

Paper Code: BA LLB 106

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UNIT 1

A. CHARTERS OF THE EAST INDIA COMPANY: 1600, 1661

ELIZABETH, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith & c. To all our officers, ministers, and subjects, and to all other people, as well within this our realm of England as elsewhere, under our obedience and jurisdiction, or otherwise, unto whom these our Letters Patents shall be seen, showed, or read, greeting. Whereas our most dear and loving Cousin, George, Earl of Cumberland, and our well-beloved subjects, Sir John Hart, of London, and others (here follow 214 other names which are omitted) have of our certain knowledge been petitioners unto us, for our Royal assent and licence to be granted unto them, that they, at their own adventures, costs, and charges, as well for the honour of this our realm of England, as for the increase of our navigation, and advancement of trade of merchandize, within our said realms and the dominions of the same, might adventure and set forth one or more voyages, with convenient number of ships and pinnaces, by way of traffic and merchandize to the East Indies, in the countries and parts of Asia and Africa and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may by all likelihood be discovered, established or had; divers of which countries, and. many of the islands, cities and ports, thereof, have long since been discovered by others of our subjects, albeit not frequented in trade of merchandize. Know ye, therefore, that we, Greatly tendering the honour of our nation, the wealth of our people, and the encouragement of them, and others of our loving subjects in their good enterprizes, for the increase of our navigation, and the advancement of our lawful traffick to the benefit of our Commonwealth, have of our special grace, certain knowledge, and mere motion, given and granted and by these presents, for us, our heirs and successors do give and grant unto our said loving subjects before in these presents expressly named, that they and every of them from henceforth be, and shall be one body corporate and politick, in deed and in name, by the name of the Governor and Company of Merchants of London, trading into the East Indies, and them by the name of the Governor and Company of Merchants of London, trading to the East Indies, one body and corporate and politick, in deed and in name, really and fully for us our heirs and successors we do order, make, ordain, constitute, establish and declare, by these presents, and that by the same name of Governor and company of merchants of London, trading into the East Indies, they shall have succession, and that they and their successors, by the name of the Governor and Company of Merchants of London, trading into the East Indies, be and shall be, at all times hereafter, persons able and capable in law, and a body corporate and politick and capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments of whatsoever kind, nature, and quality so ever they be, to them and their successors. And also to give, grant, demise, alien, assign and dispose lands, tenements and hereditaments, and to do and execute all and singular other things, by the same name that to them shall or may appertain to do. And that they and their successors, by the name of the Governor and Company Merchants of London, trading into the East Indies, may pleat and be impleaded, answer and be answered, defend and be defended, in whatsoever

courts and places, and before whatsoever judges and justices, and other persons and officers, in all and singular actions, pleas, suits, quarrels, causes, and demands whatsoever, of whatsoever kind, nature or sort, in such a manner and form, as any other, our liege people of this realm of England, being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead and be impleaded, answer and be answered, defend and be defended, release and be released, do permit and execute. And that the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, may have a common seal, to serve for all the causes and business of them and their successors. And that it shall and may be lawful to the said Governor and Company, and their successors, the same seal, from time to time, at their will and pleasure, to break, change, and to make new or alter, as to them shall seem expedient. And further, we will, and by these presents, for us, our heirs and successors, we do ordain, that there shall be from henceforth one of the same Company to be elected and appointed, in such form, as hereafter in these presents is expressed, which shall be called the Governor of the said Company, and that there shall be from henceforth twenty-four of the said Company, to be elected and appointed in such form, as hereafter in these presents is expressed, which shall be called the committees of the said Company, who, together with the Governor of the said Company for the time being shall have the direction of the voyages, of or for the said Company, and the provision of the shipping and merchandizes thereto belonging, and also the sale of all merchandizes returned in the voyages, of or for the said Company, and the managing and handling of all other things belonging to the said Company and for the better execution of this our will and grant in this behalf we have assigned, nominated, constituted and made, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Thomas Smith, Alderman of London, to be the first and present Governor of the said Company, to continue in the said office, from the date of these presents, until another of the said Company shall in due manner be chosen and sworn unto the said office, according to the ordinances and provisions hereafter in these presents expressed and declared, if the said Thomas Smith shall so long live; and also we have assigned, nominated and appointed, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Paul Banning, Leonard Hollyday, John Moore, Edward Holmeden, Richard Staper, Thomas Cordell, William Garway, Oliver Style, James Lancaster, Richard Wiseman, Francis Cherry, Thomas Allabaster, William Romney, Roger How, William Chambers, Robert Sandye, John Eldred, Richard Wiche, John Hylord, John Middleton, John Comb, William Harrison, Nicholas Ling and Robert Bell, to be the twenty-four first and present committees of the said Company, to Continue in the said office committees of the said Company from the date of these preset for one whole year next following. And further we will grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London trading into the East Indies, and their successors, that it shall and may be lawful to and for the said Governor and Company for the time being, or the more part of them, present at a publick assembly, commonly called the Court, holden for the said Company, the Governor of the said Company being always one from time to time, to elect, nominate and appoint one they said Company, to be deputy to the said Governor. which deputy shall take a corporal oath, before the Governor and five or more of the committees of the said Company for

the time being, well, faithfully and truly to execute his said office of deputy to the Governor of the said Company, and after his oath, so taken, shall and may from time to time, in the absence of the said Governor, exercise and execute the office Governor of the said Company, in such sort as the said Governor ought to do: and further we will and grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that they or the greater part of them whereof the Governor for the time being or his deputy to be one, from time to time, and at all times hereafter shall and may have authority and power yearly and every year.

B. SETTLEMENTS OF BOMBAY

Amid the discomfitures and distresses of the Company at home, resolute groups of Englishmen were making their presence felt in India. The sites of their settlements were at first determined by political rather than by commercial considerations. During centuries the natural meeting-marts of the Indo-European spice trade had been the ports of Malabar; but the monopoly of those marts was secured to Portugal by her fortress-capital at Goa, and the coast rajas were on too small a scale to afford protection to newcomers. If our captains of the "Separate Voyages" were to find a footing in India, it must be under the shelter of a strong native government. The march of the Moghul Empire southwards, at the end of the sixteenth century, gave them their chance. Leaving the direct route from Africa to Malabar, they struck northeast to the Gulf of Cambay, on whose coasts the Moghul Emperor Akbar had imposed his rule, between 1572 and 1592. Encamping at Rajapur on the Bombay Coast formed a chief inlet of the Arabian commerce for the yet unconquered kingdoms of the South. In vain the Company's servants at Surat protested and tried to found a rival station in the South. Captain Weddell secured by lavish gifts the support of the King of Bijapur, and began to plant factories along the coast. The sagacity of his selection is proved by the part which these factories played in the subsequent annals of the Company. From home the Surat factory could get no succour, nor any certain sound from their distracted masters, then in their desperate struggle with the court cabal. We have seen that fifty-seven ships and eighteen pinnaces had been sent out for port to port trade alone, during the twelve years ending 1629. The Company's records, which during the same period abound in journals of voyages to and from India, preserve only eight such documents for the thirteen disastrous years from King Charles's grant to Courten's Association in 1635 to his Majesty's death in 1649.

But the factors of the Company at Surat, although left to ruin, asserted their vitality in a wholly unexpected manner. They practically kept up the trade on their own account, continued to patrol the pilgrim highway, and maintained an attitude at once so reasonable and so resolute that the Moghul government repented of having punished them for the piracy of their rivals.

As the emperor used the English to check the piracy of the Portuguese, so he employed them to bring it to an end. The Portuguese had continued to plunder Moghul ships, subject to such reprisals as the English could inflict on them. But the English president at Surat had now made a treaty on his own account with the Goa viceroy: Why should he not also include in it the Indian government? In 1639 the Surat Council found themselves raised into negotiators between the Moghul governor and the Portuguese. The degenerate successors of Albuquerque and the half-

breed corsairs of Goa for a time transferred their piracies from the Mecca route to the Bay of Bengal, and the cold shadows which had fallen on the Surat factory were again warmed into prosperity under the sunshine of the Moghul court.

However low the fortunes of the Company sank under king or Commonwealth in England, the Surat factory grew with a strength of its own. In 1657, on account of the prosperous condition of that factory, the Company decided that there should be but one presidency in India – and that Surat. I have narrated at some length the rise of the Surat factory for several reasons. It formed the first headquarters of the English in India – a centre of English control in the East which had a vitality in itself apart from the Company in London, and which won by its Persian Gulf victory our first revenue grant – the Customs of Gombroon – and profoundly influenced our later settlements on the Indian continent. It also illustrates the position which the English quickly secured in the economy of the Moghul Empire: as a sure source of revenue, a sea-police for the coast, and the patrol of the ocean path to Mecca, gradually developing into negotiators on behalf of the native government. Surat forms the type of an early English settlement under the strong hand of the Moghul emperors.

SETTLEMENTS OF SURAT

Surat, the emporium of this ocean inlet and the capital of Gujarat, lies on a bend of the Tapti where the stream sweeps abruptly westward toward the sea. The name Surat is the modern representative of the ancient province of Surashtra, which at one time included not only Gujarat but part of Kathiawar.

In ancient times the city was the chief maritime centre of India, and Ptolemy, about 150 B.C., speaks of the trade of Pulipula, which has been identified with Phulpada, the old sacred part of Surat town. In course of time, however, the silt-bearing currents of its river and sand-laden ocean tides blocked its approach to medieval shipping, although they formed a roadstead. protected by mud-banks at Suwali, near the river mouth. Gujarat was cut off from the Moghul base in Northern India by mountains and deserts, and its annexation to the Moghul Empire cost twenty years of war, from 1572 to 1592. The work of conquest was rudely interrupted by revolts, which flared up afresh in the early years of the seventeenth century; but the long arm of the empire at length prevailed, and just as the anarchy ended the English came upon the scene.

In 1607, Captain William Hawkins, of the third “Separate Voyage,” landed at Surat with a letter from James I to the Moghul Emperor Jahangir, and proceeded to the court at Agra. But the magnificent monarch of India did not take seriously the proffers of an unknown island-king brought by a ship’s captain. Such European influence as then existed at the Moghul capital was entirely Portuguese; and, after four years, Hawkins returned to Surat with a native wife, but without any grant for trade.

Meanwhile the local governor of Surat had allowed some of Hawkins’s followers to remain there, apparently as a set-off to the Portuguese, who formed an unruly element at the roadstead. In 1609 a shipwrecked crew of our fourth “Separate Voyage” also claimed shelter. This Moghul governor, whether “bribed by the Portugals” or merely afraid lest he should have too many of the European infidels on his hands, discreetly refused. The poor sailors had to make their way home, part of them by way of Lisbon, by the clemency of the Portuguese, who were only too glad to get

rid of them. The accounts which thus reached England from Surat, of its settled government under the cegis of the Great Moghul, and of its opportunities for trade, determined the Company to effect a settlement at its port. In 1611 Sir Henry Middleton, of the sixth "Separate Voyage," landed at Suwali in spite of the Portuguese, although they had compelled him to do business by exchanging cargoes in the roadstead.

The Moghul governor, while still refusing us a factory, allowed some trade. Next year, 1612, Captain Best with the old Red Dragon, and the little Hosiander routed the Portuguese squadron that commanded the approaches to Surat, while the Moghul governor looked on from the shore. A month's hard fighting destroyed forever the Indian legend of the Portuguese supremacy over other Europeans.

The gallant Captain Best would have been satisfied with his victory, but he had with him a man who was resolved that England should reap its full results. Thomas Aldworth, factor and merchant, improved the momentary congratulations of the Moghul governor into a grant for our first settlement in India.

"Through the whole Indies," Aldworth wrote to the Company in 1613, "there cannot be any place more beneficial for our country than this, being the only key to open all the rich and best trade of the Indies."

With a handful of English merchants in an unfortified house he struggled through the reaction against us which followed the departure of Best's ships, until Downton's sea-fight two years later established for ever our superiority at Surat over the Portuguese.

Downton's feat of arms proved, unexpectedly, to be a great strategic victory. He had cut in half the Portuguese line of communication along the Indian coast. That line was held by Goa as its southern, and by Diu as its northern, base; and between the two by a squadron, which assured to Portugal the traffic of Surat and its presidency.

SETTLEMENTS OF MADRAS

The Madras Presidency, officially the Presidency of Fort St. George and also known as Madras Province, was an administrative subdivision of British India. At its greatest extent, the presidency included much of southern India, including the present-day Indian State of Tamil Nadu, the Malabar region of North Kerala, Lakshadweep Islands, the Coastal Andhra and Rayalaseema regions of Andhra Pradesh, Ganjam, Malkangiri, Koraput, Rayagada, Nabarangapur and Gajapati districts of southern Odisha and the Bellary, Dakshina Kannada, and Udupi districts of Karnataka. The presidency had its winter capital at Madras and summer capital at Ootacamund.

In 1639, the English East India Company purchased the village of Madraspatnam and one year later it established the Agency of Fort St George, precursor of the Madras Presidency, although there had been Company factories at Machilipatnam and Armagon since the very early 1600s. The agency was upgraded to a Presidency in 1652 before once more reverting to its previous status in 1655. In 1684, it was reelevated to a Presidency and Elihu Yale was appointed as president. In 1785, under the provisions of Pitt's India Act, Madras became one of three provinces established by the East India Company.

Thereafter, the head of the area was styled "Governor" rather than "President" and became subordinate to the Governor-General in Calcutta, a title that would persist until 1947. Judicial, legislative and executive powers rested with the Governor who was assisted by a Council whose constitution was modified by reforms enacted in 1861, 1909, 1919 and 1935. Regular elections were conducted in Madras up to the outbreak of the Second World War in 1939. By 1908, the province comprised twentytwo districts, each under a District Collector, and it was further sub-divided into taluks and firqas with villages making up the smallest unit of administration. Following the Montague-Chelmsford reforms of 1919, Madras was the first province of British India to implement a system of dyarchy, and thereafter its Governor ruled alongside a prime minister. In the early decades of the 20th century, many significant contributors to the Indian independence movement came from Madras. With the advent of Indian independence on 15 August 1947, the Presidency was dissolved. Madras was later admitted as a state of the Indian Union at the inauguration of the Republic of India on 26 January 1950, and was reorganized in 1956.

C. MAYOR COURT OF 1726 AND SUPREME COURT OF 1774

Sub-series: CSB Mayors' courts were established by royal charter to strengthen the administration of British justice in the Company's various settlements in India, the court at Calcutta having been established by the charter of 1726 (revised in 1753). It appointed a mayor and nine aldermen to act as judges in civil cases and was also empowered to grant probate and exercise testamentary jurisdiction. It was superseded by the Supreme Court established by Act of Parliament in 1774.

Supreme Court

Supreme Court THE REGULATING ACT 1773 AUTHORISED THE BRITISH CROWN to establish a supreme court at Calcutta by issuing a charter of 1774. Thus establishing the Supreme Court at fort William Calcutta.

Composition:

Chief justice ,3 judges ,barristers of England ,with 5 years of experience .appointed by crown sir Inpey chief justice of supreme court.

Jurisdiction of Supreme Court

Civil –territorial in Calcutta and personal in Bengal ,biharand orrissa

Equity –administer justice in a summer manner

Criminal only to british servants

Ecclesiastical –grant will

Admiralty-akkmaritime cases

Writ – writ of certiori, mandamus merits

Civil and criminal jurisdiction

Derives its authority from crown

Rules now require approval from king in council

Court fee was regulated

Empower to appoint advocates

Enabled judiciary to control executive

Writ power

Defects

Relationship between governor general and council and Supreme Court not defined. Governor general and council rejected the authority of court. Thus it became source of annoyance

Relationship between mofussil adalats and Supreme Court not defined .whether they were subordinate to Supreme Court foe no

Jurisdiction beyond the Calcutta was not defined .court could issue the summons even for people outside the Calcutta. Even people were detained in jail till decision.

Courts applied English law in India

Criminal law applied in India was harsh.

D. THE REGULATING ACT OF 1773

The Regulating Act of 1773 was an Act of the Parliament of Great Britain intended to overhaul the management of the East India Company's rule in India.^[1] The Act did not prove to be a long-term solution to concerns over the Company's affairs; Pitt's India Act was therefore subsequently enacted in 1784 as a more radical reform.

1. By 1773, the East India Company was in dire financial straits. The Company was important to Britain because it was a monopoly trading company in India and in the east and many influential people were shareholders. The Company paid GB£400,000 (present-day (2013) equivalent is £39.6 million) annually to the government to maintain the monopoly but had been unable to meet its commitments since 1768 because of the loss of tea sales to America. About 85% of all the tea in America was smuggled Dutch tea.

The East India Company owed money to both the Bank of England and the government: it had 15 million lbs (6.8 million kg) of tea rotting in British warehouses and more en route from India.

Lord North decided to overhaul the management of the East India Company with the Regulating Act.

This was the first step to the eventual government control of India. The Act set up a system whereby it supervised (regulated) the work of the East India Company.

The Company had taken over large areas of India for trading purposes and had an army to protect its interests. Company men were not trained to govern so North's government began moves towards government control since India was of national importance. Shareholders in the Company opposed the Act. The East India Company was still a powerful lobbying group in Parliament in spite of its financial problem.

Provisions of the Regulating Act

1. The Act limited Company dividends to 6% until it repaid a GB£1.5M loan (passed by an accompanying act, 13 Geo. 3 c. 64) and restricted the Court of Directors to four-year terms.
2. It prohibited the servants of company from engaging in any private trade or accepting presents or bribes from the natives.

3. The Act elevated Governor of Bengal Warren Hastings to Governor-General and subsumed the presidencies of Madras and Bombay under Bengal's control.
4. The Act named four additional men to serve with the Governor-General on the Calcutta Council: Lt-Gen John Clavering, George Monson, Richard Barwell, and Philip Francis. Barwell was the only one with previous experience in India. These councillors were commonly known as the "Council of Four".
5. A supreme court was established at Fort William at Calcutta. British judges were to be sent to India to administer the British legal system that was used there.

THE ACT OF SETTLEMENT 1781

The Act of Settlement 1781 aimed at removing the ambiguities created by the former Act, but was not successful in its entirety. With the increase in activities of the Company an urgent need of a lawyer judge was felt to deal with new cases. The Charter in 1798 did the needful by establishing the Recorder's Court at Madras and Bombay. This Court had similar jurisdiction and was subject to the same restrictions as the Supreme Court of Calcutta. In 1801 and 1824 Supreme Courts were established in Madras and Bombay respectively. The Constitutional powers, functions, limitations and jurisdiction of these courts were the same as that of the Supreme Court at Calcutta.

A parallel system of judiciary was running in the mofussil areas. The Company attained the Diwani of Bengal, Bihar, and Orissa in 1765. As per the plan of 1772 under Warren Hastings, the Courts of Original Jurisdiction were Mofussil Faujdari Adalat, the court of criminal jurisdiction; Mofussil Diwani Adalat, the court of civil jurisdiction and Small Cause Adalat. Under the Appellate Courts we had Sadar Nizami Adalat, the criminal court of appeals; Sadar Diwani Adalat, civil court of appeals. The Collectors started monopolizing the trade in the districts putting the end to this system and giving rise to a new plan of 1774.

Under this system, diwan or amil, acted as the judge of the Mofussil Diwani Adalat. The Mofussil areas of Bengal, Bihar and Orissa were divided into six districts with a Provincial Council in each district acting as the Appellate Court. The Council started creating difficulties and monopolizing trade within its jurisdiction. This led to an end of this plan as well and a new plan of 1780 was formulated.

This plan separated the executive from the judiciary. Provincial courts were left with the function of collecting land revenue only. For civil cases, a Diwani Adalat was established from which appeals went to the Sardar Diwani Adalat. Though this system assured the independence of the judiciary there were certain set-backs.

For the administration of criminal justice in a more efficient manner Warren Hastings drew a scheme in 1781 under which for apprehending criminals, Judges of the Mofussil Diwani Adalats were authorised to work as Magistrates and a department headed by the Remembrance of criminal Courts was opened to look after the working of the said courts. Act of settlement to Was passed to remove confusions in charterGovernor general and council aewe excluded from jurisdiction of the supreme courtRevenue matters were taken out of supreme court jurisdictionNo person employed by company was subject to sup reme courtIn case of natives personal law was applicable Adalats were not liable to supreme court.

E. CONFLICT : RAJA NAND KUMAR, KAMALUDDIN, PATNA CASE, COSSIJURAH CASE

Raja Nand Kumar

Raja Nand Kumar, a Hindu Brahmin was a big Zamindar and a very influential person of Bengal. He was loyal to the English company ever since the days of Clive and was popularly known as “black colonel” by the company. Three out of four members of the council were opponents of Hastings, the Governor-General and thus the council consisted of two distinct rival groups, the majority group being opposed to Hastings. The majority group comprising **Francis, Clavering** and **Monson** instigated Nand Kumar to bring certain charges of bribery and corruption against Warren Hastings before the council whereupon Nand Kumar in March, 1775 gave a letter to Francis, one of the members of the council complaining that in 1772, Hastings accepted from him bribery of more than one Lakh for appointing his son Gurudas, as Diwan. The letter also contained an allegation against Hastings that he accepted rupees two and a half lakh from Munni Begum as bribe for appointing her as the guardian of the minor Nawab Mubarak-ud-Daulah.

Francis placed his letter before the council in his meeting and other supporter, Monsoon moved a motion that Nand Kumar should be summoned to appear before the Council. Warren Hastings who was presiding the meeting in the capacity of Governor-General, opposed Monson's motion on the ground that he shall not sit in the meeting to hear accusations against himself nor shall he acknowledge the members of his council to be his judges. Mr. Barwell, the lone supporter member of Hastings, put forth a suggestion that Nand Kumar should file his complaint in the Supreme Court because it was the court and not the council, which was competent to hear the case. But Monson's motion was supported by the majority hence Hastings dissolved the meeting. Thereupon majority of the members objected to this action of Hastings and elected Clavering to preside over the meeting in place of Hastings. Nand Kumar was called before the council to prove his charges against Hastings. The majority members of the council examined Nand Kumar briefly and declared that the charges leveled against Hastings were proved and directed Hastings to deposit an amount of Rs. 3,54,105 in treasury of the company, which he had accepted as a bribe from Nand Kumar and Munni Begum. Hastings genuinely believed that the council had no authority to inquire into Nand Kumar's charges against him. This event made Hastings a bitter enemy of Nand Kumar and he looked for an opportunity to show him down.

Facts of the case:-

Soon after, Nand Kumar was along with Fawkes and Radha Charan were charged and arrested for conspiracy at the instance of Hastings and Barwell.

In order to bring further disgrace to Raja Nand Kumar, Hastings manipulated another case of forgery against him at the instance of one Mohan Prasad in the conspiracy case. The Supreme Court in its decision of July 1775 fined Fawkes but reserved its judgment against Nand Kumar on the grounds of pending fraud case. The charge against Nand Kumar in the forgery case was that he had forged a bond in 1770. The council protested against Nand Kumar's charge in the Supreme Court but the Supreme Court proceeded with the case unheeded. Finally, Nand Kumar was tried by the jury of twelve Englishmen who returned a verdict of 'guilty' and consequently,

the supreme court sentenced him to death under an act of the British parliament called the Forgery Act which was passed as early as 1728.

Serious efforts were made to save the life of Nand Kumar and an application for granting leave to appeal to the king-in-council was moved in the Supreme Court but the same was rejected.

Another petition for recommending the case for mercy to the British council was also turned down by the Supreme Court. The sentence passed by the Supreme Court was duly executed by hanging Nand Kumar to death on August 5, 1775. In this way, Hastings succeeded in getting rid of Nand Kumar.

CRITICAL APPRAISAL:-

Chief Justice Impey in this case acted unjustly in refusing to respite to Nand Kumar. No rational man can doubt that he took this course in order to gratify the Governor-General. The trial of Nand Kumar disclosed that the institution of Supreme Court hardly commanded any respect from the natives as it wholly unsuited to their social conditions and customs. The trial has been characterized as “**judicial murder**” of Raja Nand Kumar which rudely shocked the conscience of mankind. Raja Nand Kumar’s trial was certainly a case of miscarriage of justice.

