; the various tenures by which property is held; the different modes in which the

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<sup>1</sup> Dispatches to Bengal, Vol. XCV, Rev. Dispatch dated 18 Feb. 1824, pp. 877-92.

<sup>2</sup> See p. 115 *sqq.*

the revenue of the Sovereign had been collected; the state of security and the customs, manners and opinions of the inhabitants." But could this be said of Bengal? "Certain it is that our acquaintance with the provinces under your Presidency is much more limited."<sup>1</sup> Surveys would operate as a salutary check upon the mostly fallacious accounts of the native revenue subordinates. They would help to equalize the jumma, and the "true data we conceive, on which to form an equitable assessment are the survey valuation, the village accounts and the collection of former years." Separately, each of these premises might lead to conclusions "severally erroneous;" but together, they would furnish a comparison which, with certain allowances and modifications, would produce a "just and satisfactory" result. Surveys, again, would define the boundaries of the estates and so exhibit clearly the encroachments on the wastes or other public lands by the zemindars. They would facilitate adjustment and reduction of the innumerable disputes originating "from the undefined state of property" and prevent the delay of justice in the courts. Indeed, neither the public nor the private rights connected with the land could be thoroughly understood where a survey did not form "the ground-work."<sup>2</sup> It was foolish to contend that, because surveys had

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<sup>1</sup> Dispatches to Bengal, Vol. LXVIII, Rev. Dispatch dated 6 Jan. 1815, pp. 205-7.

<sup>2</sup> Idem, pp. 207-25.

had previously failed in Bengal and proved costly, they were not to be now employed; foolish also to assert that they would be harassing and oppressive to the people and particularly unsuited to the new provinces, because the lands there were "parcelled out into small properties, the joint owners of which are themselves the cultivators of the soil." Had they not been successfully conducted in the Peninsula and amply repaid their cost in conditions similar to those of the North?<sup>1</sup>

Lord Hastings and his Council appear to have been very much impressed by these views. In his minute of 21 September 1815, the Governor-General observed : "I do not mean that a survey should take place of so minute a nature as that it should exhibit the cultivation and name of the occupant of every beegha of land; for, I am aware that a survey including such particulars could not be completed within a very long period. But pergunnah surveys exhibiting the area and general view of cultivation might be prepared with comparative facility." He then enumerated their different advantages pretty nearly as the Directors had done and urged the matter on the attention of his Council.<sup>2</sup> The result was that Government in replying  
(October 1815)

<sup>1</sup> Dispatches to Bengal, Vol. LXVIII, Rev. Dispatch dated 6 Jan. 1815, pp. 225-35.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol. I, pp. 410-12.

(October 1815) to the instructions from England not only supported the Directors' views, but tried to save its face by an awkward device. "Although the Government of this Presidency has more than once stated in strong terms the objections which appeared to exist to the actual measurement of lands by the slow and tedious process of the natives, it did not, as we conceive, extend to express an objection adverse to surveys undertaken by professional persons and executed in a scientific manner."<sup>1</sup> To say the least, this circumlocution was entirely baseless. As we have seen, while the Directors had insisted on "scientific surveys" - surveys under European supervision with the natives strictly as subordinates - after the mode in which they were performed in Madras and Bombay, Lord Minto and his Council had strenuously denied their expediency and utility. Under Lord Hastings, Ensign Gerrard, it is true, had been in 1814 appointed to survey the district of Seharunpore<sup>2</sup>; but since he could not be spared from his military duties, even this partial commencement had not yet been carried into effect<sup>3</sup>. This was indeed the first occasion when the Bengal Government admitted: "Whatever sentiments our predecessors may have entertained on this

<sup>1</sup> Letters Received from Bengal, Vol. 72, Rev. Letter dated 7 Oct. 1815, para. 8.

<sup>2</sup> Ditto. Vol. 71, ditto. 31 Jan. 1815, paras. 15-16.

<sup>3</sup> Selection of Papers from the Records of East India House, Vol. I, pp. 411-12.

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this subject, we have not the slightest hesitation in expressing our belief that the most substantial advantages may be derived" from what it ingeniously termed "scientific surveys."<sup>1</sup>

It should be noted that this was only a pious belief which did not bear fruit at once. For, although the aid of the Surveyor General was soon requisitioned, surveying establishments were only temporarily employed in connection with the resumption of wastes and illegal grants of land. No efficient scheme was constructed for ascertaining the rights and boundaries of the estates in the New Provinces. In 1819 the Directors once more reminded Government of the need of surveys for this purpose and hoped to be furnished with the details of the plan which the Surveyor-General might have introduced<sup>2</sup>. In March 1821 they again stressed the subject at length<sup>3</sup>. As it was, the "extremely bad health" of the Surveyor-General, his imperfect acquaintance with the civil administration of Bengal (for previously his services were mainly rendered in Bombay), the difficulty of supplying an adequate number of European officials close upon the Maratha wars, and the magnitude of the task itself, combined with "a spirit

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<sup>1</sup> Letters Received from Bengal, Vol.72, Rev. Letter dated 7 Oct. 1815, para. 8.

<sup>2</sup> Dispatches to Bengal, Vol.LXXX, Rev. Dispatch dated 15 Jan. 1819, pp. 50-3.

<sup>3</sup> Ditto. Vol. LXXXVII, ditto. 21 March 1821, pp.608-43.

spirit of cautious economy" to postpone the general execution of surveys<sup>1</sup>. Not till the close of 1821 did Government, on the appointment of the new Surveyor-General, adopt any comprehensive measures.

The Resolution of the Governor-General in Council dated 7 September 1821<sup>2</sup> provided by no means a perfect scheme of revenue surveys. Yet, it was the first notable attempt of its kind which embodied in some measure the views of the Home Authorities. It <sup>ad</sup>mitted what the Directors had long claimed, that an accurate survey though costly would "fully" compensate the charges" in the Ceded and Conquered Provinces. Indeed, its language has a strong flavour of that used by the Directors. "Without a minute and accurate survey of the country there appears to be a very distant and uncertain prospect of ever securing a correct registry and record of landed property."<sup>3</sup> When, however, it came to describe the type of survey to be undertaken, it fell much below the Directors' desires. "A map fixing the extent and boundaries of each village and the position of the most remarkable objects, the general features of  
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<sup>1</sup> Letters Received from Bengal, Vol.86, Rev. Letter dated 28 Dec. 1821, paras. 1-11.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol. III, pp. 292-8.

<sup>3</sup> Idem, p. 292.



of the ground being sketched in the eye, would, it is conceived, answer every end." This, it was hoped, would provide a "complete guard" against any material error in the formation of the pending settlement and enable the revenue officers to acquire a "really familiar knowledge" of their districts. At the same time it was anticipated that the plan "could doubtless be so executed as that, when occasion arose, the details might be filled up with facility."<sup>1</sup> The Surveyors were to co-operate with the Collectors and so save not only some expense, but mark out without difficulty the limits of villages and estates. The survey was not to be begun in all the districts simultaneously. It was to be executed in district after district with the aid of an adequate number of half-castes or natives educated in the Orphan and other schools and possessing the necessary knowledge of land-measurement, arithmetic and the keeping of revenue records and accounts. Government was "fully prepared" to sanction the "full establishment" proposed by the Surveyor-General. As there was an immediate connection between the proposed revenue surveys and the objects of the Presidency Record Committee, the Surveyor-General was appointed a member of that Committee.<sup>2</sup> On these lines actual surveys of several  
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<sup>1</sup> Selection of Papers from the Records of the East India House, Vol. III, p. 293.

<sup>2</sup> Idem, pp. 295-8.

of the districts were set on foot and though their execution proved long and arduous and helped only a few of the Collectors in the formation of the pending settlement<sup>1</sup>, we can neither doubt the soundness of the principle underlying them nor their future significance in Land Revenue history. Lord William Bentinck gave them a fresh impetus and his successors reaped the benefits of what the Home Authorities had been persistently pressing since the rule of Lord Minto.

Other measures were also undertaken, in order to redress the past errors and abuses, preparatory to the pending settlement in the New Provinces. On 8 April 1817 the Directors regretfully noticed from the reports of Mr. Richardson the Collector of Cuttack for 1813/14 that, of the 73 lakiraji estates sold in the course of little more than 3 years in the Zillah Court, 51 had been fraudulently bought by the native officers of that Court greatly below their value<sup>2</sup>. A brother of the Sheristadar had bought 23 of those estates and it was confidently believed that the Sheristadar himself was the sharer if not the principal in the purchase. In fact, according to the information received from respectable Indians, "the purchase of the lakiraji property by the officers of the Courts,"  
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<sup>1</sup> Mill and Wilson. History of British India, Vol. VIII, p. 389.

<sup>2</sup> Dispatches to Bengal, Vol. LXXV, Rev. Dispatch dated 8 April 1817, p. 347.

said the Directors, "was systematical and had become a regular trade, the purchasers almost invariably re-selling the property at an enormous advantage."<sup>1</sup> The Directors rightly divined that besides lakiraji, other kinds of property as well must have passed into the hands of unscrupulous officers. They warned Government of the far-reaching implications of this practice. In the first place, it meant that the property of the defaulters could not be brought to a fair market where it could fetch its real price. Secondly, it discouraged the land-holders from bidding for fear of incurring the displeasure of the Court officers. Above all, it placed the under-tenants and the ryots under great injustice whenever they might institute suits in the Zillah Court against its officers themselves as zemindars or against those to whom the officers had entrusted the management of their estates. In such cases, the most watchful inspection of the conduct of his subordinates on the part of the judge was likely to avail little to detect the devious ways in which they could harass and oppress the peasants. The officers of the Courts should therefore be peremptorily forbidden from participating in sales. Since there was also reason to believe that the native officers of the Cutcherry had likewise dabbled in the same transaction, violating a  
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<sup>1</sup> Dispatches to Bengal, Vol. LXXV, Rev. Dispatch dated 8 April 1817, pp. 348-50.

distinct rule passed against it, an enquiry should be held into the whole question. The Directors demanded the opinions of the judges and Collectors and "the results of your own reflections thereon, aided by the sentiments of the Sudder Adawlut, the Board of Revenue and the Board of Commissioners." Further, they enjoined that the European district officials under whom those mal-practices flourished should be severely reprimanded and that all invalid and illegal sales should be set aside. "We trust that every practicable facility" has been afforded "to such parties as may have felt themselves aggrieved to recover their property and at the same time that the sales have not been annulled to a greater extent than the ends of justice actually required."<sup>1</sup>

These instructions were written before the extent of the evil was clearly known. The subsequent investigation of Government, far exceeded their import and revealed a vast collection of frauds of the native officers both judicial and revenue<sup>2</sup>. "Taking advantage of the novelty of the British rule, of the weakness and ignorance of the people, and in some cases of the culpable supineness and misconduct of the European  
functionaries

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<sup>1</sup> Dispatches to Bengal, Vol. LXXV, Rev. Dispatch dated 8 April 1817, pp. 350-85.

<sup>2</sup> Selection of Papers from the Records of the East India House, Vol. III, p. 269.

functionaries under whom they were employed," these officers had distorted the rules of public sales of land for arrears and contrived to acquire extensive estates. Even private sales had not escaped their clutches. Numerous ancient land-holders in the New Provinces had thus been deprived of their rights and reduced to ruin<sup>1</sup>. Not only, therefore, were the native officers strictly prohibited from acquiring property, but special rules were deemed essential to set right their wrongs. A thorough research into the voluminous and complicated revenue accounts; local enquiries involving a constant and free communication with the parties themselves; a swift but equitable distribution of justice unhampered by litigation, by the cumbrous rules of procedure, or by the intrigues of the Court officers, - all these points called for a special itinerant commission combining both revenue and judicial knowledge and endowed with large discretionary powers.

By Regulation I of 1821<sup>2</sup> and the Resolution of Government dated 27 February of the same year<sup>3</sup>, a Mufasil Commission was appointed consisting of two experienced officers, the one revenue and the other judicial. It was to be a  
commission

<sup>1</sup> See the Preamble to Regulation I, 1821 - Regulations of Bengal, Madras and Bombay, 1813-24; 1821, p.5 sqq.

<sup>2</sup> Idem, pp. 5-13.

<sup>3</sup> Selection of Papers from the Records of East India House, Vol. III, pp. 270-4.

commission on the spot, touring through the districts, investigating the disputed claims on account of public or private transfers of land prior to 1810, cancelling the sales effected by fraudulent influence, and restoring the estates to the rightful owners. Upholding all valid sales, it should make the necessary compensation in the case of those annulled wherein the purchasers were not implicated in dishonesty or deceit. It was to be superintended by a Sadr Commission at Calcutta, constituted by two members of the Sadr Diwani Adalat and a member of the Board of Revenue. This Commission was to receive the reports of the Mufasil Commission, confirm or disallow its decision, and decide appeals from its judgments. In this manner, a great and salutary reform was initiated, however much opposed by the interested persons or by the critics of the Company's administration<sup>1</sup>. The judges of the Sadr Diwani Adalat recorded a unanimous opinion "against the propriety or even the legality of the measure;" but Government ignored this protest and successfully weathered the storm<sup>2</sup>, much to the satisfaction of the Home Authorities.

The history of the settlements of the New Provinces during 1813-23, shows the gradual triumph of the Home Authorities' opinions

<sup>1</sup> Shore. Notes on Indian Affairs, Vol. I, pp. 198-201.

<sup>2</sup> Letters Received from Bengal, Vol. 86, Rev. Letter dated 10 Aug. 1821, paras. 1-10. See also, Mill and Wilson. History of British India, Vol. VIII, pp. 384-6.

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opinions over the hesitancy and even the opposition of Govern-  
ment. Those settlements were temporary, chiefly because of  
the pressure from England. It was persistently exerted during  
Lord Minto's rule and continued throughout that of Lord  
Hastings. On the other hand, while Government constantly  
urged permanency under Lord Minto, under Lord Hastings, for a  
time, it appeared to have been convinced by the Directors'  
reasonings and did not press the matter. When, however, the  
time for a final settlement arrived in 1822, it renounced  
its acquiescence and advocated permanency. But the Directors  
stood adamant. No temptation - and there were many which were  
held out by Government - could shake their conviction. And  
eventually, the settlements had to be formed exactly as they  
desired, and all idea of permanency completely excluded.

As has been indicated, the Regulations IX and X of  
1812 had declared that permanency would be bestowed on lands  
sufficiently improved in cultivation, but actually withheld  
it owing to the orders received from England<sup>1</sup>. But in 1813  
Government had written that it might have to be bestowed on  
some estates, consistently with the principle laid down in  
those Regulations<sup>2</sup>. The Directors therefore asserted  
(17 March 1815)

<sup>1</sup> See p.133 579-

<sup>2</sup> Letters Received from Bengal, Vol.67, Rev. Letter dated  
2 Oct. 1813, paras. 2-6.

(17 March 1815) that that principle could not have meant anything but the general postponement of permanency. "Having been aware . . . from the Report of the Board of Commissioners and indeed from the acknowledgment of the Governour-General in his Minute of 1812, that there were few or no entire estates to which the rule . . . would apply, we were inclined to believe that the measure would be postponed in toto."<sup>1</sup> And "in toto" was it postponed in the pending settlements by the new Governor-General and Council. Lord Moira wished, at first, to have "more time" in which to form an opinion on a question so vitally affecting the interests of the State and the happiness of the individuals<sup>2</sup>. After his tour through the Upper Provinces he definitely discountenanced permanency<sup>3</sup> and in the succeeding settlements formed in Cuttack (Regn. VI 1816: 3 years), in the Ceded Provinces (Regn. XVI 1816: 5 years), in the Conquered Provinces (Regn. IX 1818: 5 years) and once more in Cuttack (Regn. XIII 1818: 3 years), nothing about it was mentioned<sup>4</sup>. It seemed as if the boon was withheld for ever. The reason for this is not far to seek. It was the period in which

<sup>1</sup> Dispatches to Bengal, Vol. LIX, Rev. Dispatch dated 17 March 1815, pp. 92-8.