PATNA CASE

Shahbazbeg , a soldier in company army had no soldier .so he expressed his desire to adopt his nephew bahadur beg and hand him his property . bt before that he died . his widow begum claimed the property as gift from his husband after death .bahadur filed casr against begum.

Law officers sealed the property and insulted widow acco ording to muslim law three fourth property was given to widow and one fourth to bahadur Widow approsched the supreme court , which ordered to hand over all property to widow and compensation of rs 3 lakh .

Issue with Patna case

Case questions relationship of supreme court and adalats . Court procedure of arrest of bahadur and law officers was criticized Hoionldng of the supreme court that it had jurisdict over revenue farmers provoked revolt in mufussil area.

Court procedure of awarding rs 3 lakh compensation was criticized .Brought into light internal defects of judicial system(adalat and council)

COSSIJURAH CASE

Cossinaut baboo filed case of debt against a zamindar, the rajah of cossijurah . The zamindar was in debtness to cossinaut in the affidavit .babu stated the rajah was in service of company as a revenue collector thus in the jurisdiction of Supreme Court

Meanwhile the matter was referred was referred to governor and council at Calcutta where it was stated that matter was not in jurisdiction of Supreme Court .council asked to ignore the process of court. Court sent to arrest zaminder sent more force to prevent Dead lock was created Brought into defects of the charter Charter did not demarcate the jurisdict ion of court and governer

general in council Confusion as supreme court issue the writ of *habeas corpus* against the council, which council disobey Dignity of supreme court lowered.

Thus the Supreme Court established under the 1774 charter became an institution which was disliked and dreamed equally by the officers of the government and especially Indians.

F. ADALAT SYSTEM WARREN HASTINGS

Warren Hastings was born at Churchill, Oxfordshire in 1732 to a poor father and a mother who died soon after he was born. He attended Westminster School where he was a contemporary of the future Prime Ministers Lord Shelburne and the Duke of Portland. He joined the British East India Company in 1750 as a clerk and sailed out to India reaching Calcutta in August 1750. Hastings built up a reputation for hard work and diligence, and spent his free time learning about India and mastering Urdu and Farsi.^[4] He was rewarded for his work in 1752 when he was promoted and sent to Kasimbazar, an important British trading post in Bengal where he worked for William Watts. While there he received further lessons about the nature of East Indian politics.

At the time British traders still operated by the whim of local rulers and Hastings and his colleagues were unsettled by the political turmoil of Bengal with the elderly moderate Nawab Alivardi Khan likely to be succeeded by his grandson Siraj ud-Daulah and several other rival claimants also eyeing the throne. This made the British trading posts throughout Bengal increasingly insecure as Siraj ud-Daulah was known to harbour anti-European views and was likely to launch an attack once he took power. When Alivardi Khan died in April 1756 the British traders and small garrison at Kasimbazar were left vulnerable. On 3 June, after being surrounded by a much larger force, the British were persuaded to surrender to prevent a massacre taking place. Hastings was imprisoned with others in the Bengali capital Murshidabad while the Nawab's forces marched on Calcutta and captured it. The garrison and civilians were then locked up in the Black Hole of Calcutta.

For a while Hastings remained in Murshidabad and was even used by the Nawab as an intermediary, but fearing for his life he escaped to the island of Fulta where a number of refugees from Calcutta had taken shelter. While there he met and married Mary Buchanan, the widow of one of the victims of the Black Hole. Shortly afterwards a British expedition from Madras under Robert Clive arrived to rescue them. Hastings served as a volunteer in Clive's forces as they retook Calcutta in January 1757. After this swift defeat the Nawab urgently sought peace and the war came to an end. Clive was impressed with Hastings when he met him, and arranged for his return to Kasimbazar to resume his pre-war activities. Later in 1757 fighting began again, leading to the Battle of Plassey, where Clive won a decisive victory over the Nawab. Following the British victory Siraj ud-Daulah was overthrown and replaced by his uncle Mir Jafar who initiated pro-British policies.

RISING STATUS

In 1758 Hastings was made the British Resident in the Bengali capital of Murshidabad, a major step forwards in his career, at the instigation of Clive. His role in the city was ostensibly that of an ambassador but as Bengal was increasingly under the dominance of the East India Company he was often given the task of issuing orders to the new Nawab on behalf of Clive and the Calcutta authorities.^[6] Hastings personally sympathized with Mir Jafar and believed many of the demands placed on him by the Company were excessive. Hastings had already developed a philosophy that was grounded in trying to establish a more understanding relationship with India's inhabitants and their rulers and he often tried

to mediate between the two sides.

During Mir Jafar's reign the East India Company exerted an increasingly large role in the running of the region, and effectively took over the defence of Bengal against external invaders when Bengal's troops proved insufficient for the task. As he grew older Mir Jafar was gradually less able to rule the state, and in 1760 British troops ousted him from power and replaced him with Mir Qasim. Hastings expressed his doubts to Calcutta over the move, believing they were honors bound to support Mir Jafar, but his opinions were overruled. Hastings once more established a good relationship with the new Nawab and again had misgivings about the demands he relayed from his superiors. In 1761 he was recalled and appointed to the Calcutta council.

CONQUEST OF BENGAL

Further information: Battle of Buxar

Hastings was personally angered when he conducted an investigation into trading abuses in Bengal. He alleged some European and British-allied Indian merchants were taking advantage of the situation to personally enrich themselves. Widespread fraud was practiced and illegal trading took place by figures that travelled under the unauthorized protection of the British flag, knowing that local customs officials would therefore be cowed into not interfering with them. Hastings felt this was bringing shame on Britain's reputation, and he urged the ruling authorities in Calcutta to put an end to it. The Council considered his report but ultimately rejected Hastings' proposals and he was fiercely criticized by other members, many of whom had themselves profited from the trade.

Ultimately, little was done to stem the abuses and Hastings began to consider quitting his post and returning to Britain. His resignation was only delayed by the outbreak of fresh fighting in Bengal. Once on the throne Qasim proved increasingly independent in his actions, and he rebuilt Bengal's army by hiring European instructors and mercenaries who greatly improved the standard of his forces.^[9] He felt gradually more confident and in 1764 when a dispute broke out in the settlement of Patna he captured its British garrison and threatened to execute them if the East India Company responded militarily.

When Calcutta dispatched troops anyway, Mir Qasim executed the hostages. British forces then went on the attack and won a series of battles culminating in the decisive Battle of Buxar in October 1764. After this Mir Qasim fled into exile in Delhi where he later died. The treaty of Allahabad gave the East India Company the right to collect taxes in Bengal on behalf of the Mughal Emperor.

RETURN TO BRITAIN

Warren Hastings, during his time in England, as painted by Sir Joshua Reynolds in 1767–68.

Hastings resigned in December 1764 and sailed for Britain the following month. He was left deeply saddened by the failure of the more moderate strategy he supported which had been rejected by the hawkish members of the Calcutta Council. Once he arrived in London Hastings began spending far beyond his means. He stayed in fashionable addresses and had his picture painted by Joshua Reynolds in spite of the fact that, unlike many of his contemporaries, he had not amassed a fortune while in India. Eventually, having run up enormous debts, Hastings realized he needed to return to India to restore his finances and applied to the East India Company for employment. His application was initially rejected as he had made many political enemies including the powerful director Laurence Sullivan. Eventually an appeal to Sullivan's rival Robert Clive secured Hastings the position of deputy ruler at the city of Madras. He sailed from Dover in March 1769. On the voyage he met the German Baroness Imhoff and her husband. He soon fell in love with the Baroness and they began an affair, seemingly with her husband's consent. Hastings' first wife, Mary, had died in 1759 and he planned to marry the Baroness once she had

obtained a divorce from her husband. The process took a long time and it was not until 1777 when news of divorce came from Germany that Hastings was finally able to marry her.

MADRAS AND CALCUTTA

Hastings arrived in Madras shortly after the end of the First Anglo-Mysore War during which the city had been threatened with capture by the forces of Hyder Ali. The Treaty of Madras which ended the war failed to settle the dispute and there were three further wars. During his time at Madras he initiated reforms of trading practices which cut out the use of middlemen and benefited both the Company and the Indian labourers but otherwise the period was relatively uneventful for him.

By this stage Hastings shared Clive's view that the three major British Presidencies (settlements), Madras, Bombay and Calcutta, should all be brought under a single rule rather than being governed separately as they currently were. In 1771 he was appointed to be Governor of Calcutta, the most important of the Presidencies. In Britain moves were underway to reform the divided system of government and create a single rule across all of British India with its capital in Calcutta. Hastings was considered the natural choice to be the first Governor General.

While Governor, Hastings launched a major crackdown on bandits operation in Bengal which was largely successful.

He also faced the severe Bengal Famine, with around ten million deaths.

GOVERNOR GENERAL

In 1773, he was appointed the first Governor-General of Bengal. The post was new, and British mechanisms to administer the territory were not fully developed. Regardless of his title, Hastings was only a member of a five man council so confusedly structured that it was difficult to tell what constitutional position Hastings actually held.

In 1784, after ten years of service, during which he helped extend and regularize the nascent Raj created by Clive of India, Hastings resigned. On his return to England he was charged in Parliament with high crimes and misdemeanors by Edmund Burke, who was encouraged by Sir Philip Francis, whom Hastings had wounded during a duel in India. He was impeached in 1787, but the trial, which ran from 1788 to 1795, ended in acquittal. Though Hastings spent most of his fortune on his defence, the East India Company provided substantial financial support towards the end of the trial.

His supporters from the Edinburgh East India Club, as well as a number of other gentlemen from India, gave a reportedly "elegant entertainment" for Hastings when he visited Edinburgh. A toast on the occasion went to the "Prosperity to our settlements in India" and wished that "the virtue and talents which preserved them be ever remembered with gratitude."

In 1788 he acquired the estate at Daylesford, Gloucestershire, including the site of the medieval seat of the Hastings family. In the following years, he remodelled the mansion to the designs of Samuel Pepys Cockerell, with classical and Indian decoration, and gardens landscaped by John Davenport. He also rebuilt the Norman church in 1816, where he was buried two years later.

HASTINGS'S ADMINISTRATIVE ETHOS AND LEGACY

During the final quarter of the eighteenth century, many of the Company's senior administrators realized that, in order to govern Indian society, it was essential that they learn its various religious, social, and legal customs and precedents. The importance of such knowledge to the colonial government was clearly in Hastings's mind when, in 1784, he remarked:

"Every application of knowledge and especially such as is obtained in social communication

with people, over whom we exercise dominion, founded on the right of conquest, is useful to the state ... It attracts and conciliates distant affections, it lessens the weight of the chain by which the natives are held in subjection and it imprints on the hearts of our countrymen the sense of obligation and benevolence... Every instance which brings their real character will impress us with more generous sense of feeling for their natural rights, and teach us to estimate them by the measure of our own... But such instances can only be gained in their writings; and these will survive when British domination in India shall have long ceased to exist, and when the sources which once yielded of wealth and power are lost to remembrance"

Under Hastings's term as Governor General, a great deal of administrative precedent was set which profoundly shaped later attitudes towards the government of British India. Hastings had a great respect for the ancient scripture of Hinduism and set the British position on governance as one of looking back to the earliest precedents possible. This allowed Brahmin advisors to mould the law, as no English person thoroughly understood Sanskrit until Sir William Jones, and, even then, a literal translation was of little use; it needed to be elucidated by religious commentators who were well-versed in the lore and application. This approach accentuated the Hindu caste system and, to an extent, the frameworks of other religions, which had, at least in recent centuries, been somewhat more flexibly applied. Thus, British influence on the fluid social structure of India can in large part be characterized as a solidification of the privileges of the Hindu caste system through the influence of the exclusively high-caste scholars by whom the British were advised in the formation of their laws.

HASTINGS IN THE LATE 18TH CENTURY, AS PAINTED BY LEMUEL FRANCIS ABBOTT.

In 1781, Hastings founded Madrasa 'Aliya; in 2007, it was transformed into Aliah University by the Government of India, at Calcutta. In 1784, Hastings supported the foundation of the Bengal Asiatic Society, now the Asiatic Society of Bengal, by the oriental scholar Sir William Jones; it became a storehouse for information and data pertaining to the subcontinent, and existed in various institutional guises up to the present day. Hastings' legacy has been somewhat dualistic as an Indian administrator: he undoubtedly was able to institute reforms during the time he spent as governor there that would change the path that India would follow over the next several years. He did, however, retain the strange distinction of being both the "architect of British India and the one ruler of British India to whom the creation of such an entity was anathema.

IMPEACHMENT

On the trial of Warren Hastings. He was impeached for crimes and misdemeanors during his time in India in the House of Commons upon his return to England. At first deemed unlikely to succeed. The prosecution was managed by MPs including Edmund Burke, Charles James Fox and Richard Brinsley Sheridan. When the charges of his indictment were read, the twenty counts took Edmund Burke two full days to read.

The house sat for a total of 148 days over a period of seven years during the investigation. The investigation was pursued at great cost to Hastings personally, and he complained constantly that the cost of defending himself from the prosecution was bankrupting him. He is rumored to have once stated that the punishment given him would have been less extreme had he pleaded guilty. The House of Lords finally made its decision on April 1795 acquitting him on all charges.

Throughout the long years of the trial, Hastings lived in considerable style at his town house, Somerset House, Park Lane. Among the many who supported him in print was the pamphleteer and versifier Ralph

Broome. Others disturbed by the perceived injustice of the proceedings included Fanny Burney.

LEGACY The city of Hastings, New Zealand and the Melbourne outer suburb of Hastings, Victoria, Australia were both named after him. 'Hastings' is the name of one of the 4 School Houses in La Martiniere for Boys, Calcutta. It is represented by the colour red. 'Hastings' is a Senior Wing House at St Paul's School, Darjeeling, India, where all the senior wing houses are named after Anglo-Indian colonial figures. There is also a road in Kolkata, India named after him

LORD CORNWALLIS

Lord Cornwallis assumed the role of Governor-General of the Company in 1786 and continued till 1793. He was directed to take up three specific matters, one of them being reforms of the judicial system. The other tasks were resolving the problem of land revenue and improvement in the administrative machinery. During his tenure, he made significant and far-reaching reforms in the judicial administration, some of which constitute the foundation of the present legal system. The reforms were primarily made in three stages: first in 1787, then in 1790 and, finally in 1793.

REFORMS UPTO 1793

Prior to the reforms initiated by Cornwallis in 1787, the judicial plan of 1780 brought about by Warren Hastings was in force. The Company was dissatisfied with the plan of 1780 because it had separated the revenue and judicial functions, thus proving to be costly. Accordingly, the Directors advocated a merger of the two functions on the grounds of simplicity, efficiency and economy. Cornwallis faithfully effectuated the Directors' directive which led to the birth of Cornwallis's plan of 1787.

JUDICIAL PLAN OF 1787

The main feature of this plan, as previously stated, was that the revenue, judicial and magisterial functions would vest in one person, the Collector. The Collector was responsible for the collection of land revenue and to decide all cases relating to revenue. His revenue functions were confined to the revenue court known as the mal adalat. He was to act as the judge in the Moffussil Diwani Adalat of the district. As the sole judge, he had full powers to decide all types of disputes. Appeals lay to the Sadar Diwani Adalat at Calcutta and further to the King-in-Council depending on the value of the suit. In order to assist the Collector in deciding civil cases, a Registrar was appointed in each adalat. The Collector was also given some magisterial powers. As a Magistrate, he was empowered to arrest, try and punish criminals in petty offences. In the case of graver...

REFORMS

The government of Lord William Bentinck stands forth in high relief in the history of British India as the era of progression. It derives its lustre from his enlightened views of domestic policy, his vigorous administrative reforms, his intrepid philanthropy, and his spirited efforts to promote the material interests of the empire. Lord Cornwallis had given form and consistence to our institutions in 1793, but there had been little attention to their improvement

Since the days of Lord Wellesley, and they were daily becoming more and more effete. Great changes had taken place in the European service, and in the native community, and the whole system of judicial administration required be recasting and adapting to the progress of circumstances. For this task Lord William Bentinck was particularly adapted by the clearness of his perceptions, his freedom from

traditional prejudices, and his inflexible resolution; and he was happily aided by the counsels and cooperation

of three of the ablest men whose services the Company had ever enjoyed, Mr. Butterworth Bayley, Sir Charles Metcalfe, and Mr. Holt Mackenzie. He found the course of civil justice blocked up by the lumbering wagon of the provincial courts, which he justly characterized as “resting places for those members of the service who were deemed unfit for higher responsibilities.” The judicial character of the judges was, with some exceptions, the object of general contempt, and their decisions in appeal, only served to bewilder the judges of the courts subordinate to them, and to disgust the community. In regard to criminal justice their agency was simply a national grievance. They proceeded on circuit to hold the sessions twice in the year, and prisoners were kept in confinement for months before they were brought to trial. The prosecutors and witnesses were detained all this time at their own expense, and subjected to such intolerable inconvenience, while awaiting the arrival of the judges, that the concealment of crime became an object of universal solicitude throughout the country. Lord William Bentinck earned the gratitude of the public by sweeping away a class of tribunals, which combined the three great evils of delay, expense, and uncertainty. The duties of the session were, at first, entrusted to the officers he appointed Commissioners of Revenue, but finding the functions of tax-gatherer incompatible with those of a criminal judge, he transferred the duty to the judge of the district, with instructions to hold a monthly jail delivery. He entirely remodelled the system of civil judicature. A separate sudder or chief court was likewise established in

The north-west provinces and the natives of Delhi were no longer constrained to travel a thousand miles to Calcutta to prosecute an appeal. A similar boon was likewise conferred on those provinces by the erection of a separate Board of Revenue at Allahabad, and the control of the fiscal interests of twentyfive millions of people was established in the most central position. The value of these and all the other judicial reforms of Lord William Bentinck was indefinitely enhanced by restoring to the people the inestimable boon of the use of their own vernacular language in all the courts, civil, criminal, and fiscal, to which they were amenable. The Mohamedans had imposed their own court language, the Persian, on the conquered people of India in every transaction with the state. The Company's functionaries, who had from the first manifested a strong predilection for everything that was Mussulman, retained this language in the courts, although the anomaly and the incongruity was thereby increased, inasmuch as justice was now dispensed in a language foreign not only to the parties and the witnesses, but also to the judge himself. Lord William Bentinck substituted the vernacular for the Persian in all tribunals, though not without a strenuous opposition from the conservatism of the civilians.

REVENUE SETTLEMENT, N W PROVINCES, 1833

The merit of the settlement in the north-west provinces belongs to Lord William Bentinck's administration. On the acquisition of those provinces, consisting of the districts in Oude ceded by the Nabob Vizier, and the districts in the Dooab conquered from Sindia, Lord Wellesley pledged himself to grant them a permanent settlement of the land revenue, but it was repudiated by the Court of Directors, who ordered it to be limited to five years. This was a death blow to all agricultural improvement. Any attempt by the landlord to improve his estates only exposed him to the risk of an increased assessment, and as the period of revision approached he felt it to be his interest to fill up wells, and to neglect cultivation. An effort was at length made by Mr. Holt Mackenzie, the secretary to the Government

in the territorial department, a man of broad and liberal views and great earnestness, to grapple with this large question, and he produced the celebrated Regulation VII, of 1822, a monument of skill and industry, of which any statesman might justly be proud. It was based on mature knowledge and sound

and equitable principles, but it was unfortunately too complicated in its details to work well, and it imposed unlimited duties on a limited agency. The collectors disrelished the laborious task imposed on them, and performed it in a perfunctory manner. Some of them affirmed that a period of twenty years and others that a whole century would be necessary to complete the settlement in the mode required. The Board of Revenue when asked what progress had been made in it, replied that they knew nothing about the matter. At the end of ten years it was found that the work chalked out by the Regulation was scarcely begun. Lord William Bentinck was resolved to remove the opprobrium of this neglect from our administration, and after a residence of two years in Calcutta, made a tour of the north-west provinces, and during his progress invited the revenue officers of the various districts to his tents to discuss the question of the settlement. After obtaining all the information within his reach, he examined the subject in all its bearings during his residence at Simla, and on his return to Calcutta held a meeting at Allahabad of the Revenue Board and the most eminent officers in the department, when the question was fully discussed and finally settled, and the Regulation which resulted from these consultations was passed in Council, after his arrival in Calcutta, in March, 1833.

PLAN OF SETTLEMENT – ROBERT BIRD, 1833

The new settlement possessed the great merit of simplicity. It dispensed with many of the elaborate enquiries of the former Regulation, which, however useful, were not deemed essential to a fair adjustment of the claims of the state. The area of each village was to be surveyed by European officers and recorded in a map, while each individual field was measured by native officers and entered in the village register. Without a minute classification of soils, the proportion of cultivated, culturable, and waste lands, together with every circumstance which could affect the cultivation, was duly recorded. The Collector was required to decide all questions of disputed boundaries on the spot, with the aid of native assessors, and the most prolific source of litigation and misery in India was thus dammed up. All judicial questions which might arise in the course of his proceedings were determined with the aid of the punchayet, the ancient and time-honoured jury of five, in which the natives reposed such unbounded confidence as to believe that “where the punj is, there is God.” The assessment was fixed by the Collector, after an impartial investigation, and a free and friendly communication with the people, and the settlement was then made for a period of thirty years, either with the ryots individually, or with the landholder, or with the village community, as the case might be. The Collector was assisted by a body of uncovenanted deputies with liberal allowances, and their office was thrown open to the natives of the country, without reference to caste or creed. The general control of these operations was committed to Mr. Robert Bird, the ablest financial officer in the service since the days of Sir John Shore. He possessed a large grasp of mind, and combined an intimate knowledge of the system of land tenures in the north-west, with indomitable energy, and that sternness of purpose which is indispensable in any great and difficult undertaking. He was allowed to select his own subordinates and the zeal and ability they displayed did no little credit to his discernment, while the honour of having served under him was considered a distinction for life. Under such auspices, and with such instruments, the settlement was brought to a termination within ten years. It embraced an area of 72,000 square miles, and a population of 23,000,000. It was the greatest fiscal achievement of the Company's Government. The first settlement had ruined those for whose benefit it was devised, the last saved millions of much enduring men from misery and ruin. The labours of the renowned Toder Mull, under the illustrious Akbar, in the department of revenue settlements which historians have never ceased to applaud, were rivalled, if not eclipsed by those of Robert Bird; but there was no public recognition of the services of one who had conferred such inestimable blessings on a country as large and populous as Great Britain. He was only a Company's servant, and the scene of his duties lay in India, and he was

allowed to pass into obscurity on his return to his native land, and sink into the grave without the slightest mark of distinction.