<sup>2</sup> Letters Received from Bengal, Vol. 68, Rev. Letter dated 10 Jan. 1814, para. 10.

<sup>3</sup> Selection of Papers from the Records of the East India House, Vol. I, p. 412 sqq.

<sup>4</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1816, pp. 11-12, 44-5; 1818, pp. 18-19, 28-9.



which the Directors were strongly emphasising the necessity of acquiring a fuller information through the Canongoes, the Patwaries, the Surveys, the Collectors and the like sources which we have already examined. It was this insistence and, to some extent, the unwillingness of the Governor-General to be hurried into an irrevocable measure, that so far saved the situation.

So far and no further. Because, as the time came for making a fresh settlement of the Ceded Provinces and Cuttack, the old ideas revived. In October 1818, the Board of Commissioners speaking of the New Provinces as a whole, pointedly recommended that "no measure short of a general permanency of the whole of the Provinces will meet the expectation of the land-holders, founded on what they consider a solemn promise of Government."<sup>1</sup> This promise, as we know, was an old one, conditional at first on the sanction from England, and later, on the sufficiency of improvement in cultivation<sup>2</sup>. Yet, without permanency, they urged, there would be "a falling off" and not an increase of revenue in future settlements. It would obviate any errors and irregularities in the apportionment of the jumma, encourage cultivation, and

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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. III, p. 146.

<sup>2</sup> See p. 109 and 133.

and diminish the sales of land for arrears. These, and similar unsound platitudes were now served up by the Board for the consumption of Government. And all the members of Government, including Mr. Dowdeswell<sup>1</sup> whose judicious views on other matters we have already had occasion to observe, concurred in those sentiments. On 16 September 1820 they wrote Home their "unanimous opinion" that permanency "either upon the principle of a fixed jumma or of an assessment determinable by a fixed and invariable rate, ought to be extended to the Ceded and Conquered Provinces." At the same time they agreed that this should be done, only after ascertaining and recording the value of the mehals, the rights, interests and privileges of the different agricultural classes, and after framing such adequate provisions as might be necessary for their future security<sup>2</sup>.

Here was a stipulation arising mainly out of the unceasing pressure from England. Coupled as it was with permanency, Government imagined that it would secure the Directors' consent to the whole scheme. The settlements, said Government, would be made "deliberately village by village" and

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<sup>1</sup> Selection of Papers from the Records of East India House, Vol.III, pp. 147-53.

<sup>2</sup> Letters Received from Bengal, Vol.84B, Rev. Letter dated 16 Sept. 1820, paras.1-7. For the opinions of the different Members of Government see, The Selection of Papers from the Records of East India House, Vol.III, pp. 147-69.

and so, "the fullest possible information" on landed rights would be obtained. "We feel entirely satisfied that in regulating our administration on those principles, we shall possess the fullest concurrence and support of Your Honourable Court, since they accord entirely with the sentiments which you have on various occasions communicated to this Government; and we trust that you will confide in our assurance that no efforts shall be wanting to fulfil your views by the careful completion of the work in all its details."<sup>1</sup> As this work would demand considerable time, Government asked permission for extending the existing settlement to a longer period than 5 years and thereby for laying secure the foundation for permanency<sup>2</sup>.

It is both interesting and illuminating to notice that these views hardly coincided with those of Lord Hastings. In his Minute of 30 December 1819 he doubted the policy of conferring permanency which, he thought, had introduced the "most grievous oppression" in the Lower Provinces. "Let us feel our way before we stake ourselves by any similar engagement." He also observed with great truth, that it was "not easy" by any Regulation to protect the peasants, once permanency was declared. As to Government being bound by

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<sup>1</sup> Letters Received from Bengal, Vol. 84B, Rev. Letter dated 16 Sept. 1820, para. 8-9.

<sup>2</sup> Idem, paras. 11-21.

a promise to grant it, he asked sarcastically: "What can have been promised when the term used is so indefinite? We did not engage to risk the grievous injury of the nine-tenths of the population; there would have been little held out in such a prospect. Nor did the natives, as far as I could learn when I was in those provinces, show any anxiety for what we mean by a permanent settlement." Despite these sound arguments he admitted that permanency might be bestowed "in instances where we are satisfied that the interests of the Company and of its subjects were jointly consulted."<sup>1</sup> And, he signed, be it noted, the subsequent letter expressing the "unanimous opinion" of Government regarding the expediency of the measure.

All this sufficiently indicates that Lord Hastings was borne down by the "Cornwallis Caste" Bengal Councillors. But, if they could carry the Governor-General with them, they could not budge the determination of the Home Authorities. Still, however, they hoped to be able to do so, by passing some salutary reforms, as we have seen, by the appointment of the Mofasil and Sadr Commissions and by the reorganization of the surveying establishments. These, they urged, would clear the way for permanency and they also promised additional measures  
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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. III, pp. 153-5.

the better to ascertain the landed rights and tenures. The Letter of 28 December 1821 stressed the points which they wished to secure; to recognize the expediency of granting a permanent settlement; to precede this measure by an enquiry into the rights and interests of the agricultural classes; and to provide such rules as might safeguard those rights. For this last purpose, Government promised to "vest the Revenue Officers with such judicial functions as may appear necessary,"<sup>1</sup> - a reform, as has been seen, spiritedly urged by the Directors in their Dispatches of November 1814 and January 1819<sup>2</sup>. The execution of the entire scheme, added Government, could be well accomplished only by extending the existing settlement from 5 to 10 or 15 years. "Persuaded as we are of the advantages to be derived from extending the terms of the leases, we are by no means anxious to urge Your Honourable Court to the hasty declaration of the permanent settlement."<sup>3</sup>

Within a short time of the drafting of this Letter, Government received the Directors' Dispatch of 1 August 1821 which had been peremptorily sent in reply to the Letter of 16 September 1820. The Directors roundly refused to sanction the

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<sup>1</sup> Letters Received from Bengal, Vol. 86, Rev. Letter dated 28 Dec. 1821, paras. 22-23.

<sup>2</sup> See p. 264 sqq. 270 sqq.

<sup>3</sup> Letters Received from Bengal, Vol. 86, Rev. Letter dated 28 Dec. 1821, paras. 24-27.

the policy of extending the permanent settlement. "You will abstain not only from making any such settlement but upon taking any such measures which may raise the expectation that a settlement in perpetuity will hereafter be formed."<sup>1</sup> These prompt and explicit orders arose out of the apprehension that Government might compromise itself as in fact it did under Barlow and Minto, and of the determination to abandon the Cornwallis system for ever. But, if permanency was not to be declared, there was no reason why the rights and interests of the agricultural classes should not be fully ascertained and secured. Indeed, the Directors had never ceased insisting on those objects<sup>2</sup> and therefore they now held that they were preliminaries equally essential to the success of a revenue engagement whether for a term of years or for perpetuity. For this, however, was it necessary that the settlement should be made for a long term? "The long period of ten or fifteen years, even with the greatest caution on your part, could not fail to interfere with the progress of a revision which you propose to make village by village."<sup>3</sup> Thus according to the Directors, the work of ascertaining and securing the rights was to be carried on independently of the settlement. They took up this attitude

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<sup>1</sup> Dispatches to Bengal, Vol. LXXXIX, Rev. Dispatch dated 1 Aug. 1821, pp. 749-54.

<sup>2</sup> See p. 244699.

<sup>3</sup> Dispatches to Bengal, Vol. LXXXIX, Rev. Dispatch dated 1 Aug. 1821, pp. 755-9.

attitude, not because they had no faith in a long lease, nor because they were insensible of its benefits. - it is well to remember that they themselves had suggested such a lease under Lord Minto<sup>1</sup> - but because, just at the moment, Government had looked upon it mainly as a stepping stone to permanency. A long lease, they frankly avowed, was "calculated to convey a notion that it was preparatory to the introduction of an arrangement in perpetuity." They therefore ordered that the existing leases must not be continued for a term beyond 5 years<sup>2</sup>.

These curt but plain commands put an end to permanency. Neither the Proclamation of the Board of Commissioners<sup>3</sup>, nor the Resolution of Government (1 August 1822), nor the Regulation VII of 1822 mentioned anything about offering it to the land-holders of the New Provinces. On the other hand, they declared in the main, just what the Directors had required; the existing engagements were to be extended for a further term of 5 years pending an investigation and revision by the Revenue Authorities. The Resolution<sup>4</sup> exhaustively described

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<sup>1</sup> See p. 420-1.

<sup>2</sup> Dispatches to Bengal, Vol. LXXXIX, Rev. Dispatch dated 1 Aug. 1821, pp. 759-61.

<sup>3</sup> Letters Received from Bengal, Vol. 87, Rev. Letter dated 1 Aug. 1822, paras. 5-6.

<sup>4</sup> Selection of Papers from the Records of East India House, Vol. III, pp. 319-64.

described the mode in which the Collectors and the Revenue Boards were to ascertain the rights and to revise the settlements, and laid particular stress on two points enjoined by the Directors. The Directors "have expressed," said Government, "their full approbation" of concluding the settlement leisurely, village by village, and of uniting with it, the "careful ascertainment and record of the rights and interests of the classes owning or occupying land." Also, and this is significant, "they have directed that the local Government shall not, in any case, grant a permanent settlement and have interdicted the adoption of any measures calculated to raise or renew the expectation that such an arrangement is immediately contemplated."<sup>1</sup>

The Regulation VII of 1822 went still further to enforce the views of the Home Authorities<sup>2</sup>. Besides extending the existing engagements of the Ceded Provinces and Cuttack for 5 years, it declared that this extension would not bar the revenue officers "from interfering to adjust the respective rights of the Sudder Malguzars and their under-tenants." So that, it made possible what the Directors desired: the revision  
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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. III, p. 320.

<sup>2</sup> Regulations of Bengal, Madras and Bombay, 1813-23: 1822, pp. 12-29.



of settlement notwithstanding the continuance of the existing leases<sup>1</sup>. Such revision was to be made village by village, mehal by mehal, not only in the Ceded Provinces and Cuttack, but in the Conquered Provinces as well, though a new settlement was there due only in 1824. The Collectors were to ascertain and record the "fullest possible information" in regard to the landed tenures and rights. They could grant pattas to the under-tenants and ryots, fixing the limits of their rents; and it should be noted that this Mufasil Settlement made ample provision for the first time, towards the security of the just rights of the different members of the joint-village bodies. Again, the Collectors, while engaged in this work of revision, were generally to decide all causes relating to land and rent, subject to an appeal to the Courts. The Governor-General in Council might grant them special powers to adjudge claims to the property and possession of land. Above all, section XX laid down: "It shall be competent to Government to vest such Collectors as may, from time to time be judged fit, with a special authority to receive, try and determine in the first instance as above provided, all or any of the questions of the nature specified in the above-said sections, though the said Collectors may not be engaged in making or revising the settlement

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<sup>1</sup> See p.305.

settlement of the land-revenue and to vest in such of the Collectors . . . authority to receive, try and determine by summary process, all suits for rent, . . . and all complaints preferred by ryots and under-tenants . . . on account of excessive demand or undue exactions of rent." For this purpose, the Collectors' cutcherries were to be converted into civil courts; in other words, Mal-Adalats were to be established, a reform, as has been seen, persistently recommended by the Home Authorities<sup>1</sup>. The Collectors' decision was to be appealable to the Revenue Boards and in all summary suits the Boards' decision was to be final. The Collectors were to refer certain cases to arbitration and to encourage this mode of procedure, - points again, long suggested from England<sup>2</sup>.

A new era was thus begun. The revision of the settlements was impeded by innumerable obstacles; the want of precise instructions for the guidance of the Collectors, the immensity of the minute details involved, and the novelty of the entire scheme itself<sup>3</sup>. But it was based on sound principles. Lord William Bentinck succeeded in removing most of the obstacles without altering in any way the essentials already formulated, and by about 1842 the settlements of the  
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<sup>1</sup> See p.263 sqq.

<sup>2</sup> See p.187 and 266 sqq.

<sup>3</sup> Mill and Wilson. History of British India, Vol.IX, p.205.

New Provinces were completed ~~not~~ on the principle advocated by Government, - not on permanency - but on the principle inculcated by the Home Authorities - but on a lease for a term of years with the joint village bodies<sup>1</sup>.

Indeed, the rich crop of land-revenue reforms of the Bengal Provinces under Lord Hastings, owes a great deal to the Home Authorities. Without their driving power, their searching enquiries into the administrative policies alike of the past and present of Bengal, of Madras and of Bombay, their suggestions derived from these, vivified, reinforced and urged, and finally, their persistence till they were considered and carried through, it is doubtful if much would have been effected by Government. At any rate, it is certain that it would not have been effected so soon, and that even if it had, it would have been of a widely different character from what it actually became

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<sup>1</sup> Mill and Wilson, History of British India, Vol. IX, pp. 205-7, see also Footnote to page 207.

became . For, though the Governor-General was not impervious to fresh impulses, though Mr. Dowdeswell - some of whose judicious views the Home Authorities themselves seized and sustained - was in the Council (1815-19), the charm of the Cornwallis Code was still too strong to admit of being broken. It pervaded the higher departments, notably the Council itself. It engendered complaisance at what was existing and instilled dislike and even dread at what was recommended, however promising the recommendation if it was aimed against the Code. The supreme achievement of the Home Authorities lay in gradually demolishing these old ideas and setting up new ones in their place. For such a task, they had necessarily to use effectively every available weapon in their armoury. It is this that explains the sharpness of their arguments, their comprehensiveness, their persistency and vigour.

Their endeavours, one and all, were principally directed towards discovering the real resources of the country and towards ascertaining, recording and securing the rights of the individuals and the State. Hitherto, Government had done little to safeguard those rights; in fact, it had hardly even attempted to understand them. The existing machinery had proved manifestly ineffective. The Civil Courts had been clogged with revenue suits and the under-tenants and ryots had been hard-pressed by exactions and oppressions. In the whole

of the Presidency, the land-holders had defrauded Government by enjoying the revenues from illegal and invalid grants of land; and, in the Lower Provinces, the zemindars had made vast encroachments on the wastes. There was, indeed, nothing to show the exact boundaries and values of the estates. In some districts in the New Provinces, the native officers had made large fraudulent profits out of the sales of land, public as well as private. All these defects and mal-practices should be corrected and Government prevented from extending permanency.

To cure these various ills, the Home Authorities invariably came first in the field with remedies. This was perhaps natural, considering Government's conservatism and pre-occupation with political problems, with the Nepal and Maratha Wars. But it was none the less significant. It meant that a heavier burden was placed on the Directors in general administration wherein indeed they could, and they zealously hoped they would, implant their views. The revival of the Canongoe and Patwari offices was part of their policy<sup>1</sup> (as will be seen later) of rejuvenating the Indian Institutions and abandoning some of the Cornwallis principles. They explained and urged this reform in 1814-15. Government became convinced of its need and began introducing it in 1816; but it was not completed till

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<sup>1</sup> See p. 318.

till 1819, and even then it failed to secure the point stressed by the Directors. It was hesitant, for fear of a violent change in the existing system, to make the Patwaries exclusively dependent on the Collectors; and thereby it left open the loop-hole to bribery. The Directors, however, did not look to these officers alone for ascertaining and securing the landed rights and interests. From the beginning they insisted on the vigilance and activity of the Collectors and, early in 1819, they emphasised the necessity of establishing some centralizing authority, as had been temporarily established by Warren Hastings and Sir John Macpherson, for guiding and supervising that work. It was for this purpose that Government gradually increased the number of Collectors both in the Old and New Provinces and in 1820, created the Presidency and District Record Committees. It was for the same reason that the Collectors were specially required in 1822 to make the revision of the settlements in the New Provinces by ascertaining and safeguarding the different rights of the landholders and the ryots. The Registrars whom Government on its own initiative appointed from 1817 onwards were also intended for the same purpose and as such not opposed by the Directors. Nor was this all. The Directors never ceased insisting that the inferior land-holders and the peasants could be best protected and the Civil Courts relieved from the great load of revenue-suits,

only

only by conferring the requisite judicial powers on the Collectors. This was, they were well aware, based on a principle entirely opposed to one of the fundamentals of the Cornwallis Code - the separation of the revenue and judicial authorities. But it was a necessity. It was at one time familiar to the Natives. It had been urged by the subordinate officials and by the Board of Commissioners. It had, in 1809, the support even of Government. Munro had strongly recommended it. When in the circumstances it was powerfully pressed by the Directors in 1814, Government expressed approval; but subsequent conduct showed that there was a vigorous blast of Cornwallis opinion against its adoption. In 1819 the Directors again urged the question, with the result that Government was propelled to establish Mal Adalats, if not fully, at least partially, if not in the Old Provinces, at least in the New.