EMPLOYMENT OF NATIVES, 1831

But the measure which above all others has endeared the memory of Lord William Bentinck to the natives of India is that which he inaugurated of introducing them to honourable employment in the public service. Allusion has been made in a former chapter to the cardinal error of Lord Cornwallis's policy that of excluding them from every office except the lowest and the worst paid. This exclusion was fortified by the peculiar constitution of the Company, which remunerated the Court of Directors for their labours in the government of India by patronage, and not by money, and thus created a strong tendency to secure the monopoly of offices to their nominees. It would be difficult to discover in history another instance of this ostracism of a whole people. The grandsons of the Gauls who resisted Caesar became Roman senators. The grandsons of the Rajpoots who opposed Baber in his attempt to establish the Mogul power, and at the battle of Biana all but nipped his enterprise in the bud, were employed by his grandson Akbar in the government of provinces and the command of armies, and they fought valiantly for him on the shores of the bay of Bengal and on the banks of the Oxus. They rewarded his confidence by unshaken loyalty to his throne, even when it was endangered by the conspiracies of his own Mohamedan satraps. But wherever our sovereignty was established in India, the path of honourable ambition and every prospect of fame, wealth, and power was at once closed on the natives of the country. This proscription was rendered the more galling by comparison with the practice of the native courts around, where the highest prizes of power were open to universal competition. The contrast was, moreover, aggravated by the fact that the native princes themselves, the Nizam and Tippoo, Sindia and Holkar, and Runjeet Sing, adopted a more liberal policy, and freely entrusted offices of the highest responsibility, both military and political, to European foreigners. No benefit which we might confer on the country could be deemed an adequate compensation for the loss of all shares in the government, one of the highest and most honorable aspirations of humanity. It was vain to expect any attachment to our rule when even the best affected of our native subjects could see no remedy for this degradation but in the subversion of our government. The enlargement of the native mind by education only served to augment the evil, by sharpening expectations which could not be gratified. The argument for this policy was based on a notion of the administrative superiority of Englishmen, and a persuasion of the utter unfitness of the natives for any of the functions of government, mingled with a dread that their venality would be injurious to the administration. It seemed to be forgotten that it was idle to hope for any improvement in the character of the natives while they were excluded from all places of trust and influence, and left without any object of pursuit but the gratification of their own passions. Some feeble attempts had been made in preceding administrations to modify the system, but they were not based on any broad and generous principle, and were intended simply to relieve the labours of the Company's favorite officers of the civil service. Lord William Bentinck brought with him to India a deep conviction of the viciousness of this policy, and a determination "to throw open the doors of distinction to the natives, and grant them a full participation in all the honours and emoluments of the state." As far back as 1824, the Court of Directors had expressed their conviction that to secure promptitude in the administration of justice, native functionaries must be employed to dispose of all suits, of whatever description and amount.

The leading members of Government were fully prepared to abandon the Cornwallis doctrine, and to give the natives an interest in the stability of our government by giving them a share in the management of it. But it required an intrepid reformer like Lord William Bentinck at the head of the government, to carry out these large views. This liberal policy was inaugurated, by the Regulations of 1831, which

completely reconstructed the legal establishments of the Bengal Presidency, and entrusted the primary jurisdiction of all suits, of whatever character or amount, not excluding those instituted against Government, to native agency. The new system provided for three grades of native judges, the highest that of Principal Sudder Ameen, on 500 rupees a-month, subsequently raised to 750, which is still egregiously inadequate to the position and responsibilities of the office. The principle of employing natives in important offices was gradually extended to other departments, and it has resulted in imparting a degree of vigour and popularity to the British administration which it never enjoyed before. So greatly indeed has this privilege been appreciated by the natives, that there is some risk of their losing the manly feeling of independence in their great eagerness for public employ. The policy introduced by Lord William Bentinck has been zealously and nobly followed up by his successors. New paths of distinction have been opened to native ambition, and a native judge now sits on the bench of the highest court in Calcutta, and natives of rank and influence occupy seats in the Legislative Council.

SUTTEES 1830

The most benignant and memorable act of Lord William Bentinck's administration was the abolition of Suttees. Some have questioned whether this atrocious rite could be traced to a religious origin, but it was always consecrated by the solemnities of religion, and it has been practiced for twenty centuries, in a greater or less degree, wherever Hindooism has been professed. Even in Bali, one of the remote islands of the Eastern Archipelago, where the Hindoo faith still lingers, no fewer than seventy widows were burnt alive towards the close of the last century, with the body of one of the rajas. It was discouraged and sometimes prohibited by the Mohamedans, and Akbar himself on one occasion, issued from his palace on horseback and rescued a victim from the pile.

The first effort to interfere with it under the Company's Government was made by Mr. George Udny, the friend and associate of Sir John Shore, and by Dr. Carey. Lord Wellesley to whom they presented an address, was then on the eve of quitting the Government, but he recorded a minute in favour of abolishing the rite, stating "that it was one of the fundamental maxims of the British Government to consult the opinions, customs, and prejudices of the natives, but only when they were consistent with the principles of humanity, morality and reason." The Sudder Court, however, put back the cause of abolition in 1810, by issuing a Circular Order setting forth the circumstances in which the act was to be considered illegal, on which Mr. Courtenay Smith, one of the greatest men who ever adorned the bench of that court, asserted that "these orders had only served to spread and confirm this execrable usage." On this and every subsequent attempt to lessen the evil by regulating it, the Court of Directors justly remarked that such measures tended rather to increase than to diminish the practice, and that, by prohibiting it in certain cases, the Government appeared to sanction it in all others, and was thus made an ostensible party to the sacrifice. The Bombay Government committed a still more fatal error in employing one of its European officers to construct the pile in order to give the unhappy victim an opportunity of escape, if she was unable to sustain the torture of the flames. Subsequent to 1820 the question was discussed with increasing earnestness in England and in India, but some of the most distinguished of the public officers, Mr. Colebrooke, Mr. Mountstuart Elphinstone, and Colonel Sutherland, shrunk from the bold proposal of a direct prohibition, and some went so far as to assert that it would violate the rule of toleration to which our Government owed its stability. In 1823, the Court of Directors sent a dispatch to India, in which all the arguments which had been adduced against the abolition were earnestly and sincerely combated, and the question was referred to the consideration of the local Government, with an implied expression of the gratification it would afford them to learn that the rite could be safely abolished.

Lord Amherst consulted the most eminent of the Government servants, but the diversity of the

opinions they expressed only served to increase his embarrassment. Mr. Courtenay Smith and Mr. Alexander Ross boldly urged the immediate and peremptory prohibition of the rite. Mr. Harington, who had been for a quarter of a century a great authority on all local questions, and who was withal a man of strong religious feelings, considered that the rite could be extinguished only by a gradual improvement among the people through the dissemination of moral instruction. Lord Amherst was obliged to inform the Court that he could not, in such circumstances, recommend the absolute interdiction of it under legal penalties, but he trusted to the diffusion of knowledge then in progress for the eventual suppression of “this detestable superstition.” In July, 1827, the Court placed the question in the hands of the Governor-General, requesting him, after serious deliberation, to determine in what degree the ordinary course of civilization could be accelerated by a judicious and seasonable interposition of authority.

LORD WILLIAM BENTINCK

Such was the position of this question when Lord William Bentinck landed in Calcutta, feeling, as he said, the dreadful responsibility hanging over his head, in this world and the next, if, as the Governor-General of India, he was to consent to the continuation of this practice one moment longer, not than our security, but then the real happiness and permanent welfare of the native population rendered indispensable. He resolved to take up the question without any delay, and “come to as early a determination as a mature consideration would allow,” and “having made that determination, to stand by it, yea or no, and set his conscience at rest.” Immediately after his arrival, he circulated a confidential communication among fifty or sixty of the chief military and civil officers of Government, repining their opinion as to the effect which the abolition of “this impious and inhuman sacrifice not of one but of thousands of victims,” was likely to produce in the native community generally, and on the minds of the sepoys in particular.

The majority of the officers in the army asserted that the immediate and peremptory abolition of the practice would create no alarm among the native troops. Of the civil functionaries, three fourths advocated its positive prohibition. The most strenuous advocate for non-interference was the eminent orient list, Dr. Horace Wilson, whose literary pursuits had imparted a strong oriental bias to his sympathies, and who was the great patron, and the idol, of pundits and Brahmins. He affirmed that the practice could not be abolished without doing violence to the conscientious belief of every order of Hindoos; that it would be a direct interference with their religion, and an infringement of the pledge we had given them to support it; that it would diffuse a detestation of British authority, create extensive dissatisfaction and distrust, and alienate the affections of the people. The warmest advocate of abolition was Mr. – afterwards Sir William – Macnaghten, second, as an orient list, only to Dr. Wilson. He admitted that, according to the notions of the Hindoos, the sacrifice of suttee was a religious act of the highest merit, and that it was unjust as well as unwise to interfere with religious creeds, however absurd. “Let the Hindoo,” he said, “believe in his three hundred and thirty millions of gods until it may please the Almighty to reclaim him from his idolatry; but let him not immolate thousands of helpless females on the altar of fanaticism, in defiance of the eternal laws of nature and the immutable principles of justice.” He ridiculed the phantom of danger: “Under the Mohamedans, the Hindoos tamely endured all sorts of insults to their religion and violation of their prejudices. Their temples were polluted and destroyed, and many were constrained to become Mussulmans, yet there was no general organized disaffection. The rite was not respected by the hardy and warlike Hindoos of the north-west, but by the sleek and timid inhabitants of Bengal, the fat and greasy citizens of Calcutta, whose very existence depended on the prosperity of the British Government.”

ABOLITION OF SUTTEE, 1830

Fortified by the opinion of the most experienced and the most liberal minded men in the service, and confident of the support of the Court of Directors, Lord William Bentinck and his two counselors, Mr. Butterworth Bayley and Sir Charles Metcalfe, on the 14th of December, 1829, passed that celebrated Regulation which “declared the practice of Suttee illegal and punishable by the criminal courts as culpable homicide.” Thus by one bold and resolute effort, practice which had polluted India from the remotest antiquity, was extinguished under the flag of England, and for the first time since the introduction of Hindooism, “the Ganges flowed unblooded to the sea.” Twenty-five attempts at suttee were made after the passing of the Regulation, but they were prevented by the simple interposition of the police. Not the slightest feeling of alarm, still less of resentment, was exhibited in the army, or in the country. In the course of a few years, the practice became a matter of history like the sacrifice of children at Saugor, and the enlightened Hindoo of the present day looks back on this barbarous custom with the same feelings with which Englishmen look back on the human sacrifices of the Druids. Lord William Bentinck was enabled within a twelvemonth to assure the Directors that there never was a greater bugbear than the fear of revolt. The only circle in which the abolition created any sensation was that of the rich and orthodox babus of Calcutta, who resented the decision of Government, and more especially the promptitude with which it had been carried into execution, as it deprived them of the gratification of obstructing it. They drew up a petition to the Government in which the fine Roman hand of their European counselor was distinctly visible, demanding the restoration of the rite as part and parcel of Hindooism, with which Parliament had pledged itself not to interfere. The native organ of the party in his weekly journal affirmed that the signatories to the petition for restoring the “sacred rite of Suttee” included “the learned, the wealthy, the virtuous, the noble, the polite, and the mild.” But Lord William Bentinck turned a deaf ear to every remonstrance, and refused to suspend the Regulation for a moment.

A memorial was then drawn up to the Privy Council in England, appealing against the proceedings of the Government of India, because they contravened the Act of Parliament which ordained that “nothing done in consequence of the rule of the caste should be held to be a crime though not justifiable by the laws of England.” The appeal was taken into consideration in June 1832, and the venerable Lord Wellesley, the first Governor-General who had recorded his condemnation of the rite, had the high gratification of assisting in dismissing the petition, and in giving to this sublime act of humanity the sanction of the highest tribunal in the British Empire.

HINDOO LAW OF INHERITANCE, 1832

To Lord William Bentinck is also due the merit of having established the rights of conscience in India. To prevent defections from Hinduism, the Hindu legislators had enacted that ancestral property should descend only to those who performed the funeral obsequies of a deceased parent or relative, according to the rule of the shasters, and the man who renounced the Hindu creed, was thus consigned to poverty. The Mohamedans, who were enjoined to propagate their religion by the sword, treated this injunction with profound contempt. No Hindu was ever permitted to occupy a seat on the bench during their supremacy, and the Mohamedan judges, who rejected Hindu law, were not likely to deprive a proselyte to their own creed of his patrimony. Mr. Hastings, in a spirit of liberality, guaranteed to the Hindus and Muslims the enjoyment of their own laws of inheritance in his first code of 1772.

This equitable rule was subsequently re-enacted both in England and in India, by those who were as ignorant as Mr. Hastings was of the intolerant character of the Hindu law of property to which they were giving a British sanction. Lord William Bentinck resolved to relieve the Government from the odium of countenancing this illiberal law and, to avoid a fanatical opposition, took advantage of the occasion of

remodeling and re-enacting several existing regulations, quietly to introduce a clause which provided that “the Hindu and Mohamedan law of inheritance should apply only to those who were bond fide professors of those religions at the time of its application.” The law was passed without observation, and the tendency of it to restore liberty of conscience was not discovered by the bigoted Hindus till it came into operation, when it was found to be too late to demand its repeal. In the same spirit of liberality he abrogated another rule, equally unjust, but of our own creation.

Admission of native Christians

The Mohamedans had encouraged proselytism by the bestowal of honours and estates to office, 1831. And titles and some of the most eminent of their provincial governors – among others the great Moorshed-kooly-khan, the founder of Moorshedabad – were converts from Hinduism. The Company and their servants in India, from that dread of offending native prejudices, which, though in some cases judicious and prudent, too often led to the toleration of evil, had run into the opposite extreme, and expressly debarred native converts to Christianity from holding any post, however humble, under their government. Lord William Bentinck was determined to extinguish this disreputable anomaly, and in the same Regulation which threw open the public service to the natives of the country, ordained that there should be no exclusion from office on account of caste, creed, or nation. The publication of this enactment demonstrated the egregious error into which the Government had fallen by supposing that the unnatural stigma they had cast on their own creed, would tend to conciliate and gratify the Hindus. Those who had been most clamorous for the restoration of suttee were the first to come forward and applaud this act of liberality and justice.

Suppression of Thuggee, 1830

It was during the administration of Lord William Bentinck that the first energetic measures were adopted to extirpate the Thugs, a fraternity of hereditary assassins, who subsisted on the plunder of the victims they strangled. Few districts were without resident Thugs, but they generally adopted the occupation of agriculturists to conceal their nefarious profession, and no district was free from their depredations. They were in the habit of quitting their homes in a body, leaving their wives and their children in the village. They generally attached themselves, as if by accident, to the travelers they met, from whom they obtained such information as they required, by a free and cheerful intercourse. On reaching some spot suited to their purpose, a strip of cloth, or an unfolded turban, was suddenly thrown around the neck of the victim, the ends of which were crossed and drawn tight till he ceased to breathe. His body was then rifled and thrown into a pit hastily dug with a pickaxe which had been consecrated by religious ceremonies. The Thugs were bound to secrecy by solemn oaths, and recognized each other by peculiar signs and a slang vocabulary. They considered themselves as acting under the immediate auspices of the deity, and had a special veneration for Doorga, the tutelary goddess of vagabonds, thieves, and murderers. They observed her festivals with superstitious punctuality, and presented offerings at her most celebrated shrines in various parts of the country. They had a firm confidence in signs and omens, and endeavored through them to ascertain her pleasure regarding their expeditions, and considered themselves as acting under a divine commission when they were favorable. The gangs were recruited with juvenile apprentices, who were gradually and cautiously initiated into the mysteries of the profession by one of the elders, who were ever after regarded in the light of a spiritual guide. The number of their victims in the year was counted by thousands. The subordinate native chiefs and officers in Central India, as well as the zemindars and policemen in our own provinces, to whom they were well known, connived at their practices on the condition of sharing their plunder. The establishment of British functionaries in the native states first brought this atrocious system to light, and some feeble and ineffectual efforts were made to eradicate it. Lord William Bentinck was resolved to

spare no exertion to deliver India from this scourge. With this view, he created a special department for the suppression of Thuggee, and placed it under the direction of Major – afterwards Sir William – Sleeman, whose name is inseparably associated in the annals of British India with this mission of humanity. He threw his whole soul into the work, and organized a comprehensive system of operations, which embraced every province; by means of approvers who turned king's evidence, he obtained a complete clue to the proceedings and movements of the whole fraternity, as well as the means of identifying its members, and was thus enabled, with the efficient staff of officers whom he had the discernment to select, to take the field simultaneously against the various gangs in every direction. It was not among the least important results of the establishment of one paramount authority throughout the continent of India, that the officers in this department were enabled to hunt the Thugs without impediment from province to province, whether under British or native rule, and to leave them no prospect of shelter in any district. In the course of six years, two thousand of these miscreants were arrested and tried, and three fourths of them sentenced to imprisonment, transportation, or death. The confederacy was effectually broken up, and travelling in India ceased to be dangerous. These efforts were crowned by the establishment of a school of industry at Jubbulpore, for the Thugs who had turned approvers, and for the children of convicted offenders. The men were ignorant of any trade save robbery and murder, but in the factory they were instructed in every branch of manufacture, and became skilled artisans, capable of earning an honest livelihood by their labour. The children, instead of being trained to crime, were taught the rudiments of learning and trade, and fitted to become useful members of society. The scene of cheerful and industrious activity which the institution exhibited, viewed in contrast with the former occupation of its inmates, was calculated to afford the most grateful reflections to the mind of the philanthropist.

Steam communication, 1830–34

The attention of Lord William Bentinck immediately after his arrival was devoted to the establishment of steam communication on the Ganges, and between India and England. Under his directions two vessels were built in Calcutta and fitted up with engines imported from England, and they performed in the brief period of three weeks the distance of eight hundred miles between Calcutta and Allahabad, which had ordinarily occupied three months. The success of this experiment induced him to press the completion of a steam fleet on the Court of Directors, and they responded to his wishes with a laudable alacrity. The system of steam navigation on the rivers in Hindostan was thus fully established under the auspices of Government, and eventually transferred to private enterprise. A still more important object with the Governor-General was the abridgment of the voyage between England and India, which he endeavoured to promote with untiring ardour. A considerable fund had been raised for this object in Calcutta as early as 1823, and a premium was offered for any steamer which should perform the voyage between the two countries within seventy days. The “Enterprise,” commanded by Captain Johnson, was the first to compete for the premium, but she was a hundred and thirteen days in reaching Calcutta from Falmouth. The route by the Cape was consequently considered unsuited to the object. An attempt was then made by the King's Government, under the direction of Colonel Chesney, to open a communication by way of the Euphrates and the Persian Gulf, but the obstacles were found to be insuperable. It remained therefore to make an experiment by the Red Sea, and Lord William Bentinck directed the “Hugh Lindsay,” a small steamer of four hundred tons, built for Government at Bombay, to be despatched from that port on the 20th March, 1830, to Suez which she reached in a month. Three other voyages were subsequently performed by that vessel, and it was clearly demonstrated that, with suitable arrangements in the Mediterranean, the voyage from Bombay to England might be accomplished with ease in fifty-five days. But the Court of Directors raised an

objection to these experiments on the score of the great expense they entailed. Lord William Bentinck replied that the revenues of India could not, in his estimation, be appropriated to any object more conducive to the good of both countries than that of bringing them into close communication with each other. The Chairman of the Court, however, questioned whether the end in view would be worth the probable expenditure, and the India House at length positively prohibited any further employment of the “Hugh Lindsay” for the conveyance of mails. The subject was soon after brought before the House of Commons, and the committee appointed to investigate it reported that a regular and expeditious communication by steam between England and India was an object of national importance, and that measures ought to be immediately adopted to establish it by way of the Red Sea, at the joint expense of the Company and the Crown. The indifference of the India House was overruled by the higher authority of Parliament, and the “Hugh Lindsay” was again put in requisition and despatched with the mails to Suez, but the Court of Directors were lukewarm on the subject, and the enterprise, conducted without spirit, fell again into abeyance. A subscription was likewise raised at the three Presidencies to the extent of three lacs of rupees for the promotion of this object, but the plans which were devised proved abortive.

The Peninsular and Oriental Company, 1842

It was reserved for the Peninsular and Oriental Company to carry to a successful issue the comprehensive views to which Lord William Bentinck had devoted his attention, both in India and after his return to England. This Company, which was originally established for service to the ports in the Peninsula, was encouraged by a Royal charter to extend its labours to India. Commencing with a small capital and a limited object, it has gradually grown up, by a rare combination of enterprise, prudence, and perseverance, into a great national undertaking. During the quarter of a century which has elapsed since its first vessel was despatched to Calcutta in 1843, the sphere of its operations has been expanded till it embraces the whole of the eastern hemisphere. Its fleet, second only to the navies of England, France, and America, now comprises more than sixty steamers, aggregating 100,000 tons, with 20,000 horse-power. By these powerful vessels passengers, letters, books, and merchandise are conveyed, week after week, over 11,000 miles of sea to the extreme points of Sydney in Australia, and Yokohama in Japan; and the voyages are performed with a degree of speed and punctuality which would have appeared fabulous half a century ago. Mails starting from different and distant extremities have traversed half the globe and reached their destination in England, simultaneously, within an hour and a half of their appointed time. The importance of this enterprise of a private company to the interests of the mother country, and her eastern dependencies, it would be difficult to overrate. It has given a character of solidity and compactness to the British empire in the Eastern world, which enables us to contemplate its expansion without any feeling of apprehension. It has linked the most distant countries of the east with the European world, and for the first time after the lapse of more than twenty centuries, given full effect to the views of Alexander the Great when he founded Alexandria, and destined it to be the highway between Europe and Asia. It has covered the Red Sea with steamers, and converted it into an English lake. It has given a political importance to the land of the Pharaohs, which constrains England to consider the maintenance of its independence, even at the hazard of war, an indispensable article of national policy. The empire of India belongs to the nearest European power, and it is the enterprise of this Company which has conferred the advantage of this position on England. Our base of operations in Asia is the sea, but while transports were four or five months going round the Cape, our interests were always exposed to adverse contingencies. It is the spirited exertions of this Company which have brought the ports of India within four weeks' reach of the resources of

England, and completed our ascendancy in the east.

Education; Orientalism, 1813–33

The cause of education received a fresh impulse as well as a beneficial direction during Lord William Bentinck's administration. The earliest movement of Government towards the intellectual improvement of India dates from the year 1813, when on the motion of Mr. Robert Percy Smith, who had been Advocate-General in Calcutta, and, as usual, obtained a seat in Parliament on his return, a rider was added to the India Bill, directing that a lac of rupees should be appropriated "to the revival and promotion of literature, and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories out of any surplus which might remain of the rents, revenues, and profits of our territorial acquisitions." This vote was interpreted both in Leadenhall Street and in Calcutta to apply chiefly to the revival and encouragement of Hindoo and Mohamedan literature; and, considering the brahminised feelings of the period of Mr. Smith's residence in Calcutta, there can be little doubt that the grant was intended primarily, though not exclusively, for that object. During Lord Minto's administration, the only public money expended in education was devoted to the establishment of Hindoo colleges, with the view, as the Government stated, of giving the people the benefit of the beautiful morality embodied in the shasters. Mr. Dowdeswell, the superintendent of police in the lower provinces, had stated in his report, that he could not expect to obtain credit for his narrative of a thousandth part of the atrocities of the dacoits, but the only remedy he could propose was that the institutions of Mohamedanism and Hindooism should be revived, and gradually moulded into a system of instruction for these banditti. The fund voted by Parliament was allowed to accumulate for ten years, when Mr. Adam distinguished his brief tenure of office in 1823 by appointing a Committee of public instruction to suggest measures for the better education of the people in useful knowledge, and the arts and sciences of Europe, and for the improvement of public morals. This enlightened movement was soon after strengthened by the receipt of an unexpected despatch from Leadenhall Street. Seven years before this period, Lord Hastings had suggested to Mr. Charles Grant the propriety of appropriating the Parliamentary grant to the support of schools rather than of Hindoo colleges. Mr. Grant replied that there had always been in the Direction men of influence opposed to the intellectual improvement of the natives; they were gradually dying out, but it would still be premature to urge the course which the Governor-General proposed. But Mr. James Mill, the historian, the advocate of all liberal principles, now occupied an important position in the India office, where he had acquired that influence which is naturally exercised by a great mind. A proposal had been received from the Government of India to improve the Hindoo college at Benares, and the Mohamedan college in Calcutta, and to add to them a Hindoo college in the metropolis. It fell to Mr. Mill to draft the reply to this despatch, and he stated that "in professing to establish seminaries for the purpose of teaching mere Hindoo or mere Mohamedan literature, the Government bound itself to teach a great deal of what was frivolous, not a little of what was purely mischievous, and a small remainder indeed in which utility was in any way concerned. The great end of Government should be, not to teach Hindoo or Mohamedan learning, but useful learning." But Orientalism was still supreme in Calcutta. High attainments in Sanscrit and Arabic formed the surest road to promotion and honour in the public service, and the leading members of Government were naturally partial to the cultivation of those studies which had raised them to distinction. The education department, moreover,

was under the absolute control of Dr. Horace Wilson, the great champion of native literature and institutions. The Parliamentary grant was accordingly – with some trifling exceptions to save appearances – devoted for ten years longer to the promotion of studies, of which the mode, the

medium, and the scope were altogether oriental in their character, and designed to conciliate old prejudices, and to perpetuate old ideas.