In matters of pure policy, the resumptious received both the stimulus and direction from England. Minto might have provided some rules for recovering the invalid grants in the Ceded and Conquered Provinces. But he had done nothing to resume the more valuable lands, the wastes, in the Lower Provinces. Under him as also under Lord Hastings, Government was timorous of taking any effective steps in the permanently settled districts, as it thought that such steps might provoke

unrest, might be viewed as violating the declared rights of the zemindars. The Home Authorities, however, in the most explicit manner outlined their instructions on this important subject in 1814. The rights of the Individuals should in no way be infringed; but at the same time the rights of the State ought not to be sacrificed. The consequent regulations passed by Government in 1817 and 1819 obtained much consideration from the Directors who still further suggested improvements with a view to avoiding injury to the land-holders. As for surveys, the Directors had been since 1811 urging their speedy execution in the New Provinces. Minto bent on hastening permanency, pronounced them impracticable. The Directors who knew their utility from experience derived from Madras and Bombay rebutted every one of his arguments and pressed for their reconsideration in 1815. Lord Hastings admitted their advantages but made little use of them until 1821; and what he then did for them was neither very comprehensive nor very effective. Yet, founded as it was on right principles, it was a good beginning. Lord William Bentinck gave it the strength it needed and under the succeeding Governors-General surveys fully justified the views long avowed by the Home Authorities. The next question, that of correcting the errors of the fraudulent acquisitions of the native officers through sales, envisaged by the Directors in 1817, was handled well by Government in



1821 by the appointment of the Mufasil and Sadr Commissions. Of a greater point at issue, however, Government failed to grasp the essentials. As has been seen, the Directors had resolutely opposed the extension of permanency in the New Provinces. Lord Hastings himself distrusted its expediency; and for a time, the orders of the Directors were carried out by concluding temporary settlements. But in 1818-22 the Cornwallis ideas once more asserted themselves, silenced the Governor-General, expounded the beneficence of permanency and even its necessity under the cloak of fulfilling the former pledges. The Directors, therefore, acted swiftly and ruthlessly. They peremptorily suppressed permanency, never again to become a serious danger, at all events in the near future. Whether they were right or wrong in this none would perhaps now hesitate to decide.

## CHAPTER V.

THE ADMINISTRATION OF JUSTICE IN THE PRESIDENCY  
OF FORT WILLIAM IN BENGAL (1814-22).

Alike in the civil, criminal and police administration of Bengal, the views of the Home Authorities were either too advanced or revolutionary to bear much fruit under Lord Hastings. Government, to a large extent, clung to the Cornwallis system. While, therefore, it was slow to admit defects, when once it admitted them or was brought to admit them, it was quick in applying remedies from the old store of ideas. In truth, it was averse from adopting innovations which were certain to be recommended from England. Munro's stay there (1808-14) had gradually converted both the Court of Directors and the Board of Control to his own views and induced them to select him at the head of a special commission with a view to revising the judicial system of Madras<sup>1</sup>. The Directors own enquiries set up about the same time<sup>2</sup> the well-known Fifth Report

<sup>1</sup> Gleig. Life of Sir Thomas Munro, Vol.I, p. 400.

<sup>2</sup> Selection of Papers from the Records of East India House, Vol. II, p. 1 sqq.

Report (1812) and the reports of the subordinate officials had turned them into violent critics of the existing Bengal administration. In the New Provinces, already in revenue matters, they had advocated the Ryotwar system, insisted on a survey and record of rights and aimed a decisive blow at the Cornwallis principles; permanency had been consistently and resolutely forbidden<sup>1</sup>. And in the whole of the Presidency they were now urging the reconstruction of the entire judicial system on a new basis. The renovation of the ancient indigenous institutions would not, by itself, have been a noxious pill to swallow. But it implied a complete transformation; the employment of Indian judges with higher pay and wider powers civil as well as criminal, the regular use of panchayets and the authority of village-headmen, the combination of revenue and judicial powers, that is, the transference of a large part of the judge's civil duties and almost the whole of the magisterial duties to the Collectors, and a thorough revival of the village-watch - changes either omitted or opposed by Cornwallis. Not that Government was not prepared to consider these at all; as will be seen, it could not but originate a few of them on a minor scale. But, at the same time, it wished essentially to preserve intact the fundamentals of

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<sup>1</sup> See p. 110 599.

of the Cornwallis Code. It was, therefore, only natural that it should forestall wherever possible the reforms of the Home Authorities by its own, and then, when assailed, seek shelter in procrastination.

Yet opinions held strongly and urged from a higher quarter, hardly fail to produce partially at least the desired effect. And a good deal that was done by Government during the earlier, and still more during the latter part of Lord Hastings' term of office, must be attributed to this pressure from Home. Never flagging, it reached its pitch in 1819-24, partly because of the still imperfect state of justice and therefore the inadequacy of the system so far followed; partly because of the silent opposition of Government as to the reforms suggested as early as 1814; and partly because of the papers moved for in the House of Commons (16 March 1819) by Joseph Hume for an enquiry into the administration of justice in the Company's territories<sup>1</sup>. There was also another important reason why the Home Authorities preached with almost religious zeal throughout Lord Hastings's rule, the purging of the evils in criminal and prison administration. It was an era of increasing Humanitarianism; of the prohibition of Slave Trade (1806), of the partial abolition of pillory (1816),  
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<sup>1</sup> Hansard, Vol. XXXIX, p. 1000 sqq.

of the abolition of the whipping of women (1820), and of the earliest attempt at forbidding cruelty to animals (1822). The reforms of Bentham and Howard were now everywhere in the air. The hatred of pain, alike physical and moral, which inspired the desire to abolish all patent forms of suffering or oppression, was shared by philanthropists of every school, whether Benthamite Freethinkers, or Whigs, Tories, or Evangelicals. No one, indeed, can study the Dispatches of this age of effervescent enthusiasm, without being struck by the minute details into which the Home Authorities descended in order to condemn every infliction of pain and suffering. Only the desire not to interfere with the religious customs or practices of the Hindus (shared also by Government), restrained them from encouraging energetic measures for the suppression of Sati<sup>1</sup>.

(1) Civil Justice.

The early efforts of Lord Hastings's Government were chiefly aimed at reorganizing the administration of civil justice. And ironically enough, though they mostly arose out of

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<sup>1</sup> Dispatches to Bengal, Vol. XCIV, Jud. Dispatch dated 17 June 1823, pp. 293-311. Also Letters Received from Bengal, Vol. 83, Jud. Letter dated 1 Feb. 1820, paras. 50-61.

of suggestions from England, they eventually became, in some respects, intrinsically opposed to the ideas of the Home Authorities. In September 1808 and again in June 1812, the Directors had urged the speedy decision of suits, and among other things, the simplification of the proceedings of the different Courts.<sup>1</sup> Particularly in 1812, they had criticised the appointment of assistant judges as costly, anticipated the transfer of judicial power in revenue matters to the Collectors, decried the facility of appeal from the several subordinate tribunals to the next above them, especially from the Courts of the Native Commissioners to the Zillah Courts, and insisted on the "necessity" of discouraging and preventing all unnecessary repetition in the pleading of causes, "considering as we do that this practice must alone have materially contributed to swell the amount of depending suits."<sup>2</sup> "There is also too much reason to apprehend," they had further remarked, influenced no doubt by Benthamite teachings, "that the minuteness of the process and the rules of proceedings enacted for the guidance of the Courts are incompatible with that speedy adjudication of suits which is essentially necessary to give efficiency and vigour to our judicial system."<sup>3</sup>

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<sup>1</sup> Dispatches to Bengal, Vol.49, Jud. Dispatch dated 14 Sept. 1808, pp. 904-15. Also  
Ditto. Vol.58, ditto. 2 June 1812, p. 230 sqq.

<sup>2</sup> Idem, pp. 236-52.

<sup>3</sup> Idem, pp. 252-4.

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All this exhortation had been blended with a blunder which the Directors had unwittingly made a few months earlier. In February 1812, while approving the arrangement made by Minto (as we have seen)<sup>1</sup> for the better training of the Covenanted Servants, they had exhibited a zeal, as warm as it was unfortunate. The regulation for making distinct lines of duty for the revenue and judicial officers, "we doubt not, will lend its beneficial aid towards securing a constant succession of servants qualified by education and matured by experience for conducting our judicial business." And again: "it is well calculated to give our courts of justice, that which is so desirable they should at all times possess, a weight of talent, a regularity of exertion and a general consistency of administration."<sup>2</sup> By this misguided encomium the Directors never dreamt of meaning that the Collectors should not be invested with judicial authority, that the revenue and judicial powers should be strictly kept separate; and they promptly began to make this clear in their Dispatch of June 1812<sup>3</sup>. Yet, it was the very meaning which Government, brought up in the Cornwallis principles, preferred to put upon it. Was it not possible to accomplish most of what the Home Authorities had urged

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<sup>1</sup> See p. 172 *supra*.

<sup>2</sup> Dispatches to Bengal, Vol. LVII, Jud. Dispatch dated 14 Feb. 1812, pp. 194-7.

<sup>3</sup> Dispatches to Bengal, Vol. LVIII, Jud. Dispatch dated 2 June 1812, pp. 243-4.

urged without any material violation of the existing system, and indeed, with their sanction as it were, on the basis of the Cornwallis Code?

That was what Government did after some enquiries<sup>1</sup>. In 1814 it passed a series of Regulations to secure the Directors' as well as its own objects. The office of Assistant Judge was abolished and at a place or places, not being the fixed station of the Judge and Magistrate, the Registers' Courts were decreed. The Registers could be vested with special powers in the trial and determination of regular and summary suits (Regn. XXIV, 1814)<sup>2</sup>. The pleadings and processes and the mode of executing decrees and admitting appeals were also simplified. No special or second appeal was to be admitted by a Zillah or City Judge, by a Provincial Court or by Sadr Diwani Adalat, unless upon the face of the decree or documents exhibited with it, the judgment should appear inconsistent with the established judicial precedent, or with some rule in force, or with the recognized Hindu and Muslim law. Petitions and pleadings were required to be written on stamp paper, and all superfluities in them were prohibited (Regn. XXVI, 1814)<sup>3</sup>. Further, the duties of Vakeels or  
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<sup>1</sup> Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), pp. 84-137.

<sup>2</sup> Regulations of Bengal, Madras and Bombay 1813-24:1814, pp. 53-7.

<sup>3</sup> Idem, pp. 63-73. Also, Letters Received from Bengal, Vol. 70, Jud. Letter dated 29 Nov. 1814, para. 5.



pleaders were revised and simplified and their emoluments regulated (Regn. XXVII, 1814)<sup>1</sup>. It was originally proposed that all civil suits exceeding in amount or value the sum of 1000 rupees should be tried in the first instance by the Provincial Courts, so that, by reducing the number of tribunals competent to try causes above that sum, uniformity of decision could be best obtained. Since, however, the Provincial Courts would have been suddenly overwhelmed by the inrush of numerous causes into them, it was consequently determined that causes under 5000 rupees should be liable to be tried, as was then the case, in the first instance in the Zillah and City Courts, but that they should be removable to the Provincial Courts whenever expedient (The number of judges in the Provincial Courts was increased from three to four). A similar rule was likewise adopted with respect to the Sadr Diwani Adalat; suits over 5000 rupees, the limitation on appeal to the Privy Council, being declared removable from the Provincial Court to the Sadr Adalat. These last measures were intended to secure uniformity of decision and thereby those principles of right and wrong which were so imperfectly known to the community<sup>2</sup>.

This was not all. On its own initiative, Government  
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<sup>1</sup> Regulations of Bengal, Madras and Bombay, 1813-24: 1814, pp. 74-83.

<sup>2</sup> Letters Received from Bengal, Vol. 70, Jud. Letter dated 29 Nov. 1814, paras. 14-15.

took a considerable step, though as will duly appear, it was to be urged by the Home Authorities in a much more comprehensive and decisive manner. The employment of Native Judges, under the denomination of Munsifs and Sadr Amins or the Native Commissioners, was by no means a novelty. By Regulation XL of 1793 the Cornwallis Code had stipulated the appointment of Native Commissioners to act in the threefold capacity of arbitrators (Amins), referees (to decide suits referred to them by the judges), and Munsifs or judges in petty causes affecting personal property of a value not exceeding 50 rupees. Regulation XVI of 1803 had further provided for the employment of Sadr Amins or Head Commissioners with a jurisdiction in actions in real as in personal property under 100 rupees<sup>1</sup>. But jealousy and distrust had embarrassed their acts and circumscribed their powers, and the "niggardly spirit" with which their services were demanded had launched them on corruption and prevented respectable persons from accepting their situations<sup>2</sup>. Yet they were the most capable instruments for disposing of the enormous quantity of minor causes and therefore, though Government under Lord Minto in 1813 contemplated their partial abolition<sup>3</sup>, under Lord Hastings it deemed it requisite to

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<sup>1</sup> Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p. 89.

<sup>2</sup> Mill and Wilson. History of British India, Vol.VIII, p.363.

<sup>3</sup> Letters Received from Bengal, Vol.67, Rev. Letter dated 2 Oct. 1813, para. 112.

to revise this decision. It is, however, important to remember that neither Cornwallis's<sup>1</sup> nor Lord Hastings's Government willingly wished to entrust Indians with any very substantial judicial authority. The former as well as the latter were solely driven by the necessity of the case, by the deplorable reality that the Zillah and City Courts were being clogged with suits which they did not have the least prospect of deciding<sup>2</sup>. To Government in 1814 there was another compelling consideration. The Directors were at this time bent on economy in administration, a desire only too well made explicit in their recent Dispatches. In the circumstances the best mode appeared to be to render the situation of the Native Commissioners "somewhat more lucrative and respectable, from which we may naturally expect a more pure administration of justice in those tribunals."<sup>3</sup> With this limited end in view, Regulation XXIII of 1814 was enacted. It laid down that Munsifs were to have well-defined jurisdictions with power to decide suits for money or other personal

<sup>1</sup> In his Minute of Feb. 1793 Cornwallis observed : "Although we hope to render our subjects the happiest people in India, I should by no means propose to admit the Natives to any participation in framing regulations."

<sup>2</sup> Aspinall. Cornwallis in Bengal, pp.90-1. See also p.330. Note, that among Cornwallis's proposals for reorganizing the judicial administration, so fully treated of in his Minute of 11 Feb. 1793 and in the Letter dated 6 March of the same year, nothing is mentioned about conferring judicial powers on Indias.- Second Report of the Select Committee (1810), Appendix No.9 and 9(A), pp. 99-125.

<sup>3</sup> Letters Received from Bengal, Vol. 70, Jud. Letter dated 29 Nov. 1814, paras. 6-7 and 13.

personal property up to the value of 64 rupees. They were to hear suits and decide them according to certain fixed procedure, and appeals from their decisions were to be preferred to the judge. The same regulation enjoined like rules with regard to Sadr Amins to whom, however, judges were authorised to refer for trial and decision any original suits for money or personal property up to the value of 150 rupees. Also, the judges could refer any pending appeals from the Munsifs to the Sadr Amins<sup>1</sup>. But the rule on which Government prided itself and from which it anticipated "the most substantial advantage" was that which cut off "all pecuniary intercourse" between the Native Commissioners and the parties in suits, it being provided that the former should receive the fees to which they might be entitled through the medium of the Zillah or City Court<sup>2</sup>.

In all these matters Government had acted upon the direct or indirect recommendations from England and in none had it contravened the spirit of the Cornwallis Code. But the next set of rules enacted at the same time tended to disregard the opinions of the Home Authorities and to strengthen the essentials of the existing system. Eager to uphold the  
separation

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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1814, pp. 35-53.

<sup>2</sup> Letters Received from Bengal, Vol. 70, Jud. Letter dated 29 Nov. 1814, para. 13.

separation of the judicial and revenue powers, Government quoted the authorization of the Directors themselves in favour of that principle, as evidenced in the Dispatch of February 1812<sup>1</sup>, and observed: "There is no provision in the accompanying Regulations from which we ultimately anticipate more solid benefit than those cited in the margin;" that is, no person should be made the Zillah Judge and Magistrate unless he had served 3 years as Register or in some regular judicial situation; that no person should be appointed a judge of any of the Provincial Courts who had not served 3 years as a Zillah or City Judge, or in some corresponding situation, and that no person should be employed as a judge of the Sadr Diwani and Nizamut Adalat who had not previously served 3 years as a judge of one of the Provincial Courts<sup>2</sup> (Sec. 5 Regn. XXIV, Sec. 2 & 4 Regn. XXV, 1814).

As a good mode of securing a regular succession of experienced officials, this scheme was undoubtedly sound. But experience alone availed little, when the Courts, especially of the Zillah and City, were over-whelmed with business; when the ryots were practically deprived of justice; when the criminals generally of the lesser sort and therefore the more numerous

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<sup>1</sup> Letters Received from Bengal, Vol. 70, Jud. Letter dated 29 Nov. 1814, para. 4.

<sup>2</sup> Idem, para. 16.

numerous, were allowed to escape unpunished and the witnesses compelled for months to wait at the criminal courts<sup>1</sup>. To these considerations Government seemed to pay little attention, or what attention it paid proved to be meagre. It adopted the scheme virtually with a view to avoiding any injury to the existing system, with a view, indeed, to abandoning the need of investing the Collectors with judicial powers either in revenue, criminal or police matters. How far, as such, it was unsuitable from the point of view of revenue administration and was eventually relaxed at the increasing pressure of the Home Authorities, has already been indicated<sup>2</sup>. How far in criminal and police administration it was likewise inadequate and opposed to the views of the Home Authorities, will be dealt with later<sup>3</sup>. Here it is well to note that Government, enacting as it did some salutary measures, emphasised the importance of the separation of powers and even went to the extent of attributing whatever success hitherto achieved in the Bengal Provinces to this basic canon of the Cornwallis Code<sup>4</sup>.

Before Government had communicated these measures, the Home Authorities had evolved a thorough scheme of  
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<sup>1</sup> See p.345 sqq.

<sup>2</sup> See p.309.

<sup>3</sup> See p.350 sqq.

<sup>4</sup> Letters Received from Bengal, Vol.70, Rev. Letter dated 29 Nov. 1814, paras. 17-18.

comprehensive reform. The Judicial Dispatch of 9 November 1814 is memorable for the bold ideas which it marshalled with a masterly analysis of facts. We have already seen its implications in revenue administration<sup>1</sup>. In Civil and Criminal Justice it powerfully urged novel views formed on the opinions of numerous subordinate officials, notably those of Munro; a greater use of native agency, and the transfer of the magisterial powers to the Collectors. Much of what it propounded had previously been suggested by them in the equally memorable Dispatch to Fort St. George dated 29 April 1814<sup>2</sup>. And the fact that they specially required the Bengal Government to take this Dispatch, extensively quoting Munro's views, also into serious consideration, besides his recent appointment at the head of the Judicial Commission to Madras, - these are solid testimony of their approbation of his opinions. The Dispatch of 9 November developed and reinforced the proposals of that of 29 April, and was intended to revise the entire basis of the existing system.

Several reasons prompted the Home Authorities to insist on this revision. The increase of no less than 20,953 causes in 1813 over the arrears of 1807 in the different Zillah, City

<sup>1</sup> See p.264 *Sqy*.

<sup>2</sup> Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), pp. 290-308.

City and Provincial Courts and Sadr Adalat, convinced them of the utter inadequacy of the "existing provisions." "We are persuaded that those whose names stand on the files of the courts and whose causes remain to be heard and decided, form but a very small number compared with the individuals who in every year stand in need of judicial protection, but who are either unable or deterred from seeking it." <sup>1</sup> Not only, therefore, the Collectors should be invested with judicial powers to decide revenue suits which undeniably formed a large bulk, <sup>2</sup> but other measures ought to be devised, at once swift and effective. The arrears should not be ascribed to the litigiousness of the people, but in Cornwallis' own phrase "to the dilatoriness and insufficiency" of the means of administering justice. <sup>3</sup> Nor was it possible to consider those causes which had been abandoned in consequence of law charges as frivolous or vexatious. The fact that notwithstanding the increase of expenses attendant upon legal proceedings since 1793 by the extension of fees and the imposition of stamp duties, the arrear of causes was still very heavy alike in the European and native tribunals; the fact that the suits settled by "razinamah" before

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1 Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 305-14.

2 See p. 264 *seq.*

3 Second Report of the Select Committee (1810), p. 115.



before the Native Commissioners who distributed justice among the great body of the community nearly equalled in some years the suits actually adjudged by them, and in others exceeded their formal decrees; the fact also, that the suits disposed of by the European Judges were much less in proportion - all these pointed to but one conclusion, that it was of no use to augment the European part of the establishment, even if the embarrassed state of the Company's finances admitted of an additional expenditure on that account. "Double the number of zillah judges, we are persuaded, would do little more than palliate, and that feebly, the evil, and by no means reach the seat of the disease." This could only be accomplished, in any satisfactory degree, by extending the instrumentality of the natives in conducting judicial business <sup>1</sup>.

In what mode could the natives be employed in the administration of civil justice? As to this question the Directors declared their deliberate conviction that no scheme for that purpose could proceed on right principles or could hope to succeed in the fulfilment of its aims, which did not take into account "the ancient and long-established customs and institutions of the country" and which did not accommodate itself to the "habits, the feelings, and the understandings" of the  
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1 Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 390-7.

the people<sup>1</sup>. With these ideas the Directors argued that the fittest and most proper agents who could be primarily utilised in the distribution of justice were the Natives who formed "the more permanent and natural authorities" in the interior of the provinces. There were the Mundels, the Maccudims, and the Patails in Madras. That the same or similar authorities existed in the North, the Directors had ample evidence, though, of course, they rightly admitted that these functionaries might be found in a more or less mutilated condition in the Old than in the New Provinces. It was by these that the public concerns of the village communities to which they belonged were formerly regulated and administered. It was by these, with the aid of panchayets or "native juries" that the litigations occurring among the mass of the people were settled or adjusted. An array of evidence was cited by the Directors in support of the revival of this scheme from the reports of the Collectors, judges and other higher officials of Bengal, Madras and Bombay, covering the period 1789-1813<sup>2</sup>. Munro had particularly recommended it<sup>3</sup>; and to the Dispatch to Fort St. George of 29 April, which embodied his views, the Directors referred the Bengal Government for further information.

Indeed,

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1 Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp.397-9.

2 Idem, pp.399-415.

3 Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), pp.296-301.

Indeed, the Home Authorities were entirely dissatisfied with the restricted use hitherto made of the Native Agency. True, Regulation XVI of 1793 had empowered the judges of the Zillah Courts to refer to arbitration any suits that might be brought before them concerning commercial disputes and debts, on the suitors having previously entered into arbitration bonds binding them to abide by the award<sup>1</sup>. But it was only in causes wherein the value of the matter in dispute exceeded a certain sum, that more than one arbitrator had been allowed. By Regulation XL of 1793 the Native Commissioners had been authorized to hear and determine such suits whenever parties might voluntarily submit to their decision. In the first instance, the parties had to apply to the Zillah Court before the arbitration could proceed. This mode, to say nothing of the distance of the judicial station to which they had to resort, was no little hindrance to the obtaining of justice, besides conferring the power of arbitration to one person in a large portion of the causes brought into the Court. In the second instance, arbitration had likewise been on the same principle restricted to one individual, the Native Commissioner, instead of leaving it to be performed by any persons to whom the litigants might refer. So that, in neither did the Regulations provide

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1 Harrington. Analysis of the Laws and Regulations (1821), Vol.I, p.74 sqq.

provide for the employment of arbitrators "in a manner," as the Directors said, "consonant to former usage."<sup>1</sup> The existing rules were obviously ill-adapted for a prompt decision of suits. While the Zillah Courts overwhelmed with regular suits of magnitude were still required to do all the initial work, the Native Commissioners who had a heavier load of business before them in their capacity of Munsif and referee, were required to conduct the arbitration itself.

In proposing that petty disputes or suits should be exclusively, in the first instance, committed to the head of villages and panchayets, the Home Authorities did not, by any means, view their plan as free from the probability of abuse. To them the consideration was whether it would not be a blessing to the people. They urged many arguments in its favour. It would bring home justice to the very doors of the parties, relieve them from expense and vexations and ruinous loss of time, to which they were otherwise subject in seeking judicial redress. Its instruments, the mundels and panchayets, would have means of information much better than any not residing on the spot could hope to possess. It was founded on the institutions and usages which had been for many a generation well-known and familiar to the natives<sup>2</sup>. On these grounds  
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1 Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 416-21.

2 Idem, pp. 424-9.

the Directors required that the Mundels, and Panchayets assembled under them, should be empowered to act as arbitrators in matters brought before them by voluntary consent. The appeal in suits where it could be admitted should, in the ordinary course, lie to the Native Commissioners. But not to the Native Commissioners as then constituted. Their powers should be increased, they should be of a "superior order" and though their numbers might, if necessary, be reduced, the most fit and energetic persons should be selected to fill their office and they should be given a fixed salary in addition to the institution fee. A provision might also be made for remunerating the mundels wherever they might have been deprived of the legitimate emoluments belonging to them<sup>1</sup>.

The Directors held that these reforms would considerably relieve the Zillah, City and Provincial Courts. All the same, they believed, however, that those Courts would still be pressed by a weight of business which could only be effectually discharged by "removing as far as you are able, those impediments which must arise from too close an assimilation of the forms of proceedings of the Courts in India to those of the Superior Judicatures in this country." They urged the reduction of the mass of "miscellaneous business" of the Courts which

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1 Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 429-33.

which was steadily on the increase, more particularly in the Sadr Diwani Adalat<sup>1</sup>. And they hinted that the abridgement of the work of the European Courts necessarily involved in the transference of the magisterial duties to the Collectors (see p.350.) might enable Government to dispense with the assistant judges and to discontinue the employment of additional judges in the Provincial Courts. Could not the judges of the Provincial Courts be permanently reduced to two "instead of three, as is at present," and those of the Sadr Diwani Adalat to two?<sup>2</sup>

Was it feasible to adopt this scheme? There can be little doubt that the influence and authority of the Mundels and panchayets existed in a more or less unimpaired form in the New Provinces<sup>3</sup>. They might have been very well revived and requisitioned for judicial purposes as required by the Home Authorities. But in the Old Provinces there were virtually no traces of these Hindu Institutions, save that there were what were termed the "Caste Panchayets", purely, as their name implies, concerned with settling religious disputes<sup>4</sup>. Here, therefore, it would have been difficult, if not impossible, to create

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1 Dispatches to Bengal, Vol.LXVII, Jud. Dispatch dated 9 Nov. 1814, pp.438-42.

2 Idem, pp.442-5.

3 e.g. Answers to the Court's Queries. Selection of Papers in the Records of the East India House, Vol.II, p.47.

4 Idem, pp.8,16,24,29.

create authorities which did not in fact exist. The right policy was to make more use of Indian Agency, not so much of Mundels and Panchayets as of regular constituted officials, forming a more natural link with the zillah and city judges; in other words, of improving the status of the office of Native Commissioner, of placing it beyond corruption and of making it an office of rank and dignity. The Home Authorities recognized this more fully than Government. Economy (for it implied a reduction in the European part of the establishment) no doubt underlay this recognition, but it precipitated, not inspired it. They were aware that in a <sup>growing</sup> empire, it was impossible not to look to the Indians themselves for aid in administration. As will be seen, not only in the administration of civil, but in the administration of criminal justice too<sup>1</sup>, wherein the Natives had never yet been employed, the Directors wished to employ them and to entrust them with power and confidence. In recommending an extension of the authority of the Native Judges, they were by no means unsupported. In reply to Lord Wellesley's Queries, circulated in 1801, several of the covenanted servants in the judicial line had advocated that measure<sup>2</sup>. This the Court knew, but certainly appears to have

<sup>1</sup> See p.348.

<sup>2</sup> Parliamentary Papers (June 1813), pp.17,46-7,99,218,229,242,254,259.

have been much more impressed by the answers to their own Queries circulated in 1813. In these answers some of the most respected Company's servants had unburdened their desires and insisted on the enlargement of Native Agency<sup>1</sup>. Sir Henry Strachey, for instance, had responded: "I am of opinion that with respect to integrity and diligence, the Natives may be trusted with the administration of justice . . . I think no superintendence of Europeans necessary . . . If the Natives are not qualified for these or any other offices, I conceive the fault to be ours not theirs. If we encourage them, if we raise them in their own estimation, they will soon be fit for any official employment in India."<sup>2</sup> The great Munro himself had clinched the matter with his characteristic vigour:

"In a civilized and populous country like India, justice can be well-dispensed only through the agency of the natives themselves. It is absurd to suppose that they are so corrupt as to be altogether unfit to be entrusted with the discharge of this important duty. If they are so, there would be no remedy for the evil; their places would never be supplied by a few foreigners imperfectly acquainted with their customs and language. As much as possible of  
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<sup>1</sup> e.g. Selection of Papers from the Records of East India House, Vol. II, pp. 33, 50, 56, 76, 91.

<sup>2</sup> Idem, p. 67.



the administration of justice should, therefore, be thrown into the hands of the Natives; and the business of the European judge should rather be to watch over their proceedings and see that they execute their duty, than to attempt to do all things himself."<sup>1</sup>

Such was the motive power of the recommendations of the Home Authorities, and as time passed, the more convinced they became of its necessity.

Indeed, throughout the remaining part of Lord Hastings's rule, and even afterwards, they tried their best to convert Government to their views. They protested that the measures undertaken by Government were far less comprehensive than those suggested by them<sup>2</sup>. They lamented the introduction of the Cornwallis Code into Dehra Dun (acquired after the Nepal War and annexed to the district of Seharunpore), where, they said, Indian institutions should have been adopted<sup>3</sup>. They restrained Government, for the same reason, from interfering with the internal affairs of Couch Behar<sup>4</sup>, and anticipating

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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. II, p. 105 sqq.

<sup>2</sup> Dispatches to Bengal, Vol. LXXII, Jud. Dispatch dated 10 April 1816, p. 593 sqq.

<sup>3</sup> Ditto. Vol. LXXX, ditto. 10 Feb. 1819, pp. 729-821.

<sup>4</sup> Ditto. Vol. LXXIV, ditto. 27 Feb. 1817, pp. 917-84, and Letters Received from Bengal, Vol. 78, Jud. Letter dated 29 Oct. 1817, para. 33.

anticipating the probable extension of the Company's dominion, ordered that (1819) nothing beyond a provisional arrangement must hereafter be made in the territories which might be conquered, before getting their sanction. "We have no hesitation in pronouncing of the impolicy of obliterating at once the municipal establishments of a newly acquired country for the purpose of establishing a system which is admitted on all hands to be imperfect, and thus putting it out of our power to avail ourselves of what may be useful in the Native Institutions and what may be erroneous in our own."<sup>1</sup>

This policy, of course, met no welcome from Government. Lord Hastings might think (Minute of 2 October 1815) that the "original institution of local panchayet" might be utilised in judicial administration<sup>2</sup>, but Government held that the instructions of the Home Authorities were calculated to introduce "fundamental alterations" and merely forwarded them to the Sadr Diwani Adalat, asking that Court to call for the opinions of the subordinate officials<sup>3</sup>. It also waited to see the practical result of similar reforms recommended from England and implanted by Munro in Madras<sup>4</sup>. Meanwhile the work of

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<sup>1</sup> Dispatches to Bengal, Vol. LXXX, Jud. Dispatch dated 19 Feb. 1819, pp. 801-28.