New policy of education; introduction of English, 1833

Meanwhile, a predilection for English was rapidly spreading among the natives in and around the metropolis, and a demand for instruction in that language, and the acquisition of European science, was pressed with increased earnestness on the attention of the Board of Education. The Board itself was divided into two hostile parties; the Orientalists, headed by Dr. Wilson, who deprecated any interference with the patronage of Hindoo literature, and the Anglicists, as they were termed, the advocates of a European education through the medium of English, who were animated by the energy and the counsels of Mr. – now Sir Charles – Trevelyan, to whom the country is under lasting obligations for his untiring zeal at this critical period in the cause of sound and liberal education. The division in the Board brought its operations to a dead lock, and an appeal was made to Government. Mr. Macaulay, the greatest English classic of the age, was now a member of the Supreme Council, as well as President of the Board of Education, and he denounced with irresistible force the continued promotion of Orientalism, as tending, not to support the progress of truth but to delay the death of expiring error. “We are at present,” he said, “a Board for printing books which are of less value than the paper on which they are printed was when it was blank, and for giving artificial encouragement to absurd history, absurd metaphysics, absurd physics, and absurd theology.” The question was brought to an issue on the 7th March, 1835, by the resolution of the Governor-General in Council, that “the great object of the British Governmentought to be the promotion of European literature and science among the natives of India, and that the funds appropriated to education would be best employed on English education alone.” No college or school of oriental learning was, however, to be abolished, while the natives were inclined to avail themselves of it; the stipends to the teachers and students were to be continued, but not renewed; and the publication of oriental works and of translations of medical and mathematical works into Arabic, which neither the teachers nor pupils could comprehend, was at once discontinued.

Remarks on this measure, 1834

This resolution encountered a stern opposition, and the Asiatic Societies in Calcutta and in London, as well as on the Continent. came forward to deprecate it as a severe discouragement of the cultivation of oriental literature. The design of these associations was to prosecute researches into the history, antiquities, and literature of the east, and to unfold the ancient records of Asia to the European world. It was the unquestionable duty of a liberal Government to patronize such labours, and to make suitable provision from the public funds for the preservation of the ancient monuments of Indian civilization, whether in stone or manuscript; but it was a dereliction of duty to divert to the promotion of this object the scanty funds allotted to the education and improvement of the people. Nor was the patronage of the state necessary to the maintenance of Hindoo learning. It had continued to flourish for centuries without any succour from the Mohamedan princes, and there were ample funds in the country for its support, apart from those of the Treasury. To prevent the settlement of the interlopers whom the Directors could not entirely exclude from the country, they had adopted and rigidly enforced the principle, altogether novel in the history of conquest, of prohibiting their own countrymen from acquiring an interest of any description in the soil. With the exception of the estates held by Mohamedans, which were comparatively few, the whole rental of the Gangetic valley was in the hands of Hindoos, and available for the encouragement of their institutions. The celebrity of all religious, social, and family festivals, in popular estimation, depended on the entertainment of brahmins, and the

gifts bestowed on them were proportioned to their literary reputation. Hence it was impossible to discover how the withdrawal of Government aid from the two or three colleges it had established could affect in any perceptible degree the cultivation of the sacred language of the Vedas. The encouragement of English was, on the other hand, one of the highest blessings which could be conferred on the country. It unlocked to the natives all the stores of European knowledge and science, and brought them into association with the highest civilization in the world. It shook the fabric of error and the empire of superstition which had survived the lapse of twenty-five centuries. It introduced a flood of light into the minds of the natives upon every object of human enquiry, and communicated to them the secret of our own greatness. The judicious resolution of Lord William Bentinck has been followed by a degree of success which exceeds the most sanguine expectations, and the language and literature of England have now become as familiar to the upper ten thousand, as ever the language of Rome was within the sphere of her conquests. The only drawback connected with it has been the neglect of vernacular education, through which alone the great body of the people can receive the elements of mental improvement. But public measures in every department in India depend so greatly on the idiosyncrasies of those who happen, for the time, to be in power, that there is no reason to despair of seeing this error remedied at some future time, and the million rescued from the barbarism of ignorance.

General Assembly's institution, 1838

The cause of sound and enlightened education was materially promoted during this period by the efforts of the General Assembly, under the superintendence of the Rev. Dr. Duff. He proceeded to India in 1830, with the view of establishing an institution which should combine secular instruction of the highest order, through the medium of English, with an unreserved communication of the doctrines and morals of Christianity, which were altogether, excluded from the Government colleges. The tuition imparted in the institution he founded embraced every branch of a liberal education, and was in no respect inferior to that which the colleges supported by the state professed to bestow. He and his colleagues made no secret of the fact that their system of education was inseparably associated with Christian instruction, but their rooms were soon crowded with twelve hundred scholars, and the teachers were regarded with feelings of distinguished confidence. The eminent success of this institution is to be traced to the sturdy energy, and the classical endowments of its conductors, who are entitled to public gratitude for their exertions to elevate the native character, and to give the country the benefit of a complete education, in every department of human pursuit.

The Medical College, 1833

No attempt worthy of the Government had been made before the time of Lord William Bentinck to supersede native quackery by the cultivation of medical science. In the Sanscrit and Arabic colleges the systems of Galen and Hippocrates were taught in combination with a smattering of European ideas; and a public institution existed, though of a very inferior description, for training native doctors, as they were called, but they never rose above the dignity of apothecaries. As the crowning act of his administration, the Governor-General founded a medical college in Calcutta in the month of March, 1835, to afford, through the medium of English treatises and English lectures, a professional education to the natives in every branch of the science, as cultivated in Europe. The most eminent medical officers in the service were placed in the professors' chairs; a library and a museum were established, and every appliance necessary to place it on the same footing of efficiency as European colleges was furnished with a bountiful hand. Sage men of long experience and reputed wisdom confidently predicted the

failure of the experiment. Contact with a dead body had for twenty centuries been considered a mortal pollution by the Hindoos, and it was traditionally affirmed that native prejudices were invincible. But these anticipations, when brought to the test of actual practice, proved, as usual, to be the phantoms of a morbid imagination. Natives of high caste were found to resort freely to the dissecting room, and to handle the scalpel with as much indifference as European students. In the first year they assisted in dissecting sixty subjects, and the feeling of ardour with which they entered on these studies, and the aptitude for acquiring knowledge which they exhibited created a universal feeling of surprise. The downfall of one prejudice paved the way for the removal of others. In 1844, Dwarkenath Tagore, one of the most liberal and enlightened native gentlemen of the time, offered to take two of the students with him to England, and complete their professional education at his own expense. His views were cordially seconded by Dr. Mouat, the secretary of the college, to whose ability and energy the infant institution was indebted in no small measure for its efficiency, and he persuaded two of the most advanced pupils to accept the offer and cross the "black water," though at the risk of forfeiting the privileges of their caste. They entered the medical schools in London, and successfully competed with the best scientific students in England.

Sir John Malcolm Governor of Bombay, 1827

The eminent services of Sir John Malcolm during a career of forty years in India, were tardily rewarded in the year 1827 with the Government of Bombay. His political opinions carry little weight in comparison with those of Munro, Elphinstone, Metcalfe, and others, but no officer of the Company ever possessed in a higher degree the happy art of conciliating the attachment of the people. He did not, like too many of his countrymen, keep himself aloof from the natives, but associated with them with all that freedom and ease, and that genial humour for which the French in India have always been more distinguished than the English. In the provinces of Central India he was remembered with the same feelings of affectionate veneration which Bussy had excited in the Deccan, of whom it was remarked, that fifty years after he had left Hyderabad, the highest honour which the common people could pay to a European was to address him as Mons. Bussy. In the peaceful condition of Western India at the period of Sir John's appointment there was little scope for the exercise of his political or diplomatic talents, and his administration might have passed almost without observation, but for the collision which took place between the Supreme Court and his Government.

Collision of the Supreme Court and Gov, 1832

For a quarter of a century Bombay had been content with the court of a Recorder for the administration of English law, and the bench had been adorned with the genius of Sir James Mackintosh. In 1823, the growing importance of the town and port rendered it advisable to establish a Supreme Court of Judicature, with three judges, as at Calcutta and Madras. The recollection of the unseemly and perilous struggle between the Court in Calcutta and the Government, in the days of Hastings and Impey, might have suggested the necessity of preventing a similar conflict by a clear definition of the powers and jurisdiction of the new court. But the same error was repeated, and with the same mischievous results. The new judges gave the utmost latitude of construction to the indefinite powers conferred on them by their charter, and manifested the same disposition to treat the Government of the Company with contempt, and to encroach on its authority, which had been exhibited in Calcutta fifty years before. In their "thirst for jurisdiction," as the great historian of India remarked of the Supreme Court of Bengal, "they availed themselves of the hooks and handles which the ensnaring system of law administered by them afforded in abundance, to draw within their pale the whole transactions of the country." It was in

reference to these remarks of Mr. Mill, that the Bombay Chief Justice went out of his way to assert that “if the whole of what

Mr. Mill had said about judges and law had been inserted in the Bombay Courier, he knew where the editor of that paper would be now, or in a day or two.” The conflict between the two powers was brought to an issue in 1829. A Mahratta youth of fourteen, Moro Roghoonath, was left at the decease of his parents under the guardianship of his uncle, Pandoorang, a man of the highest family connections, and a kinsman of the late Peshwa. A near relative of the girl to whom Moro had been affianced, was anxious to obtain the wardship of the wealthy minor, and was advised by the lawyers to prefer his suit to the Supreme Court. He accordingly proceeded to Bombay, and under their directions made affidavit that the youth was compulsorily detained by Pandoorang at the risk of his life, and a writ of habeas corpus was immediately granted to bring him up to the Presidency. Under the instructions of Government, the Magistrate resisted the execution of the writ, alleging that neither the uncle nor the nephew had ever resided, or been possessed of property, within the jurisdiction of the Supreme Court, and were not therefore amenable to its process. The judges maintained on the contrary, that their Court had been invested with all the powers of the Court of King’s Bench, and was bound to watch over the liberty of the King’s subjects to the farthest limits of the Presidency. Sir John Malcolm addressed a temperate and conciliatory letter to them, pointing out the injurious consequences of a contest between the Royal Court and the Company’s Government, and proposing the suspension of all proceedings pending a reference to England. This communication was treated as an unconstitutional and a criminal proceeding, and denounced as an insult to the majesty of British law. During these discussions two of the judges died, but Sir John Grant, who was left alone on the bench, continued to multiply the issue of writs. A criminal, who had been sentenced to imprisonment for two years by the Sessions Judge of one of the districts in the interior, was released by order of the Supreme Court. The Guickwar refused the payment of a loan due to the Company, under the impression that the Supreme Court had power to release him from the obligation. The authority of Government was shaken to its foundation, and it became necessary to vindicate it in the eyes of the natives. Sir John Malcolm deemed it his duty to resist the encroachments of the Court with the same vigour which Warren Hastings had exhibited under similar circumstances in Calcutta. He placed a guard at the door of Pandoorang’s residence to prevent the entrance of the constable, and he issued a circular to all the Company’s Judges and Magistrates directing them to make no return to any of the writs of the Court. Sir John Grant, finding the Government immovable, closed the doors of the Court, and they remained shut for two months. The question was referred to the Privy Council in England, and his proceedings were pronounced to be utterly repugnant to law. Lord Ellenborough, the President of the Board of Control, in his private letter to Sir John Malcolm, also expressed his strong disapprobation of the measures of the Court, and informed him that he had appointed two other judges, one of whom was the Advocate-General at Bombay, and that no further mischief was to be apprehended, as “Sir John Grant would be like a wild elephant led away between two tame ones.” Elated with this communication, Sir John Malcolm read it aloud at his own breakfast table, amidst the acclamation of thirty or forty guests. A copy of it found its way – it was said mysteriously – into the Calcutta newspapers, and created a profound sensation throughout the country. The Governor was chagrined at the position in which he was placed by this disclosure of a private communication, but instead of ascribing his mortification to his own indiscretion, attributed it to the liberty which Lord William Bentinck had given to the press, which was to him an object of abhorrence. Sir John Grant immediately retired from the Bombay bench.

CONFLICT OF THE COURT OF DIRECTORS AND THE BOARD, 1832

The current of Indian affairs in England at this period, presented some singular exhibitions, both at the Board of Control and in Parliament. It has been already noticed that the debt due by the Nizam to the banking house of Palmer & Co. was liquidated in 1823, and that they became insolvent within a twelvemonth, when their affairs were placed in the hands of trustees. During the discussions on this subject at the India House, the Court of Directors had solicited the opinion of three of the most eminent counsel in England whether British subjects in India were not debarred by Act of Parliament from enforcing claims for interest beyond twelve per cent., and they affirmed that such claims could not be sustained. Soon after, Lord Hastings brought the question forward in the House of Lords and it was referred to the decision of the twelve judges, who decided that the limitation of the rate of interest by Parliament did not apply to loans made to the subjects of independent princes by British subjects residing in their dominions. The opinion of counsel was sent out, forthwith, to India from the India House with alacrity, and the Resident at Hyderabad was directed to give it all due publicity. This notification ought, in all fairness, to have been withdrawn as soon as the judges had pronounced that opinion illegal, but it was allowed to continue in force, and the trustees of Palmer & Co. complained, not without reason, that under these circumstances they found it impossible to realize the debts due to the estate. The chief debtor was Moneer-ool-moolk a near relative of the Nizam, and the ostensible prime minister He had made over some of his jageers to Palmer & Co., and the rents had been duly collected and regularly applied to the liquidation of his debts, which had been fully effected, together with interest, at the rate of twelve per cent. The remainder of their demand consisted simply of a balance of interest beyond that rate. Decrees had been obtained for this claim in the local courts, but it was difficult to execute them against one who occupied so high a position in the state without strong external pressure. Application was accordingly made on the subject to the Court of Directors, who drafted a reply in July, 1830, in which the Resident was forbidden to interfere in the matter. But the President of the Board of Control took a different view of the case, and returned the draft with this material modification, that the Resident was directed not only to inform the Nizam that the Government would hear with much satisfaction that the house had recovered their just claims from their private debtors, but also to adopt measures to promote this object. The Court remonstrated against these alterations, which reversed the policy they had resolutely maintained for ten years, of refusing the influence of their Government in reference to the private debts of the firm. They justly argued that the exorbitant interest which constituted the present claim arose from the risk with which the transaction was originally attended, and from the uncertainty of payment, both of which ceased to exist with the interposition of Government. The remonstrance was not without effect, and the despatch was withheld.

Writ of Mandamus, 1832

The question slumbered till the beginning of 1832, when the Whigs being in office, the Court of Directors were desired by the Board to prepare a despatch in the room of that to which they had formerly raised objections. But when it arrived in Cannon Row, the President of the Board drew his fatal pen across thirty-three out of its thirty-seven paragraphs, and substituted ten of his own. In this amended despatch the Court were required to declare their conviction that the joint interposition of our Government and that of the Nizam would be requisite to bring the matter in dispute to a final settlement. The Nizam was to be allowed the alternative of an arbitration, with an umpire nominated by Government, or a commission appointed by the Governor-General. The Court declined to sanction the authoritative interference of their Government in the adjustment of a debt which they considered unjust, and they refused to adopt the amendments. The President disclaimed any idea of bringing the

authority of Government to bear on the case, and made some trivial alterations in the despatch; but the Court justly remarked that in the relative position of the parties at Hyderabad, no interference of the head of the Government of India could be divested of the character of authority; and they proceeded to cancel both the amended and the original despatch. The correspondence on this subject was extended over eight months, but nothing could shake the resolution of the Directors. They persisted in refusing to sign and transmit the despatch, and at length informed the President that "they had nothing to do but to leave the law to take its course." He immediately applied to the Court of King's Bench for a writ of mandamus to compel the Directors to adopt the despatch as dictated by the Board, and they were constrained to yield to this irresistible argument; but at the same time they recorded their solemn protest against the orders which they had been compelled to sign as their own act and deed. The debt of the minister was settled by Mr. Macleod, the umpire appointed by Government, but upon the preposterous principle of allowing interest against the debtor to the utmost farthing, and refusing interest on the payments which had been successively made by him; and the transaction ended with the same disregard of justice with which it had been commenced and carried on.

The Lucknow Bankers, 1832

During these transactions, a still more objectionable case was brought under discussion in England. Between the years 1792 and 1797 the Nabob of Oude had borrowed large sums of money from Europeans and natives for his voluptuous pleasures. The chances of repayment were very remote, and altogether uncertain; and the charge for interest was proportionately high. He was at length awakened to a sense of his increasing embarrassments by the representations of the Resident, and began in earnest to compound with his creditors. The Europeans were offered better terms than the natives; but all parties were prevailed on to accept the composition, with the exception of the eminent banking firm of Monohur Doss, from whom he had borrowed about eleven lacs of rupees for the support of his wild beasts, and for the "cattle department." Soon after the king died, and his successor repudiated the debt. The bankers eventually engaged the services of a Mr. Prendergast who had amassed a fortune as a trader at Lucknow, and, like Mr. Paull, obtained a seat in Parliament on his return to England. He brought the claims of his clients before the House for the first time in 1811, but though he met with no success, he continued for twenty years to make the most strenuous efforts in a spirit of indomitable perseverance to promote their suit, both in Parliament and in the courts of law. But the Court of Directors invariably refused to enforce an unacknowledged and unproved claim against one who had not contracted the debt, and whom they recognized and treated as a sovereign prince. In this equitable decision they were fully supported by Lord Hastings, who, though he had on one occasion directed the Resident to mention the claim to the Nabob, yet, finding him determined to resist it, at once decided that it was not a case in which the British Government would be warranted in affording any official support. Mr. Canning went still further, and directed the Court to inform the Governor-General that they were so clearly aware of the difficulty of divesting a friendly communication to a weaker power of the character of authority, that they positively forbade the subject to be brought again before the Nabob by any of the officers of Government. But in 1830 the President of the Board of Control was persuaded to lend a favourable ear to the demands of Mr. Prendergast's clients, now swelled, by the accumulation of interest, to a crore of rupees. He affirmed, that while he duly honoured the principle of noninterference, he considered the present an exceptional case, and that it was his determination to make our representations to the king of Oude, "direct and formal." It was the day after the Court had refused to adopt the obnoxious despatch to Hyderabad, regarding the claims of Palmer and Co., that they were

desired by the Board to prepare a despatch to the Governor-General directing him to use his utmost efforts to procure the payment of the alleged debt from the king of Oude. The Court felt that any expression

of the wishes of Government could only signify compulsion, either by intimidation or by force, and, instead of drawing up a despatch, prepared a vigorous remonstrance, in which they pointed out the impolicy and the injustice of a course which would open the door to endless claims, not only at Lucknow, but at every din-bar in India, and beggar half its princes. A despatch was then drawn up in the office of the Board of Control, and transmitted for the acceptance of the Directors, but they passed a resolution, without a single dissenting voice, that this interference with the king of Oude was unjust, inconsistent, and mischievous, and they refused to act, though only ministerially, on the orders of the Board, until compelled to do so by process of law. Mr. Tucker, the deputy chairman, and five of his colleagues, went so far as to declare that even under the pressure of a mandamus they would not consent to affix their signature to an order which was nothing less than “an act of spoliation towards an ancient and prostrate ally.” They felt that in India, where the intricate machinery of the home Government was not understood, the act would be regarded as emanating from them, and that the odium of it would be attached to their administration. The steady resistance of the India House produced the happy effect of inducing the President to pause on the threshold of a conflict, which must have been damaging alike to the Ministry and to the Government in India, and the question was allowed to die out.

The Nozeed affair

The anomalous proceedings of the two Houses at this period in what was termed the “Nozeed affair,” exhibited a very disreputable abuse of Parliamentary influence. In 1776, Mr. Hodges, a member of the council at Masulipatam, lent money to the zemindar of Nozeed without the knowledge of the government of Madras, and in direct contravention of the orders of the Court of Directors. In June, 1777, in a communication to Madras, the Court renewed in more peremptory language their former injunction that none of their servants should advance loans on mortgage of lands. Two years after, Mr. Hodges presumed to take a mortgage of a portion of the zemindar’s estate for his debt, and the transaction received the support of the Governor and Council of Madras. The whole zemindaree was soon after taken over by Government for arrears of revenue, and an application was made in 1784 to Lord Macartney, then Governor of the Presidency, on the subject of these loans. He considered that the whole transaction was in every respect unwarranted in principle and pernicious in its tendency; but out of delicacy to the preceding Government, which had sanctioned this infraction of the Company’s rules, recorded his opinion that the creditors were entitled to some consideration on resigning the district they had so long and so irregularly held on pledge. The Court of Directors, however, resisted every solicitation to entertain the claim. A permanent settlement of the estate was made in 1803, when it was restored to the zemindaree family, leaving them to make any settlement they could effect with the creditors. Nothing further was heard of the claim for nearly thirty years, till the grandson of Mr. Hodges, having some influential friends in Parliament, induced them to bring in a bill to compel the Company to make good the whole demand, which was stated to amount to two lacs of rupees. It will be remembered that when the claims of the nabob of Arcot were introduced to the House, fifty years before, a commission was appointed to investigate their validity, and that ninety per cent. of the amount turned out to be fictitious; but in the present instance, the House passed the bill enjoining the Court of Directors to pay the full amount of this private and illegal claim, without enquiry, from the revenues of India. In the House of Lords it

encountered the most strenuous opposition from Lord Ellenborough, and from the Lord Chancellor, Lord Brougham, who deprecated the interference of the Legislature to enforce a claim, “contaminated in its origin, and illegal in its prosecution; “but it passed with a majority of two to one.

Financial Results of Lord William Bentinck’s Administration, 1828–1835

With the exception of the Coorg campaign, which was concluded in ten days, the administration of Lord William Bentinck was a reign of peace, and it produced the usual result on the finances of India. The reductions which he effected in the various departments of expenditure, combined with an improvement of the sources of revenue, extinguished the deficit of a crore of rupees which he found on his arrival, and enabled him to leave a surplus of a crore and a half on his departure in 1835. The magnificent expectations with which the trade of India had been thrown open to the nation in 1813, were but partially realized in the following twenty years, and the returns during Lord William Bentinck’s administration exhibited a decrease both of exports and imports.

Fall of the great Houses in Calcutta, 1833

This was to be attributed, in a large measure, to the great crisis of 1833, which brought down the whole commercial fabric of Calcutta. During the administration of Warren Hastings some free mariners, as the licensed interlopers were designated, opened houses of business in Calcutta on a humble scale, and gathered up the fragments of the trade to England, which dropped from the great monopoly of Leadenhall street. They embarked, moreover, in the country trade, as it was called, from one Indian port to another, and from Calcutta to the eastward, as well as in the internal traffic of the country. The famine on the Coast occasioned by Ryder Ali’s irruption into the Carnatic in 1780, created a large demand for freight and the new houses commenced shipbuilding, first at Sylhet and Chittagong, and eventually in Calcutta. They established indigo factories in the interior of the country and drove the drug which had hitherto been furnished from other countries out of the European markets. Their transactions expanded and their prosperity increased with the growth of British power. They acquired the confidence of the native and the European community, and became the bankers of the civil, military, and medical services, whose savings were transferred, month by month, to their coffers, and whose balances were annually augmented, through the process of compound interest. A desk at one of those firms was considered more valuable than a seat in Council, and the retiring partners drew out colossal fortunes, with which, on their return to England, they bought boroughs, and seated themselves in Parliament. The opening of the trade in 1813, brought out to Calcutta a bevy of new adventurers, who were regarded at first with a feeling of contemptuous indifference by the stately old houses. But they were animated with the vigour of youthful enterprise, and gradually undermined the established firms, drawing away the most profitable branches of their business, and leaving them saddled with their old factories and ships which were not worth a fourth of their original cost. The confidence of the public, which had continued unshaken for half a century, received a rude shock in 1830 by the unexpected collapse of the great firm of John Palmer & Co., usually styled the prince of merchants. The other houses, five in number, continued to struggle with increasing embarrassments, and were enabled to remain afloat as long as the credulity of their constituents provided them with deposits sufficient to meet the withdrawal of funds. But the candle at length burnt down into the socket, and they went one by one into the Insolvent Court, which engulfed sixteen crores of rupees. A large portion of this sum consisted of the savings of the services, and the extent of the calamity may be estimated from the remark of Lord William Bentinck, who had heard, he said, to his utter surprise, that a civilian, when pressed to make a purchase after the failures, had actually replied that he could not afford it.