<sup>2</sup> Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), p. 156.

<sup>3</sup> Letters Received from Bengal, Vol. 72, Jud. Letter dated 7 Oct. 1815, paras. 191-6.

<sup>4</sup> Ditto. Vol. 76, ditto. 7 Feb. 1817, paras. 3-5.

of the Courts was increasing. Consequently, a fifth judge was temporarily added to the Sadr Diwani Adalat, new arrangements were made for reducing its "miscellaneous business,"<sup>1</sup> several Registers were appointed in different districts<sup>2</sup>, and some steps taken, as the Home Authorities had desired, better to regulate the emoluments of the Native Commissioners. The Zillah and City judges were required to encourage the Sadr Amins in their duties, to remunerate them by special allowances whenever their fees were considered insufficient<sup>3</sup>. But it was not till 1821 that effective measures were undertaken to improve the status of the Native Commissioners, and it was the increasing duties of the Zillah and City Judges, just as had been forecast by the Home Authorities, that drove Government in that direction. The Provincial Courts were now empowered to increase the number of Munsifs on the recommendation of the Zillah and City Judges, and the Munsifs were authorized to try and decide suits not exceeding 150 rupees. Similarly, the Sadr Diwani Adalat could invest the Sadr Amins with authority to

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<sup>1</sup> Letters Received from Bengal, Vol.76, Jud. Letter dated 1 March 1817, paras. 59-68. Also Letters Received &c. Vol.76, Jud. Letter dated 4 July 1817, paras. 63-68.

<sup>2</sup> Ditto. Vol.72, ditto. 7 Oct. 1815, paras.304-7. Also ditto. Vol.76, ditto. 4 July 1817, para. 73.

<sup>3</sup> Ditto. Vol.76, ditto. 4 July 1817, paras.74-7.

to adjudicate on original suits up to 500 rupees, while to such Amins within that amount the Zillah and City Courts could refer suits pending before them (Regn. II, 1821)<sup>1</sup>. It is worth noticing that neither the Sadr Amins nor the Munsifs were, as yet, paid any fixed salary, as ordered by the Directors. Still, however, the institutions fee by which they were remunerated, must have materially increased with an increase in their powers.

The Home Authorities hailed this step as a result of their "endeavours to impress upon you" its need "on various occasions in the course of the last ten years." But they did not stop with this; they lighted the way for further advance. They felt that both "the number and power" of the Munsifs and Sadr Amins "are still inadequate." "We are satisfied that to secure a prompt administration of justice to the Natives of India in civil causes, Native functionaries must be multiplied so as to enable them to dispose, in the first instance, of all suits of that description, and, as appears to us, without regard to the amount at stake, their decisions being, of course, liable to revision and appeal where the check may be deemed indispensable<sup>2</sup>." The attention of the European officials should

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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1821, pp. 13-16.

<sup>2</sup> Dispatches to Bengal, Vol. 96, Jud. Dispatch dated 23 July 1824, pp. 1199-1208.

junior?

should be confined only to duties of superior order; to the decision of suits on appeal, to the supervision of the Indian judges, the police, and the higher department of criminal justice, and to the settlement and collection of revenue. "By aiming at more than we can accomplish, we endanger the attainment of that which is within our reach." To the objection that Indians could not be trusted in responsible judicial positions "it might be sufficient answer to say that they are already so trusted." It was, indeed, the decided conviction of the Home Authorities that,

"When we place the Natives of India in trust and confidence, we are bound under every consideration of justice and policy to grant them adequate allowances. We have no right to calculate on their resisting temptations to which the generality of mankind in the same circumstances would yield; but, if we show a disposition to confide in them and liberally to reward meritorious service, and to hold out promotion to such as may distinguish themselves by integrity and ability, we do not despair of improving their character both morally and intellectually, and of

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rendering them the instruments of much good."<sup>1</sup>

No comment on these ideals is necessary. To trust, to encourage, and to elevate the Indian Judges in their status and thereby in their morale - this was the noble political legacy left in 1824 by the Home Authorities, to be taken up and put in practice by Bentinck.

## (2) Criminal Justice and Police.

Not less striking were the views of the Home Authorities in regard to the administration of criminal justice. For, herein too, they urged from the very beginning the employment of the Indian agency and the transference of the magisterial powers to the Collectors - both measures contrary to the system established by Cornwallis and forming part of the new scheme to revive Indian Institutions. They  
admitted

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Dispatches to Bengal, Vol. XCVI, Jud. Dispatch dated 23 July 1824, pp. 1208-16. On 9 October 1831 Government observed that "the Native Judges already dispose of about 15-17ths of the regular civil suits (original and appeal) tried and determined throughout the country (i.e. the Bengal Presidency) and that it is chiefly in the Superior Courts that the suits in arrears are of long standing." - Parliamentary Papers (Oct. 1831), Appendix V, p. 148.

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 dacoity

admitted, and that truly, that the dangerous crime of dacoity and Kazaky had been materially reduced by the vigorous reforms introduced under Minto. But this was not enough, there was much more to be done to ensure public peace and ordered progress. There was thus "the great deficiency" in the means provided for the trial and decision of petty offences and misdemeanors, such as calumny, abusive language, slight trespass, slight assaults and petty thefts. Minor though these offences were, it was of "great importance" to suppress them for the "permanent welfare of society."<sup>1</sup> By the existing rules, only the Zillah and City Judges and their assistants as magistrates could take cognizance of such offences, the darogahs, with the exception of petty thefts, being not even allowed to receive those charges. And the complainant recently deprived of the much abused privilege formerly conceded to him, of preferring his charge through a pleader or any accredited agent, had been now expressly required to prefer the charge himself, direct to the Magistrate<sup>2</sup>. This was certainly an unhappy procedure, since it had naturally resulted in inconveniencing him and thereby generally encouraging common breaches of peace. The Directors rightly pointed this out as a grave defect, and proceeded

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 647-9.

<sup>2</sup> Idem, p. 649 sqq and p. 667 sqq. Also Regulation III, 1812.

proceeded:

"We would ask, what would be the state of public manners in our own country, if, instead of having in almost every parish a magistrate at hand to prevent and punish misdemeanors . . . and with little other business to command his attention, there were but two public functionaries in each county who could interfere in such cases and those functionaries at the same time, oppressed with such a weight of other business as to be obliged to keep the prosecutors and witnesses for months in attendance before the complaint could be decided?"<sup>1</sup>

There was no exaggeration in this biting comparison. The reports of the subordinate officials were crowded with information to illustrate the tragic fact. For instance, in 1812, Mr. Blunt, the Superintendent of Police for the Lower Provinces, observed that, during the course of 6 months in 1811 1,200 complaints of misdemeanors and the most trivial offences were preferred to the Magistrate of Chittagong, in consequence of which nearly 10,000 witnesses were draggēd from their homes to the Sadr station. He also remarked that, on account of the arrears of suits pending before him, the Magistrate could not hope

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 650-2.



hope to decide those causes "till after a lapse of some months."<sup>1</sup>

In these circumstances, the best mode that appeared to the Directors, of securing redress, was that of employing a much more numerous agency than could be furnished from the European line of the service. "To our Native subjects we must look for the supply of a deficiency so severely felt. We have long employed them in the administration of civil justice in its minor concerns, and the reasons are equally cogent why we should, in the same manner, avail ourselves of their instrumentality in the affairs of criminal judicature." The Home Authorities held that the reasons in both cases "are founded on the necessity of things in a foreign Dominion like India," - which was entirely true, - but they also explained their conviction that, "abstracted from this view of the subject, there are considerations of general policy which would strongly recommend a liberal admixture of European and Native agency." What these considerations of policy were, we are not left in doubt; they emphatically declared that the Native Commissioners of "Superior Order" whom they wished to appoint in the administration of civil justice, should also be invested with criminal powers<sup>2</sup>.

These

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 657-66.

<sup>2</sup> Idem, pp. 676-81.

These instructions of 9 November 1814, together with those of the same date concerning civil justice (see p.332), were simply referred by Government to the Sadr Diwani and Nizamut Adalat for report. In 1816 the Home Authorities desired to be informed of the result<sup>1</sup>, but up till 1821 Government considered that their instructions envisaged a "radical change."<sup>2</sup> In that year, however, when the powers of the Munsifs and Sadr Amins were increased in civil causes, it could not help investing the latter with powers to decide criminal causes as well. The judge-magistrates weighed down by the major civil and criminal suits were finding it exceedingly difficult to pay adequate attention to minor charges. The Zillah and City magistrates were therefore empowered to refer to Sadr Amins trying civil suits over 150 rupees, as also to the Hindu and Mahomedan Law Officers, all complaints for petty offences such as abusive language, calumny, inconsiderable assault, or affrays and all charges of petty thefts, - exactly as required by the Home Authorities in 1814 (Regn. III, 1821)<sup>3</sup>. Other measures were no doubt taken; the punishments that the Indian judges could inflict were defined and monthly reports demanded of their proceedings. Appeals from their decisions could be preferred within a month to the Magistrate. But these, in

<sup>1</sup> Dispatches to Bengal, Vol. LXXII, Jud. Dispatch dated 10 April 1816, pp. 601-5.

<sup>2</sup> Letters Received from Bengal, Vol. 72, Jud. Letter dated 7 Oct. 1815, para. 192.

<sup>3</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1821, pp. 17-20.

in no way diminished their utility; and the Directors in addition to expressing their "cordial approbation" of the reform, hoped that still more increased powers might be bestowed on the Indian Judges<sup>1</sup>.

An important measure powerfully urged by the Home Authorities throughout this period was the transference of the magisterial powers from the judges to the Collectors. Apart from helping to maintain efficient police<sup>2</sup>, they considered that it would cure various defects in criminal justice. Of these, the length of time which elapsed between the arrest of an offender and his trial before the circuit judge was "an evil of very considerable magnitude" which it was of "primary importance" to remove as far as practicable<sup>3</sup>. For, while it operated with great injustice on the accused, it afforded opportunities of imposing on the Courts by fabricated defences and perjured testimony. Moreover, it involved great inconvenience and hardships to witnesses and prosecutors who had twice to attend at the Sadr Court, first on the initial examination of the case before the magistrate, and secondly when the Court of Circuit assembled, usually 4 - 6 months, sometimes

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<sup>1</sup> Dispatches to Bengal, Vol. LXVI, Jud. Dispatch dated 23 July 1824, p. 1199 sqq.

<sup>2</sup> See p. 376 sqq.

<sup>3</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 687-8.

sometimes a much longer period, after the magistrate's examination and commitment. Influenced doubtless by Humanitarian ideas, the Home Authorities greatly deplored this evil and insisted on its correction. With no less truth than fervour they stressed the fact that this evil had not only been "repeatedly represented by the judicial servants under Your Presidency," but specially pointed out by the Fifth Report of the Select Committee<sup>1</sup>. The most effectual remedy for its removal was to transfer the charge of the police administration to the Collector "with authority to decide on crimes such as are at present entrusted to the Zillah Judge in his capacity of magistrate." The Zillah Judge could then be vested with criminal powers in causes of greater magnitude - but not of a capital nature - which might be brought before him on the commitment of the Collector-magistrate. Aided by the Moolvie and Pandit, the Judge must proceed to the trial of the offence immediately on commitment. In charges of sufficient magnitude, the sentence might undergo the revision of the Court of Circuit, and the Nizamut Adalat. If necessary, in the principal cities the powers of the judge and magistrate might be combined in the same

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 688-91. Also, Fifth Report, p. 69. Also, Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 28 Oct. 1814, p. 579 sqq.

same person, as was done in 1787, with the same extended powers proposed to be given to the Zillah judges<sup>1</sup>.

Never, perhaps, was a reform suggested with more insight as well as foresight. Important as it is, its basis may be examined in some detail. The principle of enlarging the powers of the magistrates had been often recommended by the judges, particularly by the acting judge of Circuit for the Division of Dacca (1804). It would, he had reasoned, contribute to more accurate proceedings in regard to the conviction of offenders, since the delay of "four or five months" intervening between the commitment before the magistrate and the trial before the Court of Circuit, "increases the difficulty tenfold and baffles the most laborious researches." It would lessen the expenses to Government, and still more, the hardships to prosecutors and witnesses, from obliging them to come twice from different parts of the district to give evidence at the Sadr Court<sup>2</sup>. The latter point had been vividly described by the Senior Judge of the Moorshidabad Court of Circuit (1803); witnesses, "mostly people of the lower order, cultivators of the soil . . . sustain great injury from being dragged

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 691-8.

<sup>2</sup> Idem, pp. 698-703.

dragged from their homes and suffering long detention at the periods of harvest . . . a detriment, by no means compensated by the allowance of subsistence which they receive from Government . . . and the clamours of indigent prosecutors and witnesses which assailed me daily on the opening and closing of the Court has had considerable effect to prompt this representation."<sup>1</sup> Nor was this all. The acting judge of Circuit for the Division of Patna had spoken of what were termed the "Thana Confessions;" that it was endless entering into a detail of the different modes in which confessions were fabricated and proved; that the prisoners were taken out singly at night and subjected to every species of maltreatment till they consented to subscribe before witnesses to a confession drawn up for their signature by the darogah or his assistant<sup>2</sup>. Could not these infamous confessions be stopped at once, by leaving as little time as possible between apprehension and commitment and vesting the Collectors with supervisory powers over the darogahs? Surely the Collectors could more easily visit the different thanas periodically and better control the conduct of the darogahs than

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 704-6.

<sup>2</sup> Idem, pp. 707-10.

than the judges could, confined as they always were to the Sadr station. Again, in answer to the queries circulated by the Directors in 1813, many of the Company's servants had recommended the transfer of the magisterial powers from the judges to the Collectors<sup>1</sup>. Munro had continually urged since 1806 that the judge should be exclusively confined to his judicial duties and that in accordance with the ancient Indian system his police and magisterial duties should be exercised by the Collector<sup>2</sup>. The growing civil business of the Zillah Courts made it imperative that the judge's attention should be largely devoted to that alone<sup>3</sup>.

Such was the basis of the reform firmly and fully expounded by the Home Authorities on 9 November 1814. In May 1815 they repeated that "nothing short of relieving the Zillah Judge" from the immediate charge of police and magistracy could ensure a prompt decision of the criminal causes<sup>4</sup>. In April 1816 they insisted that as to the separation of powers to which Government attached "so exclusive an importance as to pass<sup>by</sup> every other consideration that might interfere with its maintenance

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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. II, e.g. pp. 25, 30-31, 44.

<sup>2</sup> Idem, pp. 222 and 112.

<sup>3</sup> Dispatches to Bengal, Vol. LXVI, Jud. Dispatch dated 12 Oct. 1814, pp. 62-5.

<sup>4</sup> Ditto. Vol. LXIX, Jud. Dispatch dated 19 May 1815, pp. 981-5.

maintenance," they had deemed it "not only both reasonable in itself but urgently expedient on other grounds" to relax the practical application of the principle and to transfer to the Collectors an important portion of the functions both civil and criminal hitherto exercised by the judges. And, they declared, "our orders are peremptory that the powers of the magistrates shall hereafter be vested to the Collectors, together with the superintendence of the local police establishments."<sup>1</sup> But Government, ardently upholding the Cornwallis principle of the separation of powers, could not be induced to give it up. So that it merely referred the orders to the Nizamut Adalat for report and wrote home that it was not its intention to introduce radical changes in the existing system. Indeed, in July 1817 Government took it for granted that "great and solid improvements" had already been effected in the administration of civil and criminal justice and police, and asserted that this success should be attributed, first, to the institution of the Offices of Superintendent of Police, which was true, and secondly, to "the absolute separation of the judicial and revenue office,"<sup>2</sup> which was, to say the least, untenable

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<sup>1</sup> Dispatches to Bengal, Vol. LXXII, Jud. Dispatch dated 10 April 1816, pp. 598-600.

<sup>2</sup> Letters Received from Bengal, Vol. 77, Jud. Letter dated 4 July 1817, paras. 69-72.



untenable, because, though dacoity and kazaky were materially on the decline about this time, theft and burglary, or robbery involving wounding and murder, were definitely on the increase<sup>1</sup>. In the Lower Provinces in 1811 there were 4379 cases of thefts and burglaries; in 1812, 6755; in 1813, 7831; in 1814, 9685; in 1815, 10833; in 1816, 11626; in 1817, 13199. In 1818, thefts and burglaries increased to 13,539<sup>2</sup>, while in 1819 dacoity once more began to raise its head<sup>3</sup>. In the Upper Provinces, during these years, highway robberies declined, though the cases of wilful murder increased<sup>4</sup>. But here too it was thefts and burglaries that suddenly leapt up after 1816; in 1813 they were 15,301; in 1814, 13099; in 1815, 13055; in 1816, 19719; in 1817, 19426; and in 1818, 24004<sup>5</sup>. As will be seen, Government itself was all this time undertaking the re-organization of the subsidiary police, in order to stem this tide of crime. Yet, as far as criminal justice was concerned, it could only be slowly brought to acquiesce in the recommendations from England. Without actually going to the lengths to which

<sup>1</sup> e.g. Dispatches to Bengal, Vol. LXXXIII, Jud. Dispatch dated 18 Feb. 1820, p. 209 sqq., and ditto. Vol. XCVI, ditto. 28 April 1824, p. 516 sqq.

<sup>2</sup> ditto. Vol. LXXXIX, ditto. 27 June 1821, p. 79 sqq.

<sup>3</sup> ditto. Vol. XCVII, ditto. 24 Oct. 1824, p. 512 sqq.

<sup>4</sup> ditto. Vol. XCVI, ditto. 28 April 1824, p. 533 sqq.

<sup>5</sup> Idem, p. 535.

which the Home Authorities had gone, was it not practicable to devise some means for the speedy trial of criminal causes? The Home Authorities had urged the increase of the powers of magistrates, and to this Government felt compelled to revert without, however, transferring the magistracy to the Collectors. The preamble of Regulation XII of 1818 is interesting as showing the defects long pointed out by the Home Authorities and now for the first time unreservedly admitted by Government. It said that much of the time of the Circuit Judges was occupied in deciding causes of thefts and burglary, not of capital offence; that the prosecutors and witnesses "are exposed to great distress and inconvenience" from being compelled to attend twice to the Sadr Court, for the commitment before the Magistrate and the trial before the Circuit Judge; that "the prisoners themselves in such cases are subjected to prolonged detention in custody previously to their trial at the sessions;" and that all these could be obviated by increasing the powers of the magistrates. The Zillah and City magistrates and joint-magistrates were therefore empowered to take cognizance of thefts and burglaries - not involving murder or wounding, which were to be reserved for the Court of Circuit. They could inflict punishment up to two years and stripes up

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to 30, and "carry such sentence into immediate execution."<sup>1</sup>

These rules, however good in themselves, proved of little avail, owing to the general growth of business of the judge-magistrates. In 1820-21, the Directors, in elaborate Dispatches based on numerous reports of sub-officials, began to comment on the increase of crime, not of burglary and theft alone, but of dacoity and highway robbery as well; on the ease with which criminals escaped detection and punishments, on the lapse of time between the arrest and trial, unjust to the offenders and harassing to the witnesses and prosecutors<sup>2</sup>. And they reiterated:

"You will not be surprised to learn that we are by no means prepared to concur in the justness of the eulogium you . . . pronounce on the system of internal Government of Bengal . . . We are far from thinking that the complete separation of the judicial and revenue branches of the service has been productive of good effects . . . We enjoin you to give your unwearied attention to the means of remedying the evils we have enumerated and seriously to consider, without loss of time

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<sup>1</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1818, pp. 24-8.

<sup>2</sup> e.g. Dispatches to Bengal, Vol. LXXXIII, Jud. Dispatch dated 18 Feb. 1820, pp. 209-360, and  
 Ditto. Vol. LXXXIV, ditto. 26 April 1820, pp. 196-352.  
 and ditto. Vol. LXXXIX, ditto. 27 June 1821, pp. 48-185.

time, the suggestions which we made to you in our letter of 9 November 1814."<sup>1</sup>

With these orders and with the increase of crime, Government could not but take the step which it most disliked. Yet, it did not go far enough, nor did it abandon the system established by Cornwallis. But <sup>by</sup> the permissive Regulation IV of 1821, the Governor-General and Council could authorize a Collector or revenue officer to exercise the powers of a magistrate or invest a magistrate with the powers of a Collector. Collector-magistrates were to be guided by the existing rules concerning judge-magistrates and by the orders of the superior courts<sup>2</sup>. It should be noted that the office of judge-magistrate still remained the rule, not the exception; that already in jungle mehals and some backward tracts, the revenue officers had been occasionally invested with magisterial powers. None the less, as a measure of general policy, this was the first occasion when Government admitted the efficacy of Collector-magistracy; and but for the fact that the Collectors themselves had laborious duties, if not in the Old, at any rate in the New Provinces, many Collectors might have been invested with magisterial powers. As it was, only in Rungpore, Ramghur and the jungle mehals were Collector-magistrates employed by  
1823

<sup>1</sup> Dispatches to Bengal, Vol. LXXXIII, Jud. Dispatch dated 18 Feb. 1820, pp. 466-70.

<sup>2</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1821, pp. 20-2.

1823<sup>1</sup>. Here, as elsewhere, the Cornwallis principles died hard; the <sup>Collector</sup> judge-magistracy was not <sup>established</sup> discarded until after Dalhousie's Government<sup>2</sup>.

The most remarkable characteristics of the next group of measures suggested from England are their affinities to the Law and Prison Reforms promulgated by Bentham and Howard. "I do not know" said Sir Henry Maine, "a single reform effected since Bentham's day which cannot be traced to his influence." If this is admissible, it is not the less admissible that his influence is patently visible in the recommendations of the Home Authorities. Similarly, "I cannot name this gentleman" declared Burke of Howard in a famous peroration, "without remarking that his labours and writings have done much to open the eyes and hearts of all mankind." And without a shadow of doubt, many a suggestion of his finds a conspicuous place in the Dispatches. Briefly put, the ideas of these two great reformers centered, among other things, upon the following: that the law, especially criminal, should be simplified

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<sup>1</sup> Selection of Papers from the Records of East India House, Vol. IV, pp. 25-9. By 1827 the sub-collectors of Khurda, Balasore and Pilibhit and other revenue officers at Moradabad, Etawa, Aligarh and Meerut and in Bundelcund, had been made Joint-magistrates. The Commissioners at Delhi, Ajmir, in the Sagar and Nagpur territories, in Cuttack, Ramghur and Rungpore united revenue and judicial powers - Mill and Wilson. History of British India, Vol. VIII, p. 376 see footnote.

<sup>2</sup> Cambridge History of India, Vol. VI, p. 28 sqq.

simplified, codified and disseminated among the people, as the plea of ignorance will not save the transgressor from the penalty of his transgression; that legislation should always aim at "the greatest happiness of the greatest number;" that the great end of punishment being the prevention of crime, punishment of evil-doing should be exactly suited to the purpose - neither more nor less; that the prisoners should receive humane treatment at the hands of the prison authorities, including medical assistance, should be segregated, men and women, debtors and felons, novices and hardened criminals; that they should be supplied with necessaries, proper food, blankets, fire, water and so on; that in short, the prisons should be kept clean and healthy under good supervision.

Each of these ideas found an echo in the mind of the Home Authorities. It has been indicated how, as far back as 1808, they had specially asked Government to study Colonel <sup>Major</sup> Leith's suggestions, among which the simplification, codification and dissemination of laws occupied a prominent place <sup>1</sup>. Seven years later, they took up the last point again. "It is certainly of the first importance that every possible publicity should be given in the different zillahs to the Regulations from

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1 See p.171. Also, Selection of Papers from the Records of East India House, Vol.II, p.104.

from time to time issued by your Government." Sentences should be passed in the "most public manner" with an explanation of the enormities of crime, so that it would have a salutary effect on the bystanders and would act as deterrents to further crime. They "strongly recommended" that the judges, while pronouncing the sentence, should explain the penal enactments which might have been recently passed, and which were but imperfectly known or understood by the people<sup>1</sup>. In 1817 they handled the whole subject in a fuller manner. They observed, with much truth, that it was as rare to find an Indian in possession of the "judicial code" as it was to find an European with it who was not in the Company's service<sup>2</sup>. The Regulations could not be purchased, were difficult to be procured, were only kept at the Courts for public consultation. From the numerous representations of the European officials recorded from time to time on the Proceedings of Government, it was evident to the Directors that a "lamentable ignorance" of laws prevailed among the people in the interior of the country. This state of affairs must cease. Again, the "voluminous size to which your Legislative Code has grown and the complicated state in which it now is, calls very loudly for a general revision of it" The simplification of the Code would render its provisions intelligible

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1 Dispatches to Bengal, Vol.LXIX, Jud. Dispatch dated 19 May 1815, p.994 sqq.

2 Ditto, Vol.LXXIV, ditto. 26 Feb.1817, p.992.

intelligible to the people and enable them, if so disposed, to know "what the prescriptions of the laws really are affecting themselves."<sup>1</sup> Indeed, a judge who had studied the subject had remarked, in 1813, that there were then 411 distinct Regulations containing 5,794 sections and 2960 clauses. Natives, he had said, complained much of the complexity of the Regulations, urging that this frequently led to their infringement of them,<sup>2</sup> and consequently falling under penalties.<sup>2</sup> Small wonder, therefore, that the Home Authorities required that, once their orders of 1814 had been carried into effect, a thorough revision and consolidation of all the existing rules into a Code should be attempted as "a measure of obvious necessity," and that, in the meanwhile, the best practicable method should be adopted with a view to making the people generally acquainted with the laws.<sup>3</sup>

Government, however, could not completely comply with these orders. It admitted the need of a knowledge of the laws among the people and caused the instructions, recommending the passing of sentences in "the most public manner" with an explanation of recent penal enactments, to be circulated through the several courts.<sup>4</sup> It promised to provide means for translating

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1 Dispatches to Bengal, Vol.LXXIV, Jud. Dispatch dated 26 Feb. 1817, pp.995-1001.

2 Idem, pp.1001-5.

3 Idem, pp. 1005-9.

4 Nizamut Adawlut Circulars, Vol.I,1796-1827,p.132. Also Letters Received from Bengal, Vol.74 Jud.Letter dated 2 Aug.1816, para.33.



translating every Regulation into native languages and to render the translations accessible to all who might be desirous of perusing them<sup>1</sup>. But, when it came to the question of the Code, it pronounced the task as of "extreme difficulty."<sup>2</sup> Indeed, not till the Law Commissions of 1833 and 1853 could be established, not till a Macaulay could be found to initiate it, and some able successors could be set to attack it, was there any prospect of a through codification. Nevertheless, the observations on the subject recorded by Government in 1817 are interesting. It maintained that in a populous and extensive state "which aims at governing by Law and not by the arbitrary rule of the Sovereign or his Ministers," a voluminous code was inevitable. That was requisite for adjusting the differences which must necessarily arise in the conduct of the manifold and complex relations of civilized life. And that was obviously imperative wherever the population, the commerce and the agriculture "as we firmly believe is the case in these Provinces,"<sup>3</sup> was in a rapid course of advancement. We can admit this, but we must also admit, and Government was obliged to admit it, though in milder words, that "some of our Regulations, especially those of a comparatively old date, are . . . more prolix than was absolutely necessary." It is only fair

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1 Letters Received from Bengal, Vol.78, Jud. Letter dated 29 Oct.1817, paras.45-6.

2 Idem, para.37.

3 Idem, para.44.

fair to add that this defect had been, to some extent, overcome by the abridgment and revision of some at least of the Regulations since 181<sup>3</sup>; as for instance, the rules concerning the manufacture and sale of spirituous liquors (Regn.X,1813)<sup>1</sup>; the mode of conducting enquiries into acts alleged to have been committed by the European officers in the Civil Department (Regn.XVII, 1813)<sup>2</sup>; the revenue derivable from stamps (Regn.I, 1814)<sup>3</sup>; the partition of estates paying revenue to Government (Regn.XIX, 1814)<sup>4</sup>; the constitution of the office of Sadr Amins and Munsifs (Regn.XXIII, 1814)<sup>5</sup>; the duties of the Native Pleaders (Regn.XXVII, 1814)<sup>6</sup>; the admission of suits of Paupers (Regn.XXVIII, 1814)<sup>7</sup>; the manufacture and sale of opium (Regn.XIII, 1816)<sup>8</sup>; the appointment and maintenance of Chowkidars (Regn.XXII, 1816)<sup>9</sup>; the duties of Patwaries (Regn. XII, 1817)<sup>10</sup>; and notably, the duties, powers and functions of darogahs and other officers of Police (Regn.XX, 1817)<sup>11</sup>.

The next ideal of Bentham, that legislation should

always

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| 1 Regulations of Bengal, Madras and Bombay, 1813-24; 1813, pp. 12-22. |                           |
| 2 Idem, 1813, pp. 29-32   | 7 Idem, 1814, pp. 84-7.   |
| 3 Idem, 1814, pp. 5-12  | 8 Idem, 1816, pp. 18-34.  |
| 4 Idem, 1814, pp. 23-33   | 9 Idem, 1816, pp. 58-64.  |
| 5 Idem, 1814, pp. 25-53   | 10 Idem, 1817, pp. 14-19. |
| 6 Idem, 1814, pp. 74-83   | 11 Idem, 1817, pp. 39-84. |

always be aimed at "the greatest happiness of the greatest number," seems likewise to have influenced the views of the Home Authorities. It will be recollected that the Mahomedan Criminal Law, modified of course since the time of Warren Hastings, still continued to prevail throughout the Company's Dominion. Could this law be reasonably applied to Hindus who formed a majority in some provinces, and who seemed to have but recently enjoyed the protection of their own laws? In 1815 the Directors came to ask this question especially in regard to the New Provinces and even to parts of the Old Provinces. There was some cause for doubt. Sir Robert Dick, a Judge of the Court of Circuit for Dacca, had, in 1812, observed that the existing laws had not yet obtained the extended benefits expected to result from them, partly owing to their being little known in the interior, and largely owing to their inherent unsuitability to the manners and morals of the Hindus. The partial administration of Muslim Criminal Law to the "entire exclusion" of the Hindu Penal Code had not calculated "to reform or improve our Hindu subjects."<sup>1</sup> "I do not," he had further asserted, "explicitly subscribe to the expediency and still less to the justice of our Hindu subjects being less entitled to the benefit of their own laws than the Mussulmans whom

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1 Dispatches to Bengal, Vol. LXIX, Jud. Dispatch dated 19 May 1815, pp. 934-6.

whom they unquestionably excel in every point of morality and acknowledged fidelity to our Government." <sup>1</sup> Whether this statement was accurate or not is entirely beside the mark. The fact was that it made a profound impression on the Home Authorities and induced them to make further enquiries on the subject. As a result, they expressed their belief that, even in provinces which had been long subject to the Muslim Power previous to their annexation by the Company, the individual institutions of the Muslim Conquerors had by no means superseded the Hindu penal law. Such was, they said, the case in the Jungle Mehals originally governed by aboriginal chieftains little better than tribut<sup>a</sup>aries to the Nawabs of Bengal, in the provinces of the powerful zemindars wherein the interference of the Muslim rulers would seem to have been chiefly confined to the concerns of revenue, and above all, in Cuttack and the Conquered Provinces, recently acquired from the Marathas. In the Conquered Provinces, the Muslim jurisprudence had "no establishment whatever" unless as applying to Muslims who might <sup>2</sup> have been permitted to have the benefit of their own laws. Holding as they did these views, the Directors ordered  
Government

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1 Dispatches to Bengal, Vol. LXIX, Jud. Dispatch dated 19 May 1815, pp. 936-7.