Remarks on Lord W Bentinck's Administration, 1886

Lord William Bentinck was residing at the sanitarium of Ootacamund, in the Neelgeree hills, when the new charter reached India, but his health had been so seriously impaired by a constitutional malady, that his physicians considered it unsafe for him to descend into the plains till the cold weather had set in. Sir Frederick Adam, the governor of Madras, and Mr. Macaulay and Colonel Morrison, who had been appointed members of the Supreme Council, were accordingly summoned to join him in the hills, where the first Council under the new Act was

held, and the new Government constituted. These proceedings were unavoidably deficient in legal form, but the defect was covered the next year by an Act of indemnity. Lord William Bentinck returned to Calcutta in November, and embarked for his native land in March, 1835, after having held the reins of Government for nearly eight years. His administration marks the most memorable period of improvement between the days of Lord Cornwallis and Lord Dalhousie, and forms a salient point in the history of Indian reform. He repudiated the stationary policy of the Government, and introduced a more liberal and progressive spirit into every department of the state. With the intuition of a great mind, he discovered the weak points of our system of administration, which was becoming effete under the withering influence of routine, and the remedies he applied went to the root of the disease. He infused new blood into our institutions, and started them upon a new career of vigour and efficiency. The marked difference which they presented in the thirty years succeeding his Government, as compared with the thirty years which preceded it, was due entirely to the impulse of his genius, which became the main spring of a long succession of improvements. He was not less bold in the conception of his plans than resolute in the execution of them, to which he was sometimes obliged to sacrifice the amenities of life. He earned the gratitude of the natives by opening an honourable career to them in the government of their own country, and he was rewarded with the gratitude of Christendom for the moral courage he evinced in putting down Suttees. He has been charged with a love of innovation; but, even if the imputation be correct, such an error is far less injurious to the interests of society than the dull stagnation into which the Government was sinking, and which was an unerring symptom of decay. The great defect of his administration was the fluctuation of his political policy; but, the renewal of the non-intercourse system was ordered from England, and though at first supported by his own views, it was gradually modified, as the exigency of circumstances appeared to demand the adoption of another course for the protection of the people, as in the cases of Coorg and Mysore. The natives vied with the European community in commemorating the blessings of his administration, and united in raising a subscription for the erection of his statue in Calcutta. The pedestal was enriched with groups representing the great and good features of his government, and bore an inscription from the classic pen of Mr. Macaulay: "This statue is erected to William Cavendish Bentinck, who during seven years ruled India with eminent prudence, integrity, and benevolence; who, placed at the head of a great empire, never laid aside the simplicity and moderation of a private citizen; who infused into Oriental despotism the spirit of British freedom; who never forgot that the end of government is the welfare of the governed; who abolished cruel rites; who effaced humiliating distinctions; who allowed liberty to the expression of public opinion; whose constant study it was to elevate the moral and intellectual character of the Government committed to his charge; – this monument was erected by men who, differing from each other in race, in manners, in language, and in religion, cherish, with equal veneration and gratitude, the memory of his wise, upright, and paternal administration."

Unit 2: Evolution of Law and Legal Institution

DEVELOPMENT OF PERSONAL LAWS, DEVELOPMENT OF CRIMINAL LAW, DEVELOPEMENT OF CIVIL LAW IN PRESIDENCY TOWNS, MUFASSIL

What is common law? The expression 'Common Law of England' refers to those Unwritten legal doctrine embodying English custom and English 'traditions, which have been Developed over the centuries by the English courts. So understood It would not Include and Would be different from the English statutes Law, which has from time to time modified the Common law. But the English brought into India not only the mass of legal rules strictly Known as the common law, but also their traditions, outlook and techniques In establishing. Maintaining and developing the judicial system.

The history of present day Indo-British Jurisprudence commences with he formation of the London East India Company In 1600 in the reign of Queen Elizabeth I. The Charters of Queen Elizabeth granted to the Company In the years 1600 and 1609 gave the power to them to make and constitute such and so many reasonable laws, constitution, orders and ordinances as to them so seems necessary .The position of the Company's factories In India was at that time some what anomalous. They were generally a part of the dominion of the Mughal. Yet since the very early days, the Company had obtained the authority of the British Crown to administer justice and constitute judicial authorities fn the areas covered by these factories, In order that they might be able to administer justice according to their own notions and in accordance wIth the laws which they were familiar, the Company had endeavoured to obtain permission to administer their own laws in these areas.

In 1661 the Charter of Charles II gave to the Government and Council of several places belonging to the Company the power to judge all persons belonging to the said Government and Company according to the laws of this kingdom and to execute judgment accordingly.

Almost contemporaneously with this Charter came the Cession of the Island of Bombay by the Portuguese to the English and Its lease by Charles II to the East India Company In 1668, Prior to that this was the territory which had been under Portuguese rules and Portuguese law governed It.

The Charter of Charles II transferring the Island of Bombay to the Company, required the Company to enact laws “consonant to reason and not repugnant or contrary to” and “as near as may be agreeable to” the English laws. The charter also directed that the courts and their procedures should be like those that the established and used in the realm of England. Rules for the Civil Government and equal distribution of justice upon the Island were drafted in England by the Company's Law Officers and after the approval of the Solicitor General a draft was settled and engrossed to be sent out to India In 1669. These laws provided for the establishment of a court of judicature for the decision of all suits and criminal matters under a Judge to be appointed by the Governor and Council and for all trials in the court to be by a jury of 12 Englishmen, except when any party to the dispute was not English, In which case the jury was to be half English and half non-English. It also made

provision for regular sitting of the court, the recording of its proceedings In registers, the fixing of reasonable court-fees and for a right of appeal from the court of judicature to the Governor and Council it was constituted the Supreme Court in the Port and Island. There is little information about the administration of criminal justice during this period and the application of laws of the Company. But the correspondence between Bombay and Surat, where the factory of the Company was situated and where the Governor resided contains references of the trial by jury, of crimes, like theft, murder and mutiny. , Thus, were laid the foundation In the Seventeenth Century I although In the small area of the town and Island of Bombay of the application of English laws to Indians residing in the Presidency towns and of the system of administering justice fostered by the common law in England.

'Common Law In England' and 'Common Law In India' are distinct expression.

Whereas the former referred to the common law prevalent in England, the latter expression referred to the common law expanded by English in India. The common law, i.e., unwritten legal doctrines embodying English customs and English traditions developed over the centuries by English courts was in the beginning applied to the areas which later became the Presidency towns of Calcutta and Bombay.

Common Law In Mufassil

Then the common law trickled down to Mufassil. Between 1686 and 1694 the Company purchased certain villages in Bengal with the consent of Nawab of Bengal and acquired the status of a Zamindar in regard to those villages. As the Zamindar the Company held Zamindar's courts exercising both civil and criminal jurisdiction. These courts derive their authority from the Mughals, as the Company held this Zamindari from them. The law administered and the procedure followed in these courts were similar to those in the courts where other Zamindars exercised the jurisdiction.

There was a rise of the factories at Bombay, Madras and Calcutta, which in course of time grew into three Presidency towns. The company gradually increased the area of its supervision and control over the places surrounding these growing factories which in contradistinction to the Presidency towns were lied the Mufassil. These Presidency towns played the leading role in the introduction of the common law into india .

Presidency town & adalat system

History comprises of the growth, evolution and development of the legal system in the country and sets forth the historical process whereby a legal system has come to be what it is over time. The legal system of a country at a given time is not the creation of one man or of one day but is the cumulative fruit of the endeavor, experience, thoughtful planning and patient labour of a large number of people through generations.

With the coming of the British to India, the legal system of India changed from what it was in the Mughal period where mainly the Islamic law was followed. The legal system currently in India bears a very close resemblance to what the British left us with. As per the needs of the changing times changes and amendments were made, but the procedure which is followed not has its roots

in the era of British-India. Little did the traders of the English East India Company while establishing their trade in India know that they would end up establishing their rule for about 200 years here. But the evolution of law as it is today did not come about in one go altogether. It was the Presidency Towns individually that were first affected by this change in hands of the governance of India after which the steps towards amalgamation of the judicial system were taken by the Charters of 1726 and 1753. To improve upon this, under the Regulating Act of 1773 Supreme Courts in the Presidency Towns and then under the Act of 1798 the Recorder's Courts at Madras and Bombay were established. These were ultimately replaced by the establishment of the High Courts under the Act of 1861, which are still running in the country. It was only after independence in 1950 that the Supreme Court was established. Reforms and codifications were made in the pre and post independence eras and are still continuing. Thus law, as we know today has evolved through a complex procedure which is discussed in detail herein below.

Ancient Period

India has a golden history of over 5000 years. Therefore a comprehensive study of Indian legal history comprises of the historical process of development of legal institutions in Hindus and Muslim periods.

Pre-Mughal Era

The various sources of law relied upon by the kings at that time were shrutis, smritis, puranas, dharmasutras, dharmashastras, etc. The Arthashastra and Manusmriti were influential treatises in India, texts that were considered authoritative legal guidance.

Ancient India represented a distinct tradition of law, and had a historically independent school of legal theory and practice. The political structure in the Vedic Period consisted of kingdoms, each tribe forming a separate kingdom. The basic unit of political organization was the kula (family). A number of kulas formed a grama (village), Gramani being the head. A group of gramas formed a vis (clan) and a number of vis formed the jana (tribe). The leader was Rajan (the Vedic King). The king (raja) was the supreme head of the legislative, executive and judiciary branches. The members of the council of minister could give advice to the king, but final decisions were left to the king. The ministers and other officials were directly appointed by the king. The sabha and the samithi were responsible for the administration of justice at the village level.

According to Brihaspati Smiriti, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadivivaka, or adhyaksha; and at the top was the King's court.

Early in this period, which finally culminated into the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearances of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition.

Mughal Era

The ideal of justice under Islam was one of the highest in the Middle ages.

The administration of justice was regarded by the Muslim kings as a religious duty.

Sources of Islamic Law are divided into Primary and Secondary Sources.

Quran is the first and the most important source of Islamic law. It is believed to be the direct words of God as revealed to Muhammad through angel Gabriel in Mecca and Medina. Muslim jurists agree that the Quran in its entirety is not a legal code.

Sunna is the traditions or known practices of Prophet Muhammad, recorded in the Hadith literature.

Quran justifies the use of Sunna as a source of law.

Ijma and Qiyas are the secondary sources of Islamic law. There are 72 Muslim sects in all with the Shia sect being the most popular in India Under the Moghal Empire the country had an efficient system of government with the result that the system of justice took shape. The unit of judicial administration was Qazi. Every provincial capital had its

Qazi and at the head of the judicial administration was the Supreme Qazi of the empire (Qazi-ul-quzat).

Moreover, every town and every village large enough to be classed as a Qasba had its own Qazi. During this period, the personal laws of the non-Muslims were applied in civil matters, but the criminal law was the Islamic in nature. Whenever there was a conflict between Islamic Law and sacred laws of the Hindus, the former prevailed.

Medieval Period 1600-1726

The charter of 1600 established the English East India Company in India. as per the charter of 1661 the English and the Indians residing under the Company came under its jurisdiction.

From the period ranging from 1661 till 1726, laws of equity and justice in conformity with the laws in England were followed. There was no codified law.

In Calcutta, the judicial system was based on the Company's authority as a zamindar. This continued till the charter of 1726 was passed.

Before Madras attained the position of a Presidency in 1665 it had two courts namely, the Choultry Court and the Court of the Agent and Council.

By the charter of 1668 the Company was conferred powers to make laws for the island of Bombay.

From this period till the passing of the Charter of 1726, there were civil and criminal courts in these presidencies. In madras, there was the choultry court, the mayor's court and the admiralty court as well.

On the other hand, in Bombay till 1726 judicial systems were not stable and kept changing. Earlier there were courts like the Court of Judicature (1672) which dealt with civil and criminal cases and matters of probates and testaments, and a Court of Conscience to decide petty cases.

There was a system of appeals as well. In madras the appeals from the Mayor's Court were filed to the Governor and Council. On the other hand, Bombay had Deputy-Governor and Council as its appellate Court. In Bombay this system elapsed due to lack of independence of the judiciary. In the following judicial system of Bombay an admiralty court was established with a Judge-Advocate as its head. This court apart from its existing powers enjoyed civil and criminal

jurisdiction. Later a court of Judicature was established under this system after which the Admiralty Court lost its ground. The Admiralty court in Madras also became irregular by this time. Another system came about in 1718 in Bombay and this gave representation to the Indians as well by appointing 4 Indian Judges, known as Black Justices, in the Court.

Charter of 1726

In the subsequent years the Charter of 1726 was passed which granted special powers to the Company as was requested by it. Under this Charter the Mayor's Court was established. This superseded all the other courts of Bombay, Madras and Calcutta. This was a court of record.

The Laws under this Charter were also applied in conformity with the laws in England on the principles of equity and justice. Appeals from this court could be filed in the court of Governor and Council and further in the court of King-in-Council in England.

Requisite independence was assured to the Mayor's Courts but this along with their strict adherence to English laws became the cause of some difficulties like hostility between the Mayor and the Governor and Council, and non clarity regarding jurisdiction of the Mayor's Court in respect of the natives. The judiciary did not possess expert staff for administering justice and the executive did not have respect for the judiciary

This system remained suspended while the French had occupied Madras which they later surrendered in 1749. Then the Charter of 1753 was passed in order to remove the difficulties of the preceding Charter.

This charter put the Mayor under the subjection of the Governor and Council in order to avoid disputes between the two. Suits and actions between the natives were expressly excluded from the jurisdiction of the Mayor's Court unless both parties submitted them to its determination, and a Court of Requests was created to hear small civil cases. The defects of this Charter can be summarized by mentioning the executive ridden judiciary, failure of impartial judgment, judiciary suffering from lack of legal knowledge, limitation of the jurisdiction of the Courts to Presidency Towns, and no representation of Indian Judges as opposed to earlier provisions in some courts in Bombay.

The Company's financial break-down was the immediate cause for the enforcement of the Regulating Act of 1773. Section 13 of the Act provided for the establishment of a Supreme Court at Calcutta. The court, also a court of record with the power to punish for its contempt, had civil, equity, criminal, ecclesiastical and admiralty jurisdiction. Appeals against decisions of this Court and through the Court could be filed in all civil and criminal cases respectively before the King-in-Council. The establishment of this Court was a welcome as it was the first British Court in India consisting of lawyers, its jurisdiction was so wide that it covered all kinds of legal wrongs and that since all British subject came under its jurisdiction it ensured rule of law.

The Act of Settlement 1781 aimed at removing the ambiguities created by the former Act, but was not successful in its entirety.

With the increase in activities of the Company an urgent need of a lawyer-judge was felt to deal with new cases. The Charter in 1798 did the needful by establishing the Recorder's Court at Madras and Bombay. This Court had similar jurisdiction and was subject to the same restrictions

as the Supreme Court of Calcutta. In 1801 and 1824 Supreme Courts were established in Madras and Bombay respectively. The Constitutional powers, functions, limitations and jurisdiction of these courts were the same as that of the Supreme Court at Calcutta.

A parallel system of judiciary was running in the mofussil areas. The Company attained the Diwani of Bengal, Bihar, and Orissa in 1765. As per the plan of 1772 under Warren Hastings, the Courts of Original Jurisdiction were Mofussil Faujdari Adalat, the court of criminal jurisdiction; Mofussil Diwani Adalat, the court of civil jurisdiction and Small Cause Adalat. Under the Appellate Courts we had Sadar Nizami Adalat, the criminal court of appeals; Sadar Diwani Adalat, civil court of appeals. The Collectors started monopolizing the trade in the districts putting the end to this system and giving rise to a new plan of 1774.

Under this system, diwan or amil, acted as the judge of the Mofussil Diwani Adalat. The Mofussil areas of Bengal, Bihar and Orissa were divided into six districts with a Provincial Council in each district acting as the Appellate Court. The Council started creating difficulties and monopolizing trade within its jurisdiction. This led to an end of this plan as well and a new plan of 1780 was formulated.

This plan separated the executive from the judiciary. Provincial courts were left with the function of collecting land revenue only. For civil cases, a Diwani Adalat was established from which appeals went to the Sardar Diwani Adalat. Though this system assured the independence of the judiciary there were certain set-backs.

For the administration of criminal justice in a more efficient manner Warren Hastings drew a scheme in 1781 under which for apprehending criminals, Judges of the Mofussil Diwani Adalats were authorised to work as Magistrates and a department headed by the Remembrance of criminal Courts was opened to look after the working of the said courts.

The Governor-General Lord Cornwallis (1786-1793) introduced changes in the judicial system in 1787, 1790, and 1793. He had thoroughly reorganized the civil and criminal judicial system in India in Bengal, Bihar, and Orissa. He for the first time introduced the principle of administration according to law. In 1787 he merged the revenue collection and power to try the revenue disputes in the same hands of the magistrate who formed the Mal Adalat. Appeals from the Mal Adalat had to go to the Governor General.

In the year 1790 the policy of 1787 was annulled. Cornwallis took a great step to improve administration of justice in the Mofussil by reforming the criminal law. The scheme had three limbs: at the lowest were the magistrates in the district, then the courts of circuits, and ultimately there was the Sadar Nizamat Adalat at Calcutta (initially at Murshidabad). Sadar Nizamat Adalat, put under the control of Governor-General and his Council, was being assisted by the Muslim law officers who were to expound the law.

But later he brought reforms to the plan in year 1793 and introduced the most famous plan of the history.

According to this plan the Supreme Court was divested of all its powers except for the power of appeal and the Collector was to be given civil as well as revenue cases. Executive was estranged from the judiciary in its entirety. He introduced professional lawyers or vakeels in the courts to appear on behalf of the parties to contest their case in order to increase efficiency.

Cornwallis did everything on structural and procedural side but he could not do much to reform the substantive law, particularly the criminal law which 'was based on Muslim law and suffered from a number of defects'.

MODERN PERIOD PRE INDEPENDENCE:

The year 1861 also constituted a conspicuous landmark in the process of development of legal and judicial institutions in India. It was during this year that the steps were taken to establish High Courts at Calcutta, Madras and Bombay. These High Courts were not only better instruments of justice than the preceding courts, but also represented the amalgamation of the hitherto existing two disparate and distinct judicial systems, the Company's Courts in the Provinces of Bengal, Bombay Madras, and the three Supreme Courts (established by the Royal Charter) in the Presidency town.

The High Court enjoyed the same power over all persons and estates. It had ordinary original, appellate and extraordinary original jurisdiction in civil cases whereas extraordinary and appellant jurisdiction in criminal cases. While exercising ordinary original jurisdiction the Courts were to apply the law of equity of the corresponding Supreme Court. In extraordinary original jurisdiction, the Courts applied the law of the corresponding local court, whereas in case of appellate jurisdiction the Courts applied the law of the court of original case filing. Acting as the court of appeal, reference or revision in Criminal cases, the courts applied the Indian Penal Code. The High Courts were empowered to make rules and orders for regulating all its proceedings in civil matters. By the subsequent charters High Courts were formed in Allahabad (1875), Patna (1912), Lahore (1865) etc.

The King, in the capacity of the being regarded as the fountain of justice in English legal system, could hear any petition filed by a party with respect to any matter with the help of the Privy Council. This was later, exercised by the King in the form of appeals and not otherwise. Appeals from India could be filed as of right or with the special leave of the Privy Council.

After the mutiny of 1857 the Company's Government came to an end and the administration of the country was placed in the hands of the Crown through the Secretary of State for India. For this purpose the Indian Councils Act, 1861 and 1892 were passed. But these Acts were not enough to satisfy the growth and organized demand for self-government by the Congress. Thus came about the Morley Minto Reforms in the year 1909 with its most important aspect being the increase of the representative element in the Legislative Councils and the extension of their powers. But the defects such as lack of true representation, etc led to the passing of the Government of India Act in 1919 which emphasized maximum autonomy to provinces with the target of achieving self-government. The dissatisfaction of this led to the Government of India Act, 1935 which aimed to establish federalism.

A Federal Court set up in Delhi was established under this Act. It is believed that out of all the institutions set up under the Act; this was proved to be the most successful in operation. The Court was to consist of Chief Justice and not more than six judges. This Court had original, appellate, and advisory jurisdiction. The Court had exclusive original jurisdiction in all disputed between the federation and the units or between the units inter se.

An appeal could go to the Privy Council without leave, against the Judgements of the Federal Court given in its original jurisdiction and in any other matter with the leave of the Privy Council or of the Federal Court.

In the matter of the laws to be applied the very idea of a single omni-competent legislative body in India had been mooted in 1829 by the Governor-General, Lord William Bentick. Administrators at that time wanted to secure uniformity of law throughout the country and that was unattainable with three coextensive legislative powers existing in the country. Charter of 1833 helped to receive the object desired. Under this the Governor-General of Bengal, nominated as Governor-General of India, proposed a uniform All India Legislation and thereby created a Legislative Council. The laws made by the Council were applicable on all persons and courts. It had Lord Macaulay appointed as its first Law Member whose powers were increased by the Charter of 1853. The creation of new council at Calcutta caused the centralization and concentration of power depriving the Councils of Bombay and Madras of their law-making powers.

An important step towards fulfilling the goal of securing a uniform and simple system of law in India through the process of integration of the general system of codes was taken by the Charter Act of 1833.

Section 53 provided for the appointment of a Law Commission in India, subsequently forming the first commission of India with its members appointed by the Governor-General. The commissions' most noteworthy contribution was the Penal Code prepared under the guidance of the Macaulay. The Commission then drew its attention to the complaint of the non- Hindu and non- Muslims and thus passed the lex loci report in 1837. The report proposed an Act making a declaration that except for Hindus and Muslims all others in Mofussil were to be put under English substantive Law to the extent that it suited the Indian conditions.

The Second Law Commission, formed in 1853 submitted two reports, one dealing with reforms of the judiciary and the other with the reforms of law. It recommended the amalgamation of the Sadar Adalats and the Supreme Court in all the presidencies and the adoption of uniform civil and criminal procedure codes.

The proposals of the first two Commissions resulted in the **codification of the Code** for civil and criminal cases in the year 1857 and 1861 respectively and the enactment of the Penal Code in 1860. The Limitation Act and the High Courts Act were passed in 1855 and 1861 respectively.

The Third Law Commission proved to be the most successful of all the Commissions. It drafted several codes in its seven reports, the important ones being Indian Succession Act, Contract Act (1872), Evidence Act, the new Limitation Act and the Divorce Act 1869. Interestingly, the Government at this time was also considering the preparation of the Law Digest of cases. But it ended abruptly due to the dispute amongst its members.

Many branches of law had been ascertained by now but certain were still un-codified resulting in great deal of complexities. To this, Lord Salisbury recommended the formation of a small body to codify the remaining laws and it resulted in the codification of the Transfer of Property Act, the Easement Act, the Trusts Act and revision of the existing Codes.