2 Idem, pp. 937-43.

Government to set up an enquiry through the judges relative to the operation and effect of the Muslim Criminal Law in the whole Presidency. The judges were to state what were the defects and inconveniences which it engendered, whether they concerned the rules of evidence or of punishment and by what means they could be remedied<sup>1</sup>.

By Circular Orders of the Nizamut Adalat, Government transmitted these instructions to the several Circuit Courts and magistrates<sup>2</sup>. The outcome of this was the passing of Regulation XVII of 1817. It avowed that there were defects in the Muslim Criminal law of evidence relating to adultery, rape and incest, which render legal conviction almost impossible; that the conviction in causes of perjury had similarly been found difficult under the Muslim law of evidence, and that its exceptions to the competency and credit of witnesses were inconsistent with the ends of justice. In these cases, therefore the Courts of Circuit and the Nizamut Adalat were empowered to use their own discretion and to override, when necessary, the futwas of the Law Officers<sup>3</sup>. Further powers to override the

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<sup>1</sup> Dispatches to Bengal, Vol. LXIX, Jud. Dispatch dated 9 May 1815, pp. 943-5.

<sup>2</sup> Nizamut Adawlut Circulars, Vol. I, 1796-1827, p. 133 sqq. Also Letters Received from Bengal, Vol. 74, Jud. Letter dated 2 Aug. 1816, para. 22.

<sup>3</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1817, pp. 24-31.

the futwas in cases of conviction of a prisoner (thief or robber) on "insufficient or unsatisfactory" evidence, were given to the Nizamut Adalat in 1822 (Regn. IV, 1822)<sup>1</sup>. Nothing, however, was done towards discovering or applying the Hindu Criminal Law. But this does not appear to have mattered much so long as the European judges could mitigate or modify the sentences based on antiquated parts of the Muslim Criminal Law. Nor was there any need of still more complicating the Code by the insertion of the Hindu Criminal Law, which was, after all, in an anomalous condition.

That indiscriminate punishment, disproportionate to the gravity of crime, should be avoided - another of the Benthamite principles - early attracted the notice of the Home Authorities. Thus, in 1814 they decried the practice of confining large numbers of persons for want of security. Such a discretionary power vested in the magistrates, if not carefully controlled, would become an "engine of oppression and injustice." To imprison persons simply because their names had appeared in the thana confessions or because their presence was needed for convicting criminals, and that, too, for over two and three years, must be "severely guarded against."<sup>2</sup>  
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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1817, pp. 9 - 10.

<sup>2</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 712-21.

The discreet and solemn exercise of that power must be pointedly enforced on the magistrates and it must be the primary duty of the Circuit judges at every jail delivery to require from the magistrates a report of all persons who might have remained in confinement for a year under inability to give the security demanded. It would then remain for him to exercise his own judgment whether or not to release the prisoners<sup>1</sup>. Everyone of these points were secured by Government. As a preliminary step, in 1815 the Circular Orders of the Nizamut Adalat enjoined the Courts of Circuit to see that the magistrates furnished adequate explanation whenever the number of persons in confinement exceeded 50<sup>2</sup>. Regulation VIII of 1818 prohibited the criminal courts from requiring security for good behaviour "from persons charged with but not convicted of a specific offence on the grounds of strong suspicion of their having committed that offence, independently of any proof of notoriously bad character." In cases of notoriously bad character, established by evidence, security might be demanded; but on the failure to give it, the period of time for eventual detention must be fixed. In ordinary cases decided by the magistrates, this period must not exceed one year. Several other rules were also passed by which the Courts of Circuit were empowered to

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 721-2.

<sup>2</sup> Nizamut Adawlut Circulars, Vol. I, 1796-1827, p. 119.

to exercise vigilant supervision over the proceedings of the magistrates. And, in addition, a revision of the cases of prisoners then detained in confinement was ordered<sup>1</sup>.

If in the instances noticed so far, there is a fresh current of Benthamite ideas, in the instances relating to prison administration there is a rich flow of Humanitarian sentiment not only of Bentham but of Howard, and perhaps the whole Movement itself. It is, however, an error to suppose that Government was unaffected by ideas then so much in the air. Many a subordinate official as well as the Governor General and Council suggested and initiated several prison reforms principally through the Circular Orders of the Nizamut Adalat. That the prisoners sentenced by the magistrate should be kept separate from the prisoners convicted before the Court of Circuit (July 1814)<sup>2</sup>; that the surgeons should send periodical reports on the health of the prisoners (August 1814)<sup>3</sup>; that in the hot nights the prisoners must not be locked up in their wards (March 1815)<sup>4</sup>; that they must not be crowded together in public jails (June 1816)<sup>5</sup>, must be supplied with sufficient clothing during winter (July 1816)<sup>6</sup> and not be overworked while employed on public roads; and that the use of stocks in  
prisons

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<sup>1</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1818, pp. 15-18.

<sup>2</sup> Nizamut Adawlut Circulars, Vol. I, 1796-1827, p. 104.

<sup>3</sup> Idem, p. 107.

<sup>5</sup> Idem, p. 136.

<sup>4</sup> Idem, pp. 119-20.

<sup>6</sup> Idem, p. 141 sqq.



prisons should be generally discontinued (April 1817)<sup>1</sup> - these and similar orders were issued from time to time to the magistrates. But they do not seem to have been actually observed in all districts. The fact that some of them had to be repeated<sup>2</sup> is by itself an indication of this. Much indeed depended on the conduct of the warders and magistrates. And it was when there was any inattention to duty on their part that the Home Authorities stepped in and severely condemned the defects or irregularities left uncorrected by Government.

To give some typical examples. When the severe treatment of prisoners under handcuffs and neck-chains prescribed by the Superintendent of the Alipore Jail was disapproved by the Judge of Circuit and ordered to be discontinued, and Government censured the Judge for his interference, the Home Authorities took the side of the judge. In 1816, 40 similar cases of harsh treatment occurred in the same jail<sup>3</sup>. The Directors wrote with indignant fervour:

"The jail is a place of custody not of torture . . . those criminals but unfortunate beings who were under his (Superintendent's) charge, were not, as he asserts, put out of the pale of law, nor were they to be prohibited from

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<sup>1</sup> Nizamut Adawlut Circulars, Vol. I, 1796-1827, pp. 153-4.

<sup>2</sup> e.g. See Idem, p. 141 sqq. and p. 178-9.

<sup>3</sup> Dispatches to Bengal, Vol. LXXXIII, Jud. Dispatch dated 18 Feb. 1820, pp. 360-86, also p. 407 sqq.

from complaining or to be subjected to uncontrolled arbitrary power."

Asserting the Benthamite-Howard principle: the prisoners ought to receive "only the measure of punishment to which they were doomed; they ought undoubtedly to be subjected to no unnecessary disadvantage or hardships; they should be treated with every degree of care and humanity that might be compatible with their safe custody and the due and full execution of their sentence." More emphatic still: "It is altogether unwarrantable so to treat them that the sentence of law shall become a light matter when compared with the sentence of their keepers, and the doctrine that the convicts in a jail are persons without rights is one that we cannot tolerate for a moment."<sup>1</sup> Wise words as these were repeated on every occasion whenever the prisoners were subjected to undue punishments, and they must doubtless have acted as a spur on the conduct of Government.

Again, the frequent removal of prisoners from one station to another is not justifiable; it brings on them great hardships and oversteps the punishments legally prescribed for their crime. It should be resorted to only in cases of dire necessity and with infinite care. For what they had suffered on

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<sup>1</sup> Dispatches to Bengal, Vol. LXXXIII, Jud. Dispatch dated 18 Feb. 1820, pp. 391-5.

on the journey the prisoners should be given compensatory indulgences<sup>1</sup>. Nor were reasonable comforts denied to them. They must not be overworked in digging large lakes "wet to the knees and exposed to the scorching sun," resulting as this did in the enormous death rate of 1 in 11 during the last eight months of 1816 in Burdwan<sup>2</sup>. They must not be overcrowded - a vicious practice which had led to the death of 35 in the Banda Jail in September 1816 and the sickness of a larger number<sup>3</sup>. They must not be forced to sleep on exposed verandahs without any covering. They must be supplied with blankets and with firewood at a reasonable rate; their allowance money should on no account be withheld or curtailed. They must not be driven to the extremity of mixing flour with cold water and eating it raw, which inevitably ended in dysentery<sup>4</sup>. They must always be kept in clean, not filthy prisons and never huddled together ~~in heaps~~ at nights, enveloped with noxious effluvia. Neither should they be burdened with heavy irons and left to suffer from sores and ulcers. "This circumstance does not appear to have attracted the notice of the magistrate, the Court of Circuit, the Nizamut Adalat or yourselves. To us it seems strongly indicative of mismanagement and inattention."<sup>5</sup>  
The

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1 Dispatches to Bengal, Vol. LXXXIX, Jud. Dispatch dated 27 June 1821, pp. 58-66.

2 Ditto. Vol. LXXXIII, ditto. 18 Feb. 1820, pp. 441-51.

3 Ditto. Vol. XCII, ditto. 13 Sept. 1822, pp. 417-23.

4 Ditto. Vol. XCII, ditto. 13 Sept. 1822, pp. 423-37.

5 Ditto. Vol. XCII, ditto. ditto. pp. 438-41. See also pp. 442-5.

The Directors never objected to the erection of jails whenever necessary. On the other hand, they ordered that the prisons should be well built "with a just attention to the proper custody and health of the prisoners, a due regard to humanity, to public safety, and to the character of the British Government itself."<sup>1</sup> The expense of building jails in the Bengal Presidency considerably increased during the first two decades of the last century. The average of eight years ending with 1808-9 was 94,224 rupees; and of the next eight years ending with 1816-17 was 2,02,155<sup>2</sup>. One striking instance is sufficient to indicate the solicitude felt by the Home Authorities in regard to the health and comforts of the prisoners in the newly-built jails. In 1816 Government, at the recommendation of the magistrate, provided many facilities at the new jail at Hooghly, including separate accommodation for persons under examination and those convicted of civil offences, female convicts, prisoners convicted of minor charges, hardened criminals and those under death sentence. Also, a shop for the supply of provisions. But a cooking place, however, it refused to sanction. The Home Authorities could not but feel that this indulgence granted in several other prisons should have likewise

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<sup>1</sup> Dispat<sup>h</sup>ches to Bengal, Vol. LXXX, Jud. Dispatch dated 2 Feb. 1819, pp. 446 sqq.

<sup>2</sup> Ditto. Vol. LXXXIV, ditto. 26 April 1820, p. 362 sqq.

likewise been allowed at Hooghly, for the reason given by the magistrate that "the want of it will expose the sepoy and prisoners to the inconvenience of frequently spoiling and occasionally losing their dinners."<sup>1</sup>

In matters of police, the Home Authorities advocated measures both novel and sweeping. A good deal depended on whether or not Government was prepared to invest the Collectors with the magistracy. That this should be done, they urged, as we have seen, repeatedly from 1814. With what motives from the point of view of police administration, requires some explanation. In their famous Dispatch of 9 November 1814 they argued that the office of Collector-magistrate was quite in conformity with the "Native Institutions of the country." The Collector, again, "must under any circumstances be far better qualified to superintend the police than a civil and criminal judge can ever be, who is necessarily confined to one spot engaged in a sedentary occupation."<sup>2</sup> The force of this observation cannot be overstated. Free movement and intercourse with the people were essential for a due supervision over the darogahs and their subordinates. And these requisites,  
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<sup>1</sup> Dispatches to Bengal, Vol. LXXXVI, Jud. Dispatch dated 13 Dec. 1820, pp. 589-599.

<sup>2</sup> Ditto. Vol. LXVII, ditto. 9 Nov. 1814, pp. 601-610.

so much stressed by Mr. Dowdeswell<sup>1</sup>, could hardly be expected from the judges over-burdened with judicial business. Moreover, Munro had elaborately and convincingly contended in his answer to the Directors' enquiry in 1813, and even as far back as 1806, that "the habits of the people of India always accustomed to see the revenue and police directed by the same person and the municipal constitution of the village founded on that authority, would make it impossible to separate the office of magistrate and Collector without rendering the police utterly inefficient."<sup>2</sup> The Directors had recommended the same measure to Madras in April 1814<sup>3</sup> and there was every reason why it should be introduced into Bengal as well.

These were not the only considerations. If the Collector were made magistrate might not the large land-holders or Tahsildars be effectively employed for purposes of police? They might serve as useful links between the darogahs and the village watchmen on the one hand and the district officer on the other. The vast extent of many of the districts demanded some such link. It was clear that the earlier effort at  
securing

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<sup>1</sup> Fifth Report. Appendix No.12, p. 611.

<sup>2</sup> Selection of Papers from the Records of East India House, Vol. II, p. 221 sqq, and p. 112.

<sup>3</sup> Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), p. 305 sqq.

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securing the land-holders' aid had failed because they were placed on almost the same footing as the darogahs<sup>1</sup>. Power indeed might tempt the zemindars to oppress the ryots; but if it ~~is~~<sup>were</sup> conferred on those alone who could be trusted, and if the Collectors were empowered to control them, ready at the beck and call as it were of the ryots, the danger seemed capable of solution<sup>2</sup>.

Both these schemes, however, the one sound and practicable, the other dubious and hazardous, were indefinitely postponed by Government. The land-holders and Tahsildars were no doubt specially required in 1817 to render aid to the darogahs<sup>3</sup>; but they were given neither power nor encouragement. As for the transference of the magistracy to the Collectors, it has been seen how far it was partially effected as late as 1821<sup>4</sup>.

The proposals which the Home Authorities urged and Government felt disposed to consider, were the revival of the village watch and the stipendiary police. The first which meant the most to the Directors met the least encouragement from Government. In October 1813, on learning from the report of  
Mr. Brooke

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<sup>1</sup> See p.200.

<sup>2</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 616-47.

<sup>3</sup> Regulations of Bengal, Madras and Bombay, 1813-24; 1817, Regulation XX of 1817, p. 70.

<sup>4</sup> See p.359.

Mr. Brooke that the establishment of village-watchmen still continued to obtain in the New Provinces, they energetically urged its revival. There were two kinds of village-watchmen; first, the "kacrobess" and "darrucks" who collected and conveyed information of crimes and offences, and secondly, those who guarded and protected the villages, the chowkidars. Viewing these institutions as interwoven with the frame and texture of Indian society, the Directors deemed it "a matter of first importance that whatever immunities and allowances they are entitled to, according to ancient usage, should be preserved to them and that where they shall have been unjustly and irregularly deprived of such privileges either under the former Government or in consequence of the arrangements made by our servants, measures be taken to restore them to the parties." They were to be under the sole control of the magistrate and were to be paid in land or collections from the people, as was the custom<sup>1</sup>. In October and November 1814 they repeatedly recommended the revival of the village police as an effective prophylactic against the increase of burglary<sup>2</sup>. Cornwallis while depriving the zemindars of their authority over the police had

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<sup>1</sup> Dispatches to Bengal, Vol. LXII, Jud. Dispatch dated 20 Oct. 1813, pp. 609-37.

<sup>2</sup> Ditto. Vol. LXVI, ditto. 12 Oct. 1814, para. 76. And ditto. Vol. LXVII, ditto. 9 Nov. 1814, p. 497 sqq.



had disbanded the village-watchmen entertained by them - a consequence which had led to extensive resumptions of Chakran zemin, and in turn, to the increase of crime. Had not Warren Hastings long ago in 1774 observed that such resumptions, then partially made, had turned the village-watchmen into dacoits? And did he not propose that the Chakran zemins included in the jumma fixed with the zemindars or farmers "should again be separated from it and applied to their original purpose?" He had said, "I cannot recommend this institution (payment by land) better than by mentioning it as the universal practice of all nations of India and of the most remote antiquity."<sup>1</sup> So arguing with shrewd soundness, the Directors held that the village institutions ought to have been and ought to be incorporated into the system of police. In this opinion they had the support of numerous subordinate officials of Bengal<sup>2</sup> and of Munro, an ardent advocate of the revival of the village-watch<sup>3</sup>. It was indeed absurd to expect, as Government had expected, that the village police, deprived of their regular legitimate emoluments, would render assistance to the darogahs.