With the expiry of the Fourth Commission, there came an end of a large scale codification undertaken by the British Government. They had successfully enacted the necessary laws to suit the pressing needs of the country.

D. CHARTER OF 1833

In 1780 Bengal First time British rulers introduced the maxim justice, equity and conscience and later it was introduced in other presidencies like Bombay and Madras and rest of India.

In Punjab 1872 Punjab laws act 1872 introduced the doctrine, maxim Justice, Equity and Conscience in judicial system.

Central Provinces Laws Act 1875, Section 6 mentions when the judge that is court should use the maxim Justice, Equity and Conscience while deciding a case.

Later it was added to other laws also.

How this maxim worked?

When court found that there is no provision in Hindu religious law or Muslim religious law then the maxim Justice, Equity and Conscience came to help the court and accordingly court decided the case.

This depends on the education of judge, his thinking thus what he felt right was right.

Very slowly this began to influence and bring more and more English law into India.

In 1862 High courts were established and Englishmen became the judge who were studied and knew English judicial system, they were barristers and were trained in law.

From India appeals went to Privy Council in England thus automatically more and more English law was introduced in India.

But English law was not used in every case.

It depend on case, there are many cases which one can find where English law was not used.

Few examples -

Khwaja Muhammad khan vs Husaini Begum

Srinath Roy vs Dinabandhu sen

English courts also always gave importance to Hindu customs and Muslim customs in India.

After India became independent today also courts use the English Judgments, now a day's even American judgment is referred while giving judgment.

But while doing this Indian courts see that and give more importance to religion and mob and not to individual freedom.

As in India number of courts increased, high courts increased and every court gave its own judgment and there was no supreme court, a court whom other courts can look for guidance and to find the correct meaning of law.

Thus English people felt the need for codification of laws in India.

Thus charter of 1833 made provision to create uniform and codified system of law in India.

The charter introduced and established.

1.It established an omni competent all India legislature having legislative authority throughout the country

2.it created a new office of the law member in the government of India

3.it provided for the appointment of a law commission in India

It established an omni competent all India legislature having legislative authority throughout the country – First time in 1829 Lord William Bentinck spoke about this.

The charter act 1833 received royal assent on august 28 1833 and came into force on April 22, 1834.

The important provisions of this charter, law are as follows.

1.The governor general of Bengal was designated as the Governor General of India.

2.Governor General in council got powers of superintendence, direction and control of the whole civil and military government and the revenues of India.

3.centralization of legislative power

4.setting up of legislative council

5.legislative council got the power to repeal, amend any law in India exception charter of 1833

6.All the laws and enacts passed by the legislative council were called as Acts of the Government of India, before this they were called as regulations. All laws were binding on all the courts in India.

7.The office of the law member was created who helped or assisted governor general in law making

8.appointment of law commission

First law commission in India was established in year 1835; under the act membership of the commission had to be approved by the court of directors.

The charter act placed the law commission wholly under the direction and control of Governor General in council

The first project commission got was to codify the penal law for India.

After this commission prepared draft and presented it to the Governor General in 1837.

Macaulay did lot of work regarding creation of draft.

When Maculay retired after that the work of law commission lost the speed.

It did nothing special.

In 1842 it prepared draft of the law of limitation.

The concept of Lex loci, a report was prepared as there were situations when neither Hindu nor Muslim law was applicable.

Law Commission of India is an executive body established by an order of the Government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted a mandate by the Government. The Commission is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice.

The first Law Commission was established during the British regime in 1834 by the Charter Act of 1833.

After that three more Commissions were established in pre-independent India. The first Law Commission of independent India was established in 1955 for a three year term. Since then Eighteen more Commissions have been established. The Centre appointed Justice D K Jain as the chairman of the

20th Law Commission of India less than three weeks before his retirement as a Judge of the Supreme Court. Justice Jain, who would take up the assignment after his retirement on January 24, will have a three-year tenure and has been saddled with a wide terms of reference including one to examine existing laws from the gender equality perspective and suggest necessary amendments. The Nineteenth Law Commission was established on 1 September 2009 under the Chairmanship of a justice P.Venkatarama Reddy. Its tenure has been fixed till 31 August 2012. Other than the Chairman, the Eighteenth Law Commission has one Permanent Member, one Member-Secretary and six Part-time Members.

E.INDIAN HIGH COURTS ACT 1861

Indian Legal History - Indian High courts act 1861

Company kept judicial and executive functions separate since year 1793.

But this system was not perfect; the appointment procedure of judges was faulty.

Executive became judge and judge became executive vice versa because of lack of experience judiciary suffered as executive failed to do justice to judiciary.

In 1868, company officers pointed out that native judges and pleaders who had received a regular legal education at the Calcutta University had a better knowledge than the civilian, executive judges.

Therefore Bengal officers proposed the establishment of a separate judicial service.

Sir Henry Maine in 1868 condemned the [British] district judges as shamefully inefficient. In year 1872 Law member Stephen supported the idea of a separate judicial service but nothing happened. In 1924, the Rankin committee disfavoured appointment of civilian as district judges, saying that the subordinate judges got more knowledge than civilian judges as subordinate judges got experience and legal education. But nothing happened.

The Indian High Courts Act 1861 –

The Indian High Courts Act was passed by the British Parliament on the 6th August, 1861 and was titled as an act for establishing high courts of judicature in India.

This legislation contained only 19 sections only.

Its main function was to abolish the supreme courts and the Sadar Adalats in the three Presidencies and to establish the high court's in their place.

The records and document of the various courts became the records and documents of the High Court concerned.

It gave power authority in Her Majesty to issue letters patent under the great seal of the United Kingdom, to erect and establish High courts of judicature at Calcutta, Madras and Bombay.

Each High court was to consist of a chief justice and as many puisne judges not exceeding fifteen as her majesty might think to fit to appoint.

Who became the high court judge or who was eligible to become the high court judge?

Judges were selected out of the following categories of persons

1. Barrister must have 5 years or more experience
2. members of the covenanted civil service of not less than ten years standing who should have served as Zillah judges for at least three years of that period

3. Persons who shall have held judicial office not inferior to that of principal sadar amen or judge of small cause court for a period of not less than five years.

4. Person who have been pleaders of a Sadar court or high court for a period of not less than ten years.

But the rule was made that, not less than one third of the judges in a High court, including chief justice were to be barristers and not less than one-third of the judges were to be members of the covenanted civil service.

The judges of the High court were to be held office during her majesty's pleasure.

Each high court was to have and exercise all such civil and criminal admiralty and viceadmiralty, testamentary, intestate and matrimonial jurisdiction and original and appellate

The High Court was to have superintendence over all courts subject to its appellate jurisdiction.

It got power, authority to call for return, to transfer any suit or appeal from one court to another and to make an issue general rules for regulating the practice and proceedings of such courts.

The charter for the Calcutta high court was issued on May 14, 1862 and was published in Calcutta on the 1st July 1862 establishing the high court from the next day.

The charter for the high court's of Bombay and Madras were issued on June 26, 1862 and these courts were inaugurated on the 14th and 15th august 1862.

F.PRIVY COUNCIL

The Privy Council's jurisdiction over the Indian subcontinent grew in patches that extended unevenly inwards from coastal locations, mirroring the process by which the East India Company, incorporated in 1600, gradually acquired political power in the region. The result of this process was that right up until

India and Pakistan's emergence as independent countries in 1947, 'India' as such did not form a jurisdiction. Instead, the courts that the Privy Council heard appeals from were provincial tribunals, themselves taking appeals from lands far beyond the subcontinent.

The earliest appeals to the Privy Council from India were not appeals against the decision of any court, but petitions to the English Crown against alleged oppression by East India Company officials. The earliest appeal from a court in India to the Privy Council was in 1679.

Once England ruled the world and Privy Council or King in council heard appeals from more than 150 countries in all types of cases civil, criminal etc.

The jurisdiction of the Privy Council originated at the Norman Conquest with the premise that:

"The King is the fountain of all justice throughout his Dominions, and exercises jurisdiction in his Council, which act in an advisory capacity to the Crown."

At the beginning of the fourteenth century, receivers were appointed to aid the dispensation of justice in Parliament. One group was appointed for Great Britain and Ireland, and one for the Channel Islands.

Appeals from the Channel Islands became the first regular appellate business of the King's Council, now the Judicial Committee of the Privy Council. With the growth of the British Empire, this business increased with appeals and petitions from the Royal Council, and Privy Council Committees were formed.

From 1833 the Privy Council was officially known as or called as the judicial committee of the Privy Council.

Privy Council - Abolished the Sati system of India.

In 1831 the Privy Council heard an appeal against the East India Company “from certain Hindus of Calcutta complaining of a regulation of the Governor General... abolishing the practice of Sati system”.

In India Sati is a custom in which after the death of Husband it was a rule that the wife should commit suicide or burn herself with her dead husband.

The ban was upheld by the Privy Council, but it was heard by an unusually large board of nine judges. This court was highest court of appeal for over two centuries, setting high standard of justice system in India.

In 1726 for the first time a right to appeal to the king in council was granted from the courts in India. From period 1726 to 1833 more than three hundred appeals were disposed of by the Privy Council.

During its period as the highest court of appeal from India the Privy Council rendered more than 2500 judgment which for a great body of precedents. These judgments constitute the fountain source of law on many points.

Privy Council was situated and bases in London and distance was 5000 miles or more.

All the Privy council documents are kept at the Public Record office, London.

If ever you read their letters, discussions about the slave colonies in England parliament you will realize how less our own Politicians discuss about the progress of India in our own parliament.

Today our politicians wait for Supreme Court of India to order them in writing to give free food to poor people of India, give free medicine or reduce the medicine prices.

K.M. Munshi, a lawyer-statesman observed –The British Parliament and the Privy Council are the two great institutions which the Anglo Saxon race has given to mankind.

The Privy Council during the last few centuries has not only laid down law but coordinated the concept of right and obligations throughout all the dominions and colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important.

It has been a great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our constitution.

Alladi Krishnaswami Ayyar, an eminent lawyer-member of the constituent assembly observed regarding work of Privy Council, he said,

There can be no doubt that the record of the judicial committee of the Privy Council has been a splendid one. On 6th February, 1950 at a sitting of the Privy council a message was read from the Government of India paying a tribute to the Valuable services rendered by Privy council to India over a period of more than two centuries .

Government of India act 1935 started the federal policy in India.

This act established, made provision for the establishment of federal court in India.

Federal policy, constitution means distribution of power between centre and the constitutional unit.

Federal court is one which solves disputes between the centre and the constitutional unit.

Federal court was formally inaugurated on the 1st October, 1937

The viceroy administered the oath of allegiance to the first three judges of the court namely,

- Sir Maurice Gwyer – chief Justice from 1 October, 1937 to 25 April, 1943
- Sir Shah Muhammad Sulaiman
- M.R. Jayakar.

The court held its first sitting at New Delhi on December 6, 1937.

The governor general was not bound to accept the opinion of the Federal court.

Governor General = Today's Prime minister and his council

From Federal court appeals went to the Privy Council.

The judges of the federal court were appointed by his Majesty.

They were to remain in office till they reached age of 65 years.

A judge could be removed from office for misbehavior or infirmity of mind or body.

In India federal court worked for only 12 years but the job done was excellent.

Federal court is predecessor of the present day supreme court of India.

Indian Constituent Assembly passed the abolition of Privy Council jurisdiction act on the 24th September, 1949 to abolish the jurisdiction of Privy Council in respect of appeals from India.

The act came into force on the 10th October, 1949.

The last appeal from India was disposed of by the Privy Council on December 15, 1949 and with this came to an end India's 200 year old connection with Privy Council.

On January 26, 1950, the federal court itself was converted into the Supreme Court and all the federal court judges on that day became the judges of the Supreme Court.

Thus Indian Legal history started its new era.

In short I will here mention about the current working and role of The Judicial Committee of the Privy Council around the world.

The Judicial Committee of the Privy Council is the highest court of appeal for many current and former Commonwealth countries, as well as the United Kingdom's overseas territories, crown dependencies, and military sovereign base areas.

It also hears very occasional appeals from a number of ancient and ecclesiastical courts. These include the Church Commissioners, the Arches Court of Canterbury, the Chancery Court of York, prize courts and the Court of Admiralty of the Cinque Ports.

- United Kingdom appeals
- Commonwealth appeals
- Overseas territories and sovereign base appeals
- Appeals to local head of state

United Kingdom appeals

The Judicial Committee hears domestic appeals to Her Majesty in Council as follows:

- Jersey, Guernsey and the Isle of Man
- the Disciplinary Committee of the Royal College of Veterinary Surgeons
- against certain schemes of the Church Commissioners under the Pastoral Measure 1983

The Judicial Committee also has the following rarely-used jurisdictions:

- appeals from the Arches Court of Canterbury and the Chancery Court of York in non-doctrinal

faculty causes

- appeals from Prize Courts
- disputes under the House of Commons Disqualification Act
- appeals from the Court of Admiralty of the Cinque Ports

Additionally, Her Majesty has the power to refer any matter to the Judicial Committee for "consideration and report" under section 4 of the Judicial Committee Act 1833.

Under the Constitutional Reform Act 2005, devolution cases from the regions of the United Kingdom are now heard by The Supreme Court.

Commonwealth appeals

To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

In criminal cases, it is unusual for the lower court to have the power to grant leave unless your case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice.

Appeal therefore lies from these countries:

- Antigua and Barbuda
- Bahamas
- Barbados
- Belize
- Cook Islands and Niue (Associated States of New Zealand)
- Grenada
- Jamaica
- St Christopher and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Tuvalu

Legislation enacted in New Zealand in October 2003 abolished appeals from New Zealand to the Privy Council in respect of all cases heard by the Court of Appeal of New Zealand after the end of 2003. This New Zealand legislation does not affect rights of appeal from the Cook Islands and Niue.

Appeal to the Judicial Committee also lies from the following independent republics within the Commonwealth:

- the Republic of Trinidad and Tobago
- the Commonwealth of Dominica
- Kiribati
- Mauritius

The circumstances in which appeals may be brought are similar to those in which appeals lie to Her Majesty in Council as above, except that from Kiribati an appeal lies only in cases where it

is alleged that certain constitutional rights of any Banaban or of the Rabi Council have been or are likely to be infringed.

Overseas territories and sovereign base appeals

The Judicial Committee hears appeals from the following overseas territories of the United Kingdom:

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Monserrat
- Pitcairn Islands
- St Helena and dependencies
- Turks and Caicos Islands

Additionally, appeals are heard from sovereign base areas in Cyprus:

- Akrotiri
- Dhekelia

Appeals to local head of state

In civil cases only, an appeal lies to the Judicial Committee from the Court of Appeal of Brunei to the Sultan and Yang di-Pertuan.

By agreement between Her Majesty and the Sultan these appeals are heard by the Judicial Committee, whose opinion is reported to the Sultan instead of to Her Majesty.

FEDERAL COURT

The Government of India Act, 1935 changed the structure of the Indian Government from “Unitary” to that of “Federal” type. The Distribution of powers between the Centre and the Provinces required the balance to avoid the disputes which would be arisen between the constituent units and the Federation.

The system of Federation clearly demanded the creation of a Federal Court which would have jurisdiction over the States as well as the Provinces. Federal Court functioned only for 12 years. It was the highest Court in India. Over it, there was Privy Council. But to approach the Privy Council required huge expenses to the litigants’ Hence the establishment of the Federal Court was made necessary.

It saved the time, expenses to the litigants. It was also a convenience to the Indians. Therefore, the Federal Court lessened the work load of the Privy Council, and gradually it occupied the position of Privy Council. Lastly, in the place of Federal Court, the Supreme Court of India has been established on 25-1-1950.

Establishment:

Section 200 of the Government of India Act, 1935 provided for the establishment of Federal

Court in India. On 1-10-1937, the Federal Court was inaugurated at Delhi. Sir Maurice Gwyer was the First Chief Justice of the Federal Court. It was a Court of Record.

Appointment of Judges:

Judges and the Chief Justice were to be appointed by His Majesty. They were to hold office till the age of 65 years. His Majesty was empowered to remove any Judge from his office on the grounds of misbehavior or infirmity of mind or body, on the recommendation of the judicial committee of the Privy Council.

Qualifications:

Qualifications required for a judge are:

- i. 5 years experience as a Judge of a High Court; or
- ii. 10 years standing as an advocate or barrister; or
- iii. 10 years standing in Court.

Salary:

The Judges of the Federal Court were entitled such salaries and allowances and to such rights in respect of leave and pensions, as were laid down by His Majesty from time to time.

Jurisdiction of the Federal Court:

The Federal Court got three kinds of jurisdictions

- i. Original;
- ii. Appellate; and
- iii. Advisory.

i. Original Jurisdiction:

The Original Jurisdiction was confined to disputes between Units of the Dominion or between the Dominion and any of the units. The private individuals had no right to sue any Dominion before the Federal Court.

ii. Appellate jurisdiction:

The Federal Court exercised appellate jurisdiction in constitutional cases under the Act of 1935. Its appellate jurisdiction was extended to civil and criminal cases. On the same principles and jurisdiction the Supreme Court of India was established.

An appeal from any judgment, decree or final order of a High Court would be entertained by the Federal Court, if the High Court certified that the case involved a substantial question of law as to the interpretation of the Act of 1935 or any other Act and law. The certificate was a condition precedent to every appeal.

iii. Advisory Jurisdiction:

The Federal Court was empowered to give advisory opinion to the Governor-General, whenever a question of law had arisen or is likely to arise which is of such a nature and of such public importance that it was expedient to obtain the opinion of the Federal Court upon it. The Court after such hearing as it thinks fit report to the Governor-General thereon.

Authority of Federal Court:

The High Courts were subordinate to Federal Court. The law declared by the Federal Court and any judgment of the Privy Council will be binding on all the courts in British India. Expansion of

Jurisdiction:

From 1937 to 15-8-1947, the Federal Court entertained only the appellate jurisdiction in

constitutional cases. After Independence Act, 1947, the Federal Court was empowered to have the appellate jurisdiction in civil and criminal matters also. But at the same time, geographical area was reduced, as the Pakistan was separated.

Abolition of Federal Court:

The abolition of the Privy Council Jurisdiction Act 1949 severed the connection of Privy Council with Federal Court with effect from 15-12-1949 by the Act of 1949, "Period of golden Age of Federal Court" began when lasted till the establishment of the Supreme Court of India on 26-1-1950.

Conclusion:

Federal Court worked for a short period of 12 years. But it left a permanent work and mark on the legal history of India. It was the First Constitutional Court. It was also the First All-India Court of extensive Jurisdiction.

During the period of 1937 to 1950, two English and 6 Indian Justices performed their services. All of them got the rare distinction of being the Federal Court of India. They maintained the noble traditions.

They contributed a great deal to the establishment of sound federal judiciary in India. They also built up great traditions of independence, impartiality and integrity which were inherited by its successor the Supreme Court of India.

UNIT III: CONSTITUTIONAL DEVELOPMENTS AND FRAMING OF INDIAN CONSTITUTION

A. The Indian Councils Act, 1861

It was an Act of the Parliament of the United Kingdom that transformed the Viceroy of India's executive council into a cabinet run on the portfolio system. This cabinet had six "ordinary members" who each took charge of a separate department in Calcutta's government: home, revenue, military, law, finance, and (after 1874) public works. The military Commander-in-Chief sat in with the council as an extraordinary member. The Viceroy was allowed, under the provisions of the Act, to overrule the council on affairs if he deemed it necessary - as was the case in 1879, during the tenure of Lord Lytton.

The Secretary of State for India at the time the Act was passed, Sir Charles Wood, believed that the Act was of immense importance: "the act is a great experiment. That everything is changing in India is obvious enough and that the old autocratic government cannot stand unmodified is indisputable."

The 1861 Act restored the legislative power taken away by the Charter Act of 1833. The legislative council at Calcutta was given extensive authority to pass laws for British India as a whole, while the legislative councils at Bombay and Madras were given the power to make laws for the "Peace and good Government" of their respective presidencies. The Governor General was given the power to create new provinces for legislative purposes. He also could appoint Lt. Governors for the same.

B. Govt. of India Act 1909

The **Indian Councils Act 1909** (9 Edw. 7 c. 4), commonly known as the **Morley-Minto Reforms** [or as the **Minto-Morley Reforms**], was an Act of the Parliament of the United Kingdom that brought about a limited increase in the involvement of Indians in the governance of British India.

John Morley, the Liberal Secretary of State for India, and the Conservative Viceroy of India, The Earl of Minto, believed that cracking down on uprising in Bengal was necessary but not sufficient for restoring stability to the British Raj after Lord Curzon's partitioning of Bengal. They believed that a dramatic step was required to put heart into loyal elements of the Indian upper classes and the growing Westernised section of the population.

They produced the Indian Councils Act of 1909 (Morley-Minto reforms), these reforms did not go any significant distance toward meeting the Indian National Congress demand for 'the system of government obtaining in Self-Governing British Colonies'. The act is also sometimes called minto-Morley reform but that is not the correct citation. The Act of 1909 was important for the following reasons:

- It effectively allowed the election of Indians to the various legislative councils in India for the first time. Previously some Indians had been appointed to legislative councils. The majorities of the councils remained British government appointments. Moreover, the electorate was limited to specific classes of Indian nationals;
- The introduction of the electoral principle laid the groundwork for a parliamentary system even though this was contrary to the intent of Morley. As stated by Burke and Quraishi

“To Lord Curzon's apprehension that the new Councils could become 'parliamentary bodies in miniature', Morley vehemently replied that, 'if it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it'. But he had already confessed in a letter to Minto in June 1906 that while it was inconceivable to adapt English political institutions to the 'nations who inhabit India...the spirit of English institutions is a different thing and it is a thing that we cannot escape, even if we wished...because the British constituencies are the masters, and they will assuredly insist... all parties alike... on the spirit of their own political system being applied to India.' He never got down to explaining how the spirit of the British system of government could be achieved without its body.”

- Muslims had expressed serious concern that a first past the post electoral system, like that of Britain, would leave them permanently subject to Hindu majority rule. The Act of 1909 stipulated, as demanded by the Muslim leadership

- that Indian Muslims be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils and in the Imperial Legislature;
- that the number of reserved seats be in excess of their relative population (25 percent of the Indian population); and,
- that only Muslims should vote for candidates for the Muslim seats ('separate electorates').

These concessions were a constant source of strife from 1909 to 1947. British statesmen generally considered reserved seats as regrettable in that they encouraged communal extremism as Muslim candidates did not have to appeal for Hindu votes and vice versa. As further power was shifted from the British to Indian politicians in 1919, 1935 and afterward, Muslims were ever more determined to hold on to if they could not expand the reserved seats and their weightage. However, Hindu politicians repeatedly tried to eliminate reserved seats as they considered them to be undemocratic and hindering the development of a shared Hindu-Muslim Indian national feeling.

In 1906, Morley announced in the British parliament that his government wanted to introduce new reforms for India, in which the locals were to be given more powers in legislative affairs. With this, a series of correspondences started between him and Lord Minto, the then Governor General of India. A committee was appointed by the Government of India to propose a scheme of reforms. The committee submitted its report, and after the approval of Lord Minto and Lord Morley, the Act of 1909 was passed by the British parliament. The Act of 1909 is commonly known as the Morley-Minto Reforms.

Major provisions of the Act

The Act amended the Indian Councils Acts of 1861 and 1892 Its major provisions are as follows:

1. The members of the Legislative Councils, both at the Center and in the provinces, were to be of four categories i.e. *ex officio* members (Governor General and the members of their Executive Councils), nominated official members (those nominated by the Governor General and were government officials), nominated non-official members (nominated by the Governor General but were not government officials) and elected members (elected by different categories of Indian people).
2. The maximum number of nominated and elected members of the Legislative Council at the Center was increased from 16 to 60. The number did not include ex-officio members.
3. The maximum number of nominated and elected members of the provincial legislative councils under a governor or lieutenant-governor was also increased. It was fixed as 50 in Bengal, Bombay, Madras, United Provinces, and Eastern Bengal and Assam, and 30 in Punjab,

Burma, and any lieutenant-governor province created thereafter. Legislative councils were not created for provinces under a chief commissioner

4. The right of separate electorate was given to the Muslims.
5. Official members were to form the majority but in provinces non-official members would be in majority.
6. The members of the Legislative Councils were permitted to discuss the budgets, suggest the amendments and even to vote on them; excluding those items that were included as non-vote items. They were also entitled to ask supplementary questions during the legislative proceedings.
7. The Secretary of State for India was empowered to increase the number of the Executive Councils of Madras and Bombay from two to four.
8. Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.
9. The Governor-General was empowered to nominate one Indian member to his Executive Council.

Legislative councils

The Governor-General, with the approval of the Secretary of State for India, made regulations for how members of legislative councils were nominated or elected nominated, and their qualifications. Regulations made in accordance with the Act could not be exercised until laid before both Houses of Parliament, so that either house might object. By the regulation of November 1909, the councils were composed as follows:

- India: 68 total (69 with the Governor-General). Eight *ex officio* members (six members of the Governor-General's council plus the Commander in Chief and Lieutenant-Governor of the province in which the council sits); 35 nominated members; and 25 elected members (12 from provincial councils and municipal committees, six from landholders in seven provinces, five from the Muslims of five provinces, and one each from the Chambers of Commerce of Calcutta and Bombay).
- Madras: 48 total (49 with the Governor). Four *ex officio* members (three members of the cabinet, and the Advocate-General); 23 nominated members, of which not more than 16 were officials, and one representative of Indian commerce; two nominated experts, and 19 elected members (one elected by the Corporation of Madras, eight by municipalities and district boards, one by the University of Madras, four by landowners, one by the planting community, two by Muslims, one by the Madras Chamber of Commerce, and one by The Madras Trades Association).

- Bombay: 48 total (49 with the Governor). Four *ex officio* members (three from the executive council, and the Advocate-General); 21 nominated members, of which not more than 14 were officials; two nominated experts; and 21 elected members (One elected by the Corporation of Bombay, four by municipalities, one by the University of Bombay, three by landholders, four by Muslims, one by the Bombay Chamber of Commerce, one by the Karachi Chamber of Commerce, one by the Millowners' associations of Bombay and Ahmadabad, and one by the Indian commercial community).
- Bengal: 53 total (54 with the Lieutenant-Governor). Three *ex officio* members of the executive council; 22 nominated members, of which not more than 17 could be officials; two nominated experts; and 26 elected members (one elected by the Corporation of Calcutta, six by municipalities, six by district boards, one by the University of Calcutta, five by landholders, four by Muslims, two by the Bengal Chamber of Commerce, and one by the Calcutta Trades Association).
- United Provinces: 48 total (49 with the Lieutenant-Governor). 26 nominated members, of which not more than 20 be officials, and one representing Indian commerce); two nominated experts; 20 elected members (four elected by the large municipalities in rotation, eight by district boards and smaller municipalities, one by Allahabad University, two by landowners, four by Muslims, and one by the Upper India Chamber of Commerce).
- Eastern Bengal and Assam: 42 total (43 with the Lieutenant-Governor). 22 nominated members, of which not more than 17 be officials, and one representing Indian commerce; two nominated experts; 18 elected members (three elected by municipalities, five by district and local boards, two by landowners, four by Muslims, two by the tea interest, one by the jute interest, and one by the Commissioners of the Port of Chittagong).
- Punjab: 26 total (27 with the Lieutenant-Governor). 19 nominated members, of which not more than 10 to be officials; two nominated experts; five elected members (one elected by the Punjab Chamber of Commerce, one by the University of the Punjab, three by municipal and cantonment committees).
- Burma: 17 total (18 with the Lieutenant-Governor). Six nominated officials; eight nominated non-officials (four to represent the Burmese population, two to represent the Indian and Chinese Communities, two to represent other interests); two nominated experts; and one member elected by the Burma Chamber of Commerce.

The Indian Councils Act served as the governance structure of India for a decade. It was modified by the Government of India Act 1912, to clarify the authority of the Governor of Bengal, to create a legislative council for the new province of Bihar and Orissa, to dispense with Parliamentary review of the creation of new legislative councils for provinces under a lieutenant-governor and to permit the creation of legislative councils in provinces under chief commissioners. The Government of India Act 1915 consolidated 47 prior acts of Parliament relating to the governance of India into a single act of 135 sections and five schedules

The Montague-Chelmsford Commission was formed in response to increasing demands in India for home rule, and issued a report in 1917. The Government of India Act 1919 enacted the legislative reforms recommended by the Montague-Chelmsford Report.

C. The Government of India Act, 1919

It was an Act of the Parliament of the United Kingdom. It was passed to expand participation of Indians in the government of India. The Act embodied the reforms recommended in the report of the Secretary of State for India, Edwin Montagu, and the Viceroy, Lord Chelmsford. The Act covered ten years, from 1919 to 1929.

The Act provided a dual form of government (a "diarchy") for the major provinces. In each such province, control of some areas of government, the "transferred list", were given to a Government of ministers answerable to the Provincial Council. The 'transferred list' included Agriculture, supervision of local government, Health and Education. The Provincial Councils were enlarged.

At the same time, all other areas of government (the 'reserved list') remained under the control of the Viceroy. The 'reserved list' included Defense (the military), Foreign Affairs, and Communications.

The Imperial Legislative Council was enlarged and reformed. It became a bicameral legislature for all India. The lower house was the Legislative Assembly of 144 members, of which 104 were elected and 40 were nominated and tenure of three years. The upper house was the Council of States consisting of 34 elected and 26 nominated members and tenure of five years.

The Government of India Act, 1935

The most significant aspects of the Act were:

The grant of a large measure of autonomy to the provinces of British India (ending the system of diarchy introduced by the Government of India Act 1919) provision for the establishment of a "Federation of India", to be made up of both British India and some or all of the "princely states" the introduction of direct elections, thus increasing the franchise from seven million to thirtyfive million people a partial reorganization of the provinces:

Sindh was separated from Bombay

Bihar and Orissa was split into separate provinces of Bihar and Orissa

Burma was completely separated from India

Aden was also detached from India, and established as a separate Crown colony

Membership of the provincial assemblies was altered so as to include more elected Indian representatives, who were now able to form majorities and be appointed to form governments the establishment of a Federal Court

However, the degree of autonomy introduced at the provincial level was subject to important limitations: the provincial Governors retained important reserve powers, and the British authorities also retained a right to suspend responsible government.

The parts of the Act intended to establish the Federation of India never came into operation, due

to opposition from rulers of the princely states. The remaining parts of the Act came into force in 1937, when the first elections under the Act were also held

Indians had increasingly been demanding a greater role in the government of their country since the late 19th century. The Indian contribution to the British war effort during the First World War meant that even the more conservative elements in the British political establishment felt the necessity of constitutional change, resulting in the Government of India Act 1919. That Act introduced a novel system of government known as provincial "diarchy", i.e., certain areas of government (such as education) were placed in the hands of ministers responsible to the provincial legislature, while others (such as public order and finance) were retained in the hands of officials responsible to the British-appointed provincial Governor. While the Act was a reflection of the demand for a greater role in government by Indians, it was also very much a reflection of British fears about what that role might mean in practice for India (and of course for British interests there).

The experiment with diarchy proved unsatisfactory. A particular frustration for Indian politicians was that even for those areas over which they had gained nominal control; the "purse strings" were still in the hands of British officialdom.

The intention had been that a review of India's constitutional arrangements and those princely states that were willing to accede to it. However, division between Congress and Muslim representatives proved to be a major factor in preventing agreement as to much of the important detail of how federation would work in practice.

Against this practice, the new Conservative-dominated National Government in London decided to go ahead with drafting its own proposals (the white paper). A joint parliamentary select committee, chaired by Lord Linlithgow, reviewed the white paper proposals at great length. On the basis of this white paper, the Government of India Bill was framed. At the committee stage and later, to appease the diehards, the "safeguards" were strengthened, and indirect elections were reinstated for the Central Legislative Assembly (the central legislature's lower house). The bill duly passed into law in August 1935.

As a result of this process, although the Government of India Act 1935 was intended to go some way towards meeting Indian demands, both the detail of the bill and the lack of Indian involvement in drafting its contents meant that the Act met with a lukewarm response at best in India, while still proving too radical for a significant element in Britain.

Some Features of the Act:

No preamble: the ambiguity of British commitment to dominion status

While it had become uncommon for British Acts of Parliament to contain a preamble, the absence of one from the Government of India Act 1935 contrasts sharply with the 1919 Act, which set out the broad philosophy of that Act's aims in relation to Indian political development. The 1919 Act's preamble quoted, and centered on, the statement of the Secretary of State for India, Edwin Montagu (17 July 1917 – 19 March 1922) to the House of Commons on 20 August 1917, which pledged:

The gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral Part of the British Empire .

Indian demands were by now centering on British India achieving constitutional parity with the

existing Dominions such as Canada and Australia, which would have meant complete autonomy within the British Commonwealth. A significant element in British political circles doubted that Indians were capable of running their country on this basis, and saw Dominion status as something that might, perhaps, be aimed for after a long period of gradual constitutional development, with sufficient "safeguards".

This tension between and within Indian and British views resulted in the clumsy compromise of the 1935 Act having no preamble of its own, but keeping in place the 1919 Act's preamble even while repealing the remainder of that Act. Unsurprisingly, this was seen in India as yet more mixed messages from the British, suggesting at best a lukewarm attitude and at worst suggesting a "minimum necessary" approach towards satisfying Indian desires.

No Bill of Right

In contrast with most modern constitutions, but in common with Commonwealth constitutional legislation of the time, the Act does not include a "bill of rights" within the new system that it aimed to establish. However, in the case of the proposed Federation of India there was a further complication in incorporating such a set of rights, as the new entity would have included nominally sovereign (and generally autocratic) princely states.

A different approach was considered by some, though, as the draft outline constitution in the Nehru Report included such a bill of rights.

Relationship to a Dominion Constitution

In 1947, a relatively few amendments in the Act made it the functioning interim constitutions of India and Pakistan.

Safeguards

The Act was not only extremely detailed, but it was riddled with 'safeguards' designed to enable the British Government to intervene whenever it saw the need in order to maintain British responsibilities and interests. To achieve this, in the face of a gradually increasing Indianization of the institutions of the Government of India, the Act concentrated the decision for the use and the actual administration of the safeguards in the hands of the British-appointed Viceroy and provincial governors who were subject to the control of the Secretary of State for India.

'In view of the enormous powers and responsibilities which the Governor-General must exercise in his discretion or according to his individual judgment, it is obvious that he (the Viceroy) is expected to be a kind of superman. He must have tact, courage, and ability and be endowed with an infinite capacity for hard work. "We have put into this Bill many safeguards," said Sir Robert Horne... "but all of those safeguards revolve about a single individual, and that is the Viceroy. He is the linch-pin of the whole system.... If the Viceroy fails, nothing can save the system you have set up." This speech reflected the point of view of the die-hard Tories who were horrified by the prospect that some day there might be a Viceroy appointed by a Labour government.'

Reality of Responsible Government under the Act – Is the Cup Half-Full or Half-Empty

A close reading of the Act reveals that the British Government equipped itself with the legal instruments to take back total control at any time they considered this to be desirable. However, doing so without good reason would totally sink their credibility with groups in India whose support the act was aimed at securing. Some contrasting views:

"In the federal government... the semblance of responsible government is presented. But the

reality is lacking, for the powers in defense and external affairs necessarily, as matters stand, given to the governor-general limit vitally the scope of ministerial activity, and the measure of representation given to the rulers of the Indian States negatives any possibility of even the beginnings of democratic control. It will be a matter of the utmost interest to watch the development of a form of government so unique; certainly, if it operates successfully, the highest credit will be due to the political capacity of Indian leaders, who have infinitely more serious difficulties to face than had the colonial statesmen who evolved the system of self-government which has now culminated in Dominion status."

Lord Lothian, in a talk lasting forty-five minutes, came straight out with his view on the Bill: "I agree with the diehards that it has been surrender. You who are not used to any constitution cannot realize what great power you are going to wield. If you look at the constitution it looks as if all the powers are vested in the Governor-General and the Governor. But is not every power here vested in the King? Everything is done in the name of the King but does the King ever interfere? Once the power passes into the hands of the legislature, the Governor or the Governor-General is never going to interfere. ...The Civil Service will be helpful. You too will realize this. Once a policy is laid down they will carry it out loyally and faithfully... We could not help it. We had to fight the diehards here. You could not realize what great courage has been shown by Mr. Baldwin and Sir Samuel Hoare. We did not want to spare the diehards as we had to talk in a different language... These various meetings — and in due course G.D. (Birla), before his return in September, met virtually everyone of importance in Anglo-Indian affairs — confirmed G.D.'s original opinion that the differences between the two countries were largely psychological, the same proposals open to diametrically opposed interpretations. He had not, probably, taken in before his visit how considerable, in the eyes of British conservatives, the concessions had been... If nothing else, successive conversations made clear to G.D. that the agents of the Bill had at least as heavy odds against them at home as they had in India.

False Equivalences

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Under the Act, British citizens resident in the UK and British companies registered in the UK must be treated on the same basis as Indian citizens and Indian registered companies unless UK law denies reciprocal treatment. The unfairness of this arrangement is clear when one considers the dominant position of British capital in much of the Indian modern sector and the complete dominance, maintained through unfair commercial practices, of UK shipping interests in India's international and coastal shipping traffic and the utter insignificance of Indian capital in Britain and the non-existence of Indian involvement in shipping to or within the UK. There are very detailed provisions requiring the Viceroy to intervene if, in his unappeasable view, any India law or regulation is intended to, or will in fact, discriminate against UK resident British subjects, British registered companies and, particularly, British shipping interests.

"The Joint Committee considered a suggestion that trade with foreign countries should be made by the Minister of Commerce, but it decided that all negotiations with foreign countries should be conducted by the Foreign Office or Department of External Affairs as they are in the United Kingdom. In concluding agreements of this character, the Foreign Secretary always consults the

Board of Trade and it was assumed that the Governor-General would in like manner consult the Minister of Commerce in India. This may be true, but the analogy itself is false. In the United Kingdom, both departments are subject to the same legislative control, whereas in India one is responsible to the federal legislature and the other to the Imperial Parliament.”

British Political Needs vs. Indian Constitutional Needs – the Ongoing Dysfunction

From the moment of the Montagu statement of 1917, it was vital that the reform process stay ahead of the curve if the British were to hold the strategic initiative. However, imperialist sentiment, and a lack of realism, in British political circles made this impossible. Thus the grudging conditional concessions of power in the Acts of 1919 and 1935 caused more resentment and signally failed to win the Raj the backing of influential groups in India which it desperately needed. In 1919 the Act of 1935 or even the Simon Commission plan would have been well received. There is evidence that Montagu would have backed something of this sort but his cabinet colleagues would not have considered it. By 1935, a constitution establishing a Dominion of India, comprising the British Indian provinces might have been acceptable in India though it would not have passed the British Parliament.

‘Considering the balance of power in the Conservative party at the time, the passing of a Bill more liberal than that which was enacted in 1935 is inconceivable.’

Provincial Part of the Act

The provincial part of the Act, which went into effect automatically, basically followed the recommendations of the Simon Commission. Provincial diarchy was abolished; that is, all provincial portfolios were to be placed in charge of ministers enjoying the support of the provincial legislatures. The British-appointed provincial governors, who were responsible to the British Government via the Viceroy and Secretary of State for India, were to accept the recommendations of the ministers unless, in their view, they negatively affected his areas of statutory “special responsibilities” such as the prevention of any grave menace to the peace or tranquility of a province and the safeguarding of the legitimate interests of minorities. In the event of political breakdown, the governor, under the supervision of the Viceroy, could take over total control of the provincial government. This, in fact, allowed the governors a more untrammelled control than any British official had enjoyed in the history of the Raj. After the resignation of the congress provincial ministries in 1939, the governors did directly rule the ex-Congress provinces throughout the war.

It was generally recognized, that the provincial part of the Act, conferred a great deal of power and patronage on provincial politicians as long as both British officials and Indian politicians played by the rules. However, the paternalistic threat of the intervention by the British governor rankled.

Federal Part of the Act

Unlike the provincial portion of the Act, the Federal portion was to go into effect only when half the States by weight agreed to federate. This never happened and the establishment of the Federation was indefinitely postponed after the outbreak of the Second World War.

Terms of the Act

The Act provided for Diarchy at the Centre. The British Government, in the person of the Secretary of State for India, through the Governor-General of India – Viceroy of India, would

continue to control India's financial obligations, defense, foreign affairs and the British Indian Army and would make the key appointments to the Reserve Bank of India (exchange rates) and Railway Board and the Act stipulated that no finance bill could be placed in the Central Legislature without the consent of the Governor General. The funding for the British responsibilities and foreign obligations (e.g. loan repayments, pensions), at least 80 percent of the federal expenditures, would be non-votable and be taken off the top before any claims could be considered for (for example) social or economic development programs. The Viceroy, under the supervision of the Secretary of State for India, was provided with overriding and certifying powers that could, theoretically, have allowed him to rule autocratically.

Objectives of the British Government

The federal part of the Act was designed to meet the aims of the Conservative Party. Over the very long term, the Conservative leadership expected the Act to lead to a nominally dominion status India, conservative in outlook, dominated by an alliance of Hindu princes and right-wing Hindus which would be well disposed to place itself under the guidance and protection of the United Kingdom. In the medium term, the Act was expected to (in rough order of importance): win the support of moderate nationalists since its formal aim was to lead eventually to a Dominion of India which, as defined under the Statute of Westminster 1931 virtually equaled independence;

Retain British of control of the Indian Army, Indian finances, and India's foreign relations for another generation;

Win Muslim support by conceding most of Jinnah's Fourteen Points;

Convince the Princes to join the Federation by giving the Princes conditions for entry never likely to be equaled. It was expected that enough would join to allow the establishment of the Federation. The terms offered to the Princes included:

Each Prince would select his state's representative in the Federal Legislature. There would be no pressure for Princes to democratize their administrations or allow elections for state representatives in the Federal Legislature.

The Princes would enjoy heavy weight age. The Princely States represented about a quarter of the population of India and produced well under a quarter of its wealth. Under the Act:

The Upper House of the Federal Legislature, the Council of State, would consist of 260 members: 156 (60%) elected from the British India and 104 (40%) nominated by the rulers of the princely states.

The Lower House, the Federal Assembly, would consist of 375 members: 250 (67%) elected by the Legislative Assemblies of the British Indian provinces; 125 (33%) nominated by the rulers of the princely states.

Ensuring that the Congress could never rule alone or gain enough seats to bring down the government

This was done by over-representing the Princes, by giving every possible minority the right to separately vote for candidates belonging to their respective communities (see separate electorate), and by making the executive theoretically, but not practically, removable by the legislature.

Gambles Taken by the British Government

Viability of the proposed Federation. It was hoped that the gerrymandered federation, encompassing units of such hugely different sizes, sophistication and varying in forms of government from autocratic Princely States to democratic provinces, could provide the basis for a viable state. However, this was not a realistic possibility (see e.g. The Making of India's Paper Federation, 1927-35 in Moore 1988) would have rapidly broken down with the British left to pick up the pieces without any viable alternative.

Princes seeing and Acting in Their Own Long-Range Best Interests - That the Princes would see that their best hope for a future would lie in rapidly joining and becoming a united block without which no group could hope, mathematically, to wield power. However, the princes did not join, and thus exercising the veto provided by the Act prevented the Federation from coming into existence. Among the reasons for the Princes staying out were the following:

They did not have the foresight to realize that this was their only chance for a future.

Congress had begun, and would continue, agitating for democratic reforms within the Princely States. Since the one common concern of the 600 or so Princes was their desire to continue to rule their states without interference, this was indeed a mortal threat. It was on the cards that this would lead eventually to more democratic state regimes and the election of states' representatives in the Federal Legislature. In all likelihood, these representatives would be largely Congressmen. Had the Federation been established, the election of states' representatives in the Federal Legislature would amount to a Congress coup from the inside. Thus, contrary to their official position that the British would look favorably on the democratization of the Princely States, their plan required that the States remain autocratic. This reflects a deep contradiction on British views of India and its future.

'At a banquet in the princely state of Benares Hailey observed that although the new federal constitution would protect their position in the central government, the internal evolution of the states themselves remained uncertain. Most people seemed to expect them to develop representative institutions. Whether those alien grafts from Westminster would succeed in British India, however, itself remained in doubt. Autocracy was "a principle which is firmly seated in the Indian States," he pointed out; "round it burn the sacred fires of an age-long tradition," and it should be given a fair chance first. Autocratic rule, "Informed by wisdom, exercised in moderation, and vitalized by a spirit of service to the interests of the subject, may well prove that it can make an appeal in India as strong as that of representative and responsible institutions." This spirited defense brings to mind Nehru's classic paradox of how the representatives of the advanced, dynamic West allied themselves with the most reactionary forces of the backward, stagnant East.'

Under the Act,

'There are a number of restrictions on the freedom of discussion in the federal legislature. For example the act forbids ... any discussion of, or the asking of questions about, a matter connected with an Indian State, other than a matter with respect to which the federal legislature has power to make laws for that state, unless the Governor-General in his discretion is satisfied that the matter affects federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked.'

They were not a cohesive group and probably realized that they would never act as one .Each

Prince seemed consumed by the desire to gain the best deal for himself were his state to join the Federation: the most money, the most autonomy.

That enough was being offered at the Centre to win the support of moderate nationalist Hindu and Muslim support. In fact, so little was offered that all significant groups in British India rejected and denounced the proposed Federation. A major contributing factor was the continuing distrust of British intentions for which there was considerable basis in fact. In this vital area the Act failed Irwin's test:

'I don't believe that... it is impossible to present the problem in such a form as would make the shop window look respectable from an Indian point of view, which is really what they care about, while keeping your hand pretty firmly on the things that matter.' (Irwin to Stonehaven, 12 November 1928)

That the wider electorate would turn against the Congress. In fact, the 1937 elections showed overwhelming support for Congress among the Hindu electorate.

That by giving Indian politicians a great deal of power at the provincial level, while denying them responsibility at the Centre, it was hoped that Congress, the only national party, would disintegrate into a series of provincial fiefdoms. In fact, the congress High Command was able to control the provincial ministries and to force their resignation in 1939. The Act showed the strength and cohesion of Congress and probably strengthened it. This does not imply that Congress was not made up of and found its support in various sometimes competing interests and groups. Rather, it recognizes the ability of Congress, unlike the British Raj, to maintain the cooperation and support of most of these groups even if, for example in the forced resignation of Congress provincial ministries in 1939 and the rejection of the Cripps Offer in 1942, this required a negative policy that was harmful, in the long run, to the prospects for an independent India that would be both united and democratic.

Indian Reaction to the Proposed Federation

No significant group in India accepted the Federal portion of the Act. A typical response was: 'After all, there are five aspects of every Government worth the name: (a) The right of external and internal defense and all measures for that purpose; (b) The right to control our external relations; (c) The right to control our currency and exchange; (d) The right to control our fiscal policy; (e) the day-to-day administration of the land.... (Under the Act) You shall have nothing to do with external affairs. You shall have nothing to do with defense. You shall have nothing to do, or, for all practical purposes in future, you shall have nothing to do with your currency and exchange, for indeed the Reserve Bank Bill just passed has a further reservation in the Constitution that no legislation may be undertaken with a view to substantially alter the provisions of that Act except with the consent of the Governor-General.... there is no real power conferred in the Centre.' (Speech by Mr Bhulabhai DESAI on the Report of the Joint Parliamentary Committee on Indian Constitutional Reform, 4 February 1935.