Before the arrival of the orders from England, Government had begun to revive the town-police, "the stipendiary police" as it was called, the chowkdari system. By Regulation XIII

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<sup>1</sup> Dispatches to Bengal, Vol. LXVII, Jud. Dispatch dated 9 Nov. 1814, pp. 501-26.

<sup>2</sup> Idem, pp. 529-616.

<sup>3</sup> Parliamentary Papers relating to the Police and Civil and Criminal Justice (1819), p. 302 sqq.

XIII of 1813, Minto had provided for the employment of chowkidars in the cities of Dacca, Patna and Moorshidabad. It was based on the principle that they should be "nominated, appointed and maintained by the respective communities for whose benefit and protection such subsidiary police establishments may be required." It is needless for our purpose to enter into the details of this plan<sup>1</sup>. Suffice it to remember that whenever the representatives of the communities failed in their duty the magistrates could intervene and appoint, remunerate, punish or dismiss the chowkidars. In fact, they were entirely under the control of the magistrates and the communities only paid for their maintenance. Lord Hastings's Government never departed from this principle - although it modified it in some respects - and gradually extended the chowkidari system, first to the sadar stations of the Divisions of Dacca, Moorshidabad, Calcutta and Patna (Regn. III, 1814)<sup>2</sup>, and next, generally to all such stations in the Divisions of Benares and Bareilly (Regn. XVI, 1814)<sup>3</sup>.

The Home Authorities approved the introduction of the stipendiary police system into the cities. But they wrote in May 1815 that they were "not . . . prepared to admit the facility

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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1813, pp. 24-7.

<sup>2</sup> Idem, pp. 13-14. Also Letters Received from Bengal, Vol. 73, Jud. Letter dated 28 Feb. 1816, paras. 1-63.

<sup>3</sup> Idem, pp. 21-22. Also, ditto. Vol. 74, ditto. 31 May 1816, paras. 1-20.

facility nor perhaps the propriety of its extension to the villages on the principle on which it has been introduced into the great cities." In the villages, the chowkidars, pykes and other types of watchmen who were formerly paid in lands, should be employed. Where the chakran zemins were not available to any extent, separate plots of waste lands capable of cultivation should be granted to them<sup>1</sup>. Not to depart, as far as practicable from the old system, not to irritate the poor people by the imposition of a cess which might be irksome and novel, or to give the least scope for misappropriation and mischief in its collection and distribution - these considerations underlay the orders from England.

Government, however, could not be reconciled to them. Very possibly it was afraid of taking any measures which might be viewed as contravening the permanent settlement; for the resumption of the chakran zemins and wastes, included in the zemindaries in the Old Provinces, assumed that aspect. But the stipendiary police system met the most determined opposition at Bareilly<sup>2</sup> and not a little trouble in other sadr stations too, where it had been indiscriminately extended. The insurrection of  
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<sup>1</sup> Dispatches to Bengal, Vol. LXIX, Jud. Dispatch dated 19 May 1815, pp. 1032-43.

<sup>2</sup> Letters Received from Bengal, Vol. 74, Jud. Letter dated 31 May 1816, para. 3 sqq.

of Bareilly starting as a protest against the "chowkidari tax" and eventually assuming a political complexion, fired the wrath of the Home Authorities. On 19 August 1818 they wrote a powerful Dispatch vindicating their own views and decrying and attacking the policy of Government. While they had approved the introduction of the system in the big cities, they had by no means admitted its expediency or efficacy in all the sadr stations, many of which were indeed little more than villages. Thus, for instance, neither necessity nor expediency called for its extension in Cuttack where already the village police was "very efficient," as the magistrate himself had testified. The passion for uniformity, of having a consistent system of police throughout all the districts irrespective of its need and their ancient scheme of police, was strongly condemned by the Home Authorities. Therefore, they not only advocated its discontinuance where it was superfluous or irksome, but pressed the strengthening of the village-watch on its old basis<sup>1</sup>.

Meanwhile Government had promised to place the village-watch on a firm footing. But what it actually did amounted to little. Regulation XX of 1817, which consolidated all rules concerning the police officers and earned the name of

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<sup>1</sup> Dispatches to Bengal, Vol. LXXIX, Jud. Dispatch dated 19 Aug. 1818, pp. 123-47, and 207-50.

of the "Police Manual," required the darogahs to keep at their thanas a complete register of the village-watchmen<sup>1</sup>. But the watchmen were left to be employed by the zemindars or village headmen, and if the latter failed in their duty nothing was suggested as to how they could be coerced to do it. The watchmen were to be subject to the orders of the darogah, to report to him daily, twice every week, or once every week or fortnight as they happened to be situated near or farther away from the thana. They were to be vigilant and bold in resisting or arresting thieves and robbers, and certain punishments were prescribed for their neglect or inattention<sup>2</sup>. But all this could avail little when no proper and regular provision was made for their maintenance; and the cry of the Directors that this should be done remained a cry in the wilderness. As for the stipendiary police, though subordinate chowkis were profitably employed in addition<sup>3</sup> and their pay was increased<sup>4</sup>, their regular establishments were considerably reduced at Cuttack, Dacca and some other sadr stations<sup>5</sup>, and the inhabitants relieved of the cess in accordance with the orders from England.

Such

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<sup>1</sup> Regulations of Bengal, Madras and Bombay 1813-24; 1817, p. 58.

<sup>2</sup> Idem, pp. 58-9.

<sup>3</sup> Letters Received from Bengal, Vol. 76, Jud. Letter dated 7 Feb. 1817, paras. 5-6.

<sup>4</sup> See Regulation XVIII of 1817.

<sup>5</sup> e.g. Dispatches to Bengal, Vol. LXXXIX, Jud. Dispatch dated 27 June 1821, pp. 170-85.

Such was the period of partial realization of the brilliant conceptions of the Home Authorities in judicial administration. To propose new schemes, to discredit the old and then to win the way to success, was a task of infinite difficulty. The solid range of Cornwallis' opinion, shaken yet strong, had to be broken. It required courage, ability, patience and, above all, an unflinching faith in what they were proposing and an equal disbelief in what was suffered in Bengal. And these qualities, one and all, they acquired after searching enquiries and much reflection. The reports of the sub-officials never escaped their vigilance. These, their own investigations into past history, the Fifth Report, the answers to the Court's Queries, and the views of Munro, steeled their will to reform if not to revise the very basis of the Cornwallis system. The ferment of Legal and Humanitarian ideas brewing at home stimulated their thoughts. And their recommendations, generally wise and intelligent and urged with characteristic vigour, gradually cut adrift Government from the moorings of a system which was not only functioning badly on the whole but eschewing all that was liberal and new.

For the Cornwallis system, within twenty years, had showed signs of acute decay. Under its shadow both the civil and criminal courts, overburdened with business, were condemned to

to a kind of administrative paralysis. They delayed justice to the point of denial, brought hardships alike on the prosecutors, witnesses and accused, and gave no promise of swiftness and celerity. To have strengthened them as they were, would have meant an enormous increase of European agency for which neither the Home Authorities nor Government were really prepared. Economy stood in the way. But while the Home Authorities were bent on invigorating them by the infusion of new blood at much less cost, Government endeavoured to prop them up by old expedients not costly, indeed, or comprehensive, and therefore ineffective. The abolition of the office of assistant judge, the regular appointment of Registers, the slight increase in the powers of Munsifs and Sadr Amins, were the first of these expedients, partly the outcome of pressure from England, and partly the efforts of a Government opposed to radical changes. Yet, without these radical changes there was little hope for progress. The Home Authorities were convinced of this. They pressed to relieve the judge-magistrates, to expedite justice, by the use of Panchayets, by the employment of Native Judges with higher pay and wider powers, with authority to decide civil suits of greater value and all criminal charges of misdemeanors and minor offences, and by the transference of the magisterial powers to the Collectors. Thus it was, that they wished to revert to the Indian Institutions, to break away from  
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the trammels of the Cornwallis Code. Thus it was, that they hoped to enlist the sympathy and co-operation of Indians, to open up to them the avenues of steady advancement. Government, however, could not appreciate this at first. It refused to be launched on innovations and paid homage and tribute to the separation of powers. But when the work of the courts increased, it slowly became conscious of the defects of the system which it sponsored and bit by bit accepted the proposals of the Home Authorities. The Panchayets were never rejuvenated, but the Indian judges, Munsifs and Sadr Amins were given substantial powers, and the Collectors, in some districts, appointed as magistrates. The change was clearly not yet complete; it was only initiated; but under Lord William Bentinck and his successors it was well on the way to completion, acquiring a stamp which the Home Authorities had long desired to imprint.

In matters of police, very little was effected by the Home Authorities. Their plan for the incorporation of large zemindars or land-holders, contingent on the collector-magistracy, was disregarded and indefinitely shelved by Government. Their solicitude to revive and sustain the village-watch after the old pattern, was but imperfectly rewarded. But it was not in this alone that their main attention was directed. The age of legislative quiescence in England was also the age of Legal  
and



and Humanitarian activity. It was an era when Bentham was becoming a force at home and bringing France, Russia, Portugal, Spain, and even parts of South America, under his spell; when Napoleon had already issued clear and simple codes in France and her dependencies; when Howard had surveyed "the depths of dungeons," "the mansions of sorrow and pain," of the entire Continent and England, and evoked the desire for prison reform in the heart of his countrymen: It is this that explains the anxious zeal of the Home Authorities to systematize, codify and disseminate the laws, to build legislation on Bentham's principles, to simplify the proceedings of the courts, to lessen the hardships to the prosecutors, witnesses and accused, to expedite trial close on the heels of apprehension, to abandon the practice of confining large numbers of persons for want of security, to fit punishment to crime, and to provide health and reasonable comforts for the prisoners. Government could only partially carry out these objects with the slender means of knowledge and machinery at its disposal. It was indeed left to more modern times to achieve what the Home Authorities had conceived at the beginning of the last century.

## CONCLUSION

The influence of the Home Authorities effected, during 1807-22, the relaxation of the bonds of the Cornwallis Code and the initiation of administrative methods more modern and akin to our own. The importance of this cannot be exaggerated; for the system which enthralled Government was also a system which was becoming increasingly unworkable. It was a system which took little heed of the needs and interests either of the individual or the State and bred administrators who regarded change as something abhorrent and destructive, believing that what was established in 1793 was essentially sound and applicable at all times and to all places. The Bengal Government paid scant attention to altered or different economic conditions, refused to profit by experience, and satisfied itself with half-measures or expedients, never very effective as they never could reach the root of the evil.

The governing principles of this system which became the Government's creed, were permanency, the absolute separation of the revenue and judicial authorities, and the exclusion of Indians from extensive employment in the service. Each one of these, meant more than what it ostensibly signified. The passion for permanency precluded all consideration of the ascertainment and recognition of the rights of the actual  
landholders

landholders and the ryots, precluded a survey and record of rights, precluded any determined efforts at recovering revenue from the wastes, and fostered the resolution to fix for ever the settlements of the Ceded and Conquered Provinces. The strict separation of the revenue and judicial powers implied at this period, a practical denial of justice to the ryots and others, an unbridled and inefficient police, and hardships to witnesses, prosecutors and accused. For the judge-magistrate pinned to the Sadr Court and overburdened with business, had neither the time nor facilities to understand and settle the grievances of the oppressed peasants and to control the conduct of the darogahs. Nor had they sufficient powers and time to accelerate the decision of criminal charges, to bridge the gulf between commitment and trial. The appointment of assistant judges and later of Registers, restricted as it was from motives of economy, could only ill-supply the remedy. And for the same reason, as also for the fact that their whole attention was demanded by the increase of dacoity and highway robbery, the joint, assistant and separate magistrates, intended chiefly as extraordinary measures, served chiefly that extraordinary purpose. While the scant provision for the employment of Indian judges not only denied a speedy distribution of justice, but entailed an ever increasing European agency which was impossible alike on ethical and financial grounds. Combined  
with

with these were the slow and tedious forms of procedure of the Courts, a prolixity and complexity of the Regulations, a difficulty of disseminating them, producing an almost complete ignorance of the laws among the people.

All these defects could not be quickly removed, though they were pointed out by a number of able sub-officials. Government, in general, was phlegmatic and conservative. It cared little for suggestions from below. Some of the officials, significantly enough, wrote their reports specially for the consideration of the Home Authorities, - the report of Mr. Dowdeswell, for instance, on judicial administration. Moreover Government was preoccupied with political problems, at times with sudden upheavals, and there was no public opinion in India to urge it to action. Herein, indeed, lies the importance of the criticism and pressure from England. The attention of the Directors in particular was principally confined to general administration; they could do little in external policy. They had no special attachment to the system established in 1793; their oracle in administrative matters was not Cornwallis, but Munro. They studied, at the same time, the reports of sub-officials, finding in them the suggestions for reforms, and urged Government to reap the benefits of the experience gained not only in Bengal, but also in Madras and Bombay. They had, in fact, a wider range, and with it a better opportunity of

grasping

grasping the larger issues of policy. They held enquiries at home and felt to the quick the evils exposed by the Parliamentary enquiries. In a period in which they were fast losing their commercial privileges, they were afraid that they might lose their political privileges as well, if they did not set their house in order. Indeed, they lived in constant dread of Parliamentary interference. There were violent critics in Parliament such as Francis, Paul, Creevey, and even men like Joseph Hume. The leaven of the Humanitarian and Legal Reform movement was steadily working towards the attack and destruction of all kinds of existing abuses. Pamphlets were gradually appearing in England assailing the various defects in Indian administration. Therefore, public opinion at home was to be feared and kept at rest by timely reforms. The Company did not want a Burke to investigate and inveigh against its affairs

The Ministry and the Board of Control, it is true, did not wish to curtail the political privileges of the Company yet, even for this, Buckinghamshire was not wholly unprepared, neither was Grenville, who fervently advocated the direct assumption of administration by the Crown. Normally, however, Buckinghamshire rendered much help to the Directors. Like them he upheld the views of Munro and when the Bengal Government appealed to him against the Court in the question of permanency in the New Provinces, notwithstanding his quarrels with them in the Major Hart Controversy, he sided with the Directors. All  
the

the time, there was the friendship between Munro and Cumming, a clerk at the head of the revenue and judicial departments of the reorganized Board, which made the Board pro-Munro, a fact which, together with his return home in 1808, his striking evidence before the Select Committee, and his frequent communications with the Company, besides leading to his appointment as Chief of the special commission to Madras, left indelible marks of his opinions on the proposals of both the Home Authorities.

Up till the close of Lord Minto's rule, the efforts of the Home Authorities were sedulously and mainly aimed at preventing Government from declaring the settlements of the New Provinces permanent. In this, after an uneven yet stubborn contest, they succeeded, not indeed by 1813, but by 1822, the interval being characterized by hesitation varied by opposition though not of the previous unreasoning and violent type. After 1813, one by one, they expounded and urged reforms which cleared the way for radical changes, relaxing the fetters of the Cornwallis Code. The appointment of Canongoes and Patwaries and of the District and Presidency Record Committees for determining the different rights of the landed classes and safeguarding the ryots from the exactions of the zemindars, should be attributed to this pressure. Likewise, the surveys and the rule in 1822 requiring the Collectors not to form the settlements of the Ceded and Conquered Provinces until they had ascertained and secured

secured the rights of the subordinate holders. The measures for the resumption of the wastes, the partial establishment of the Mal-Adalats and the Collector-magistracy, the greater employment of Indian judges with higher emoluments and wider powers, the simplification of the proceedings of the courts, and the attempts at disseminating the laws - these too, could not have been possible but for the insistence from England, Here, however, as in police and prison administration, the recommendations of the Home Authorities were completely realized only in later times. And some of them remain, to this day, essential parts of administration: the temporary settlements in the North-Western Provinces, the survey and record of rights the collector-magistracy, the village-watch on <sup>a firm</sup> ~~the ancient~~ basis, the codification and the dissemination of the laws, the humane treatment of prisoners, and finally, but no less conspicuously, the widening employment of Indians in the service. The policy of the Home Government was thus inspired by insight as well as foresight.

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