However, the Liberals, and even elements in the Congress were tepidly willing to give it a go: "Linlithgow asked Sapru whether he thought there was a satisfactory alternative to the scheme of the 1935 Act. Sapru replied that they should stand fast on the Act and the federal plan embodied in it. It was not ideal but at this stage it was the only thing. A few days after Sapru's visit Birla came to see the Viceroy. He thought that Congress was moving towards acceptance of

Federation. Gandhi was not over-worried, said Birla, by the reservation of defense and external affairs to the centre, but was concentrating on the method of choosing the States' representatives. Birla wanted the Viceroy to help Gandhi by persuading a number of Princes to move towards democratic election of representatives. Birla then said that the only chance for Federation lay in agreement between Government and Congress and the best hope of this lay in discussion between the Viceroy and Gandhi."

The Working of the Act:

The British government sent out Lord Linlithgow as the new viceroy with the remit of bringing the Act into effect. Linlithgow was intelligent, extremely hard working, honest, serious and determined to make a success out of the Act. However, he was also unimaginative, stolid, legalistic and found it very difficult to "get on terms" with people outside his immediate circle. In 1937, after the holding of provincial elections, Provincial Autonomy commenced. From that point until the declaration of war in 1939, Linlithgow tirelessly tried to get enough of the Princes to accede to launch the Federation. In this he received only the weakest backing from the Home Government and in the end the Princes rejected the Federation *en masse*. In September 1939, Linlithgow simply declared that India was at war with Germany. Though Linlithgow's behavior was constitutionally correct it was also offensive too much of Indian opinion that the Viceroy had not consulted the elected representatives of the Indian people before taking such a momentous decision. This led directly to the resignation of the Congress provincial ministries. From 1939, Linlithgow concentrated on supporting the war effort.

D Accession of princely states and recognition of the states

At the time of Indian independence in 1947, India was divided into two sets of territories, the first being the territories under the control of the British Empire, and the second being the territories over which the Crown had suzerainty, but which were under the control of their hereditary rulers. In addition, there were several colonial enclaves controlled by France and Portugal. The political integration of these territories into India was a declared objective of the Indian National Congress, which the Government of India pursued over the next decade. Through a combination of factors, Sardar Vallabhbhai Patel and V. P. Menon convinced the rulers of the various princely states to accede to India. Having secured their accession, they then proceeded to, in a step-by-step process, secure and extend the central government's authority over these states and transform their administrations until, by 1956, there was little difference between the territories that had formerly been part of British India and those that had been part of princely states. Simultaneously, the Government of India, through a combination of diplomatic and military means, acquired *de facto* and *de jure* control over the remaining colonial enclaves, which too were integrated into India.

The princely states were granted Privy-purse, a compensation (money) for giving away their properties and revenue-generating assets to Government of India. For some of the princely states, Privy purses are so huge that it ranges up to 20 lakhs per month in 1947

Although this process successfully integrated the vast majority of princely states into India, it was not as successful in relation to a few states, notably the former princely states of Jammu and Kashmir, Tripura and Manipur, where active secessionist movements exist.

Princely States in India

The early history of British expansion in India was characterised by the co-existence of two approaches towards the existing princely states. The first was a policy of annexation, where the British sought to forcibly absorb the Indian princely states into the provinces which constituted their Empire in India. The second was a policy of indirect rule, where the British assumed suzerainty and paramountcy over princely states, but conceded to them sovereignty and varying degrees of internal self-government. During the early part of the 19th century, the policy of the British tended towards annexation, but the Indian Rebellion of 1857 forced a change in this approach, by demonstrating both the difficulty of absorbing and subduing annexed states, and the usefulness of princely states as a source of support. In 1858, the policy of annexation was formally renounced, and British relations with the remaining princely states thereafter were based on subsidiary alliances, whereby the British exercised paramountcy over all princely states, with the British crown as ultimate suzerain, but at the same time respected and protected them as allies, taking control of their external relations. The exact relations between the British and each princely state were regulated by individual treaties and varied widely, with some states having complete internal self-government, others being subject to significant control in their internal affairs, and some rulers being in effect little more than the owners of landed estates, with little autonomy.

During the 20th century, the British made several attempts to integrate the princely states more closely with British India, in 1921 creating the Chamber of Princes as a consultative and advisory body and in 1936 transferring the responsibility for the supervision of smaller states from the provinces to the centre and creating direct relations between the Government of India and the larger princely states, superseding political agents. A more ambitious aim was a scheme of federation contained in the Government of India Act 1935, which envisaged the princely states and British India being united under a federal government.¹ This scheme came close to success, but was abandoned in 1939 as a result of the outbreak of the Second World War.¹ As a result, in the 1940s the relationship between the princely states and the crown remained regulated by the principle of paramountcy and by the various treaties between the British crown and the states.

Neither paramountcy nor the subsidiary alliances could continue after Indian independence. The British took the view that because they had been established directly between the British crown and the princely states, they could not be transferred to the newly independent dominions of India and Pakistan. At the same time, the alliances imposed obligations on Britain that it was not prepared to continue to carry out, such as the obligation to maintain troops in India for the

defence of the princely states. The British government therefore decided that paramountcy, together with all treaties between them and the princely states, would come to an end upon the British departure from India.

The Saurashtra and Kathiawar regions of Gujarat were home to over two hundred princely states, many with non-contiguous territories, as this map of Baroda shows.

The termination of paramountcy would have in principle meant that all rights that flowed from the states' relationship with the British crown would return to them, leaving them free to negotiate relationships with the new states of India and Pakistan "on a basis of complete freedom. Early British plans for the transfer of power, such as the offer produced by the Cripps Mission, recognised the possibility that some princely states might choose to stand out of independent India. This was unacceptable to the Indian National Congress, which regarded the independence of princely states as a denial of the course of Indian history, and consequently regarded this scheme as a "Balkanisation" of India. The Congress had traditionally been less active in the princely states because of their limited resources which restricted their ability to organise there and their focus on the goal of independence from the British,¹ and because Congress leaders, in particular Mohandas Gandhi, were sympathetic to the more progressive princes as examples of the capacity of Indians to rule themselves. This changed in the 1930s as a result of the federation scheme contained in the Government of India Act 1935 and the rise of socialist Congress leaders such as Jayaprakash Narayan, and the Congress began to actively engage with popular political and labour activity in the princely states. By 1939, the Congress' official stance was that the states must enter independent India, on the same terms and with the same autonomy as the provinces of British India, and with their people granted responsible government. As a result, it insisted on the incorporation of the princely states into India in its negotiations with British but the British took the view that this was not in their power to grant.

A few British leaders, particularly Lord Mountbatten, the last British viceroy of India, were also uncomfortable with breaking links between independent India and the princely states. The development of trade, commerce and communications during the 19th and 20th centuries had bound the princely states to the British India through a complex network of interests.¹ Agreements relating to railways, customs, irrigation, use of ports, and other similar agreements would get terminated, posing a serious threat to the economic life of the subcontinent. Mountbatten was also persuaded by the argument of Indian officials such as V. P. Menon that the integration of the princely states into independent India would, to some extent, assuage the wounds of partition. The result was that Mountbatten personally favoured and worked towards the accession of princely states to India following the transfer of power, as proposed by the Congress.

Accepting integration

The princes' position

The rulers of the princely states were not uniformly enthusiastic about integrating their domains into independent India. Some, such as the kings of Bikaner and Jawhar, were motivated to join India out of ideological and patriotic considerations but others insisted that they had the right to join either India or Pakistan, to remain independent, or form a union of their own. Bhopal, Travancore and Hyderabad announced that they did not intend to join either dominion. Hyderabad went as far as to appoint trade representatives in European countries and commencing negotiations with the Portuguese to lease or buy Goa to give it access to the sea, and Travancore pointed to the strategic importance to western countries of its thorium reserves while asking for recognition. Some states proposed a subcontinent-wide confederation of princely states, as a third entity in addition to India and Pakistan.¹ Bhopal attempted to build an alliance between the princely states and the Muslim League to counter the pressure being put on rulers by the Congress.

A number of factors contributed to the collapse of this initial resistance and to nearly all non-Muslim majority princely states agreeing to accede to India. An important factor was the lack of unity among the princes. The smaller states did not trust the larger states to protect their interests, and many Hindu rulers did not trust Muslim princes, in particular Hamidullah Khan, the Nawab of Bhopal and a leading proponent of independence, whom they viewed as an agent for Pakistan.^[31] Others, believing integration to be inevitable, sought to build bridges with the Congress, hoping thereby to gain a say in shaping the final settlement. The resultant inability to present a united front or agree on a common position significantly reduced their bargaining power in negotiations with the Congress. The decision by the Muslim League to stay out of the Constituent Assembly was also fatal to the princes' plan to build an alliance with it to counter the Congress and attempts to boycott the Constituent Assembly altogether failed on 28 April 1947, when the states of Baroda, Bikaner, Cochin, Gwalior, Jaipur, Jodhpur, Patiala and Rewa took their seats in the Assembly.

Many princes were also pressured by popular sentiment favouring integration with India, which meant their plans for independence had little support from their subjects. The Maharaja of Travancore, for example, definitively abandoned his plans for independence after the attempted assassination of his dewan, Sir C. P. Ramaswami Iyer. In a few states, the chief ministers or dewans played a significant role in convincing the princes to accede to India. The key factors that led the states to accept integration into India were, however, the efforts of Lord Mountbatten, Sardar Vallabhbhai Patel and V. P. Menon. The latter two were respectively the political and administrative heads of the States Department, which was in charge of relations with the princely states.

Lord Louis Mountbatten played an important role in convincing reluctant monarchs to accede to the Indian Union.

Mountbatten believed that securing the states' accession to India was crucial to reaching a negotiated settlement with the Congress for the transfer of power. As a relative of the British King, he was trusted by most of the princes and was a personal friend of many, especially the Nawab of Bhopal, Hamidullah Khan. The princes also believed that he would be in a position to ensure the independent India adhered to any terms that might be agreed upon, because Prime Minister Jawaharlal Nehru and Patel had asked him to become the first Governor General of the Dominion of India.

Mountbatten used his influence with the princes to push them towards accession. He declared that the British Government would not grant dominion status to any of the princely states, nor would it accept them into the British Commonwealth, which meant that the states would sever all connections with the British crown unless they joined either India or Pakistan. He pointed out that the Indian subcontinent was one economic entity, and that the states would suffer most if the link were broken. He also pointed to the difficulties that princes would face maintaining order in the face of threats such as the rise of communal violence and communist movements.

Mountbatten stressed that he would act as the trustee of the princes' commitment, as he would be serving as India's head of state well into 1948. He engaged in a personal dialogue with reluctant princes, such as the Nawab of Bhopal, who he asked through a confidential letter to sign the Instrument of Accession making Bhopal part of India, which Mountbatten would keep locked up in his safe. It would be handed to the States Department on 15 August only if the Nawab did not change his mind before then, which he was free to do. The Nawab agreed, and did not renege over the deal.¹

At the time, several princes complained that they were being betrayed by Britain, who they regarded as an ally,^[43] and Sir Conrad Corfield resigned his position as head of the Political Department in protest at Mountbatten's policies.^[36] Mountbatten's policies were also criticised by the opposition Conservative Party.^[44] Winston Churchill compared the language used by the Indian government with that used by Adolf Hitler before the invasion of Austria.^[45] Modern historians such as Lumby and Moore, however, take the view that Mountbatten played a crucial role in ensuring that the princely states agreed to accede to India.^[46]

Instruments of Accession

Patel and Menon backed up their diplomatic efforts by producing treaties that were designed to be attractive to rulers of princely states. Two key documents were produced. The first was the Standstill Agreement, which confirmed the continuance of the pre-existing agreements and administrative practices. The second was the Instrument of Accession, by which the ruler of the princely state in question agreed to the accession of his kingdom to independent India, granting the latter control over specified subject matters. The nature of the subject matters varied depending on the acceding state. The states which had internal autonomy under the British

signed an Instrument of Accession which only ceded three subjects to the government of India—defence, external affairs, and communications, each defined in accordance with List 1 to Schedule VII of the Government of India Act 1935. Rulers of states which were in effect estates or talukas, where substantial administrative powers were exercised by the Crown, signed a different Instrument of Accession, which vested all residuary powers and jurisdiction in the Government of India. Rulers of states which had an intermediate status signed a third type of Instrument, which preserved the degree of power they had under the British. The Instruments of Accession implemented a number of other safeguards. Clause 7 provided that the princes would not be bound to the Indian constitution as and when it was drafted. Clause 8 guaranteed their autonomy in all areas that were not ceded to the Government of India. This was supplemented by a number of promises. Rulers who agreed to accede would receive guarantees that their extra-territorial rights, such as immunity from prosecution in Indian courts and exemption from customs duty, would be protected, that they would be allowed to democratise slowly, that none of the eighteen major states would be forced to merge, and that they would remain eligible for British honours and decorations.

The accession process

The limited scope of the Instruments of Accession and the promise of a wide-ranging autonomy and the other guarantees they offered, gave sufficient comfort to many rulers, who saw this as the best deal they could strike given the lack of support from the British, and popular internal pressures. Between May 1947 and the transfer of power on 15 August 1947, the vast majority of states signed Instruments of Accession. A few, however, held out. Some simply delayed signing the Instrument of Accession. Piploda, a small state in central India, did not accede until March 1948. The biggest problems, however, arose with a few border states, such as Jodhpur, which tried to negotiate better deals with Pakistan, with Junagadh, which actually did accede to Pakistan, and with Hyderabad and Kashmir, which declared that they intended to remain independent.

Border states[

The ruler of Jodhpur, Hanwant Singh, was antipathetic to the Congress, and did not see much future in India for him or the lifestyle he wished to lead. Along with the ruler of Jaisalmer, he entered into negotiations with Muhammad Ali Jinnah, who was the designated head of state for Pakistan. Jinnah was keen to attract some of the larger border states, hoping thereby to attract other Rajput states to Pakistan and compensate for the loss of half of Bengal and Punjab. He offered to permit Jodhpur and Jaisalmer to accede to Pakistan on any terms they chose, giving their rulers blank sheets of paper and asking them to write down their terms, which he would sign. Jaisalmer refused, arguing that it would be difficult for him to side with Muslims against Hindus in the event of communal problems. Hanwant Singh came close to signing. However, the atmosphere in Jodhpur was in general hostile to accession to Pakistan. Mountbatten also pointed

out that the accession of a predominantly Hindu state to Pakistan would violate the principle of the two-nation theory on which Partition was based, and was likely to cause communal violence in the State. Hanwant Singh was persuaded by these arguments, and somewhat reluctantly agreed to accede to India

Junagadh

Although the states were in theory free to choose whether they wished to accede to India or Pakistan, Mountbatten had pointed out that "geographic compulsions" meant that most of them must choose India. In effect, he took the position that only the states that shared a border with Pakistan could choose to accede to it. The Nawab of Junagadh, a princely state located on the south-western end of Gujarat and having no common border with Pakistan, chose to accede to Pakistan ignoring Mountbatten's views, arguing that it could be reached from Pakistan by sea. The rulers of two states that were subject to the suzerainty of Junagadh—Mangrol and Babariawad—reacted to this by declaring their independence from Junagadh and acceding to India. In response, the Nawab of Junagadh militarily occupied the states. The rulers of neighbouring states reacted angrily, sending their troops to the Junagadh frontier and appealed to the Government of India for assistance. A group of Junagadhi people, led by Samaldas Gandhi, formed a government-in-exile, the *Aarzi Hukumat* ("temporary government

India believed that if Junagadh was permitted to go to Pakistan, the communal tension already simmering in Gujarat would worsen, and refused to accept the accession. The government pointed out that the state was 80% Hindu, and called for a plebiscite to decide the question of accession. Simultaneously, they cut off supplies of fuel and coal to Junagadh, severed air and postal links, sent troops to the frontier, and reoccupied the principalities of Mangrol and Babariawad that had acceded to India. Pakistan agreed to discuss a plebiscite, subject to the withdrawal of Indian troops, a condition India rejected. On 26 October, the Nawab and his family fled to Pakistan following clashes with Indian troops. On 7 November, Junagadh's court, facing collapse, invited the Government of India to take over the State's administration. The Government of India agreed

Post-integration issues

The princes

Although the progressive integration of the princely states into India was largely peaceful, not all princes were happy with the outcome. Many had expected the Instruments of Accession to be permanent, and were unhappy about losing the autonomy and the guaranteed continued existence of their states they had expected to gain. Some felt uneasy about the disappearance of states that

generations of their family had controlled, while others were unhappy about the disappearance of administrative structures they had worked hard to build up and which they believed to be efficient. The majority, however, despite the "strain and tension" of adapting to life as private citizens were content to retire on the generous pension provided by the privy purse. Several took advantage of their eligibility to hold public offices under the central government. The Maharaja of Bhavnagar, Col. Krishna Kumarasingh Bhavasingh Gohil, for example, became the Governor of Madras State and several others were appointed to diplomatic posts overseas.

UNIT -4

A. Colonialism and imperialisms:stages of Economy

Colonialism and imperialism

Imperialism is a type of advocacy of empire. Its name originated from the Latin word "imperium", which means to rule over large territories. Imperialism is "a policy of extending a country's power and influence through colonization, use of military force, or other means".¹ Imperialism has greatly shaped the contemporary world. The term imperialism has been applied to Western (and Japanese) political and economic dominance especially in Asia and Africa in the 19th and 20th centuries. Its precise meaning continues to be debated by scholars. Some writers, such as Edward Said, use the term more broadly to describe any system of domination and subordination organised with an imperial center and a periphery.

Imperialism is defined as "an unequal human and territorial relationship, usually in the form of an empire, based on ideas of superiority and practices of dominance, and involving the extension of authority and control of one state or people over another." Imperialism is a process and ideology that does not only focus on political dominance, but rather, conquest over expansion. Imperialism is particularly focused on the control that one group, often a state power, has on another group of people. There are "formal" or "informal" imperialism. "Formal imperialism" is, "the physical control or full-fledged colonial rule". "Informal control" is less direct; however, it is still a powerful form of dominance

The definition of imperialism has not been finalized for centuries and was confusedly seen to represent the policies of major powers, or simply, general-purpose aggressiveness. Further on, some writers used the term imperialism, in slightly more discriminating fashion, to mean all kinds of domination or control by a group of people over another. To clear out this confusion about the

definition of imperialism one could speak of "formal" and "informal" imperialism, the first meaning physical control or "full-fledged colonial rule" while the second implied less direct rule though still containing perceivable kinds of dominance. Informal rule is generally less costly than taking over territories formally. This is because, with informal rule, the control is spread more subtly through technological superiority, enforcing land officials into large debts that cannot be repaid, ownership of private industries thus expanding the controlled area, or having countries agree to uneven trade agreements forcefully.

It is mostly accepted that modern-day colonialism is an expression of imperialism and cannot exist without the latter. The extent to which "informal" imperialism with no formal colonies is properly described remains a controversial topic amongst historians.^[2] Both colonization and imperialism have been described by Tom Nairn and Paul James as early forms of globalization:

Even if a particular empire does not have a "global reach" as we would define it today, empires by their nature still tend to contribute to processes of globalization because of the way that imperial power tends to generate counter-power at its edge-lands and send out reverberations far beyond the territories of their immediate control.

The word imperialism became common in Great Britain during the 1870s and was used with a negative connotation. In Britain, the word had until then mostly been used to refer to the politics of Napoleon III in obtaining favorable public opinion in France through foreign military interventions.

Colonialism vs Imperialism

"The word 'empire' comes from the Latin word imperium; for which the closest modern English equivalent would perhaps be 'sovereignty', or simply 'rule'. The greatest distinction of an empire is through the amount of land that a nation has conquered and expanded. Political power grew from conquering land, however cultural and economic aspects flourished through sea and trade routes. Europe and the United States of America had controlled over eighty percent of the globe's land area along with holding important seaports at their possession. A distinction about empires is "that although political empires were built mostly by expansion overland, economic and cultural influences spread at least as much by sea". Some of the main aspects of trade that went overseas consisted of animals and plant products. European empires in Asia and Africa "have come to be seen as the classic forms of imperialism: and indeed most books on the subject confine themselves to the European seaborne empires. European expansion caused the world to be divided by how developed and developing nation are portrayed through the world systems theory. The two main regions are the core and the periphery. The core consists of high areas of income and profit; the periphery is on the opposing side of the spectrum consisting of areas of low income and profit. These critical theories of Geo-politics have led to increased discussion of the meaning and impact of imperialism on the modern post-colonial world. The Russian leader

Lenin suggested that "imperialism was the highest form of capitalism, claiming that imperialism developed after colonialism, and was distinguished from colonialism by monopoly capitalism".^[13] This idea from Lenin stresses how important new political world order has become in our modern era. Geopolitics now focuses on states becoming major economic players in the market; some states today are viewed as empires due to their political and economic authority over other nations.

The term "imperialism" is often conflated with "colonialism", however many scholars have argued that each have their own distinct definition. Imperialism and colonialism have been used in order to describe one's superiority, domination and influence upon a person or group of people. Robert Young writes that while imperialism operates from the center, is a state policy and is developed for ideological as well as financial reasons, colonialism is simply the development for settlement or commercial intentions. Colonialism in modern usage also tends to imply a degree of geographic separation between the colony and the imperial power. Particularly, Edward Said distinguishes the difference between imperialism and colonialism by stating; "imperialism involved 'the practice, the theory and the attitudes of a dominating metropolitan center ruling a distant territory', while colonialism refers to the 'implanting of settlements on a distant territory. Contiguous land empires such as the Russian or Ottoman are generally excluded from discussions of colonialism. Thus it can be said that imperialism includes some form of colonialism, but colonialism itself does not automatically imply imperialism, as it lacks a political focus

Imperialism and colonialism both dictate that the political and economic advantage over a land and the indigenous populations they control, yet scholars sometimes find it difficult to illustrate the difference between the two. Although imperialism and colonialism focus on the suppression of *an other*, if Colonialism refers to the process of a country taking physical control of another, Imperialism refers to the political and monetary dominance, either formally or informally. Colonialism is seen to be the architect deciding how to start dominating areas and then imperialism can be seen as creating the idea behind conquest cooperating with colonialism. Colonialism is when the imperial nation begins a conquest over an area and then eventually is able to rule over the areas the previous nation had controlled. Colonialism's core meaning is the exploitation of the valuable assets and supplies of the nation that was conquered and the conquering nation then gaining the benefits from the spoils of the war. The meaning of imperialism is to create an empire, by conquering the other state's lands and therefore increasing its own dominance. Colonialism is the builder and preserver of the colonial possessions in an area by a population coming from a foreign region Colonialism can completely change the existing social structure, physical structure and economics of an area; it's not unusual that the characteristics of the conquering peoples are inherited by the conquered indigenous populations.

Imaginative Geographies and Orientalism

Imperial control, both territorial and non-territorial, is justified through discourses that shape our understanding of different spaces. The concept of imaginative geographies explains how this understanding is limited by our attitudes and ideas which work to obscure the reality of these spaces.

Orientalism, as theorized by Edward Said, refers to how the West developed an imaginative geography of the East. This imaginative geography relies on an essentializing discourse that represents neither the diversity nor the social reality of the East. Rather, by essentializing the East, this discourse uses the idea of place-based identities to create difference and distance between "we" the West and "them" the East, or "here" in the West and "there" in the East.^[26] This difference was particularly apparent in textual and visual works of early European studies of the Orient that positioned the East as irrational and backward in opposition to the rational and progressive West. Defining the East as a negative vision of itself, as its inferior, not only increased the West's sense of self, but also was a way of ordering the East and making it known to the West so that it could be dominated and controlled. The discourse of Orientalism therefore served as an ideological justification of early Western imperialism, as it formed a body of knowledge and ideas that rationalized social, cultural, political, and economic control of other territories.

Age of Imperialism

The Age of Imperialism, a time period beginning around 1700, saw (generally European) industrializing nations engaging in the process of colonizing, influencing, and annexing other parts of the world in order to gain political power.¹ Although imperialist practices have existed for thousands of years, the term "Age of Imperialism" generally refers to the activities of European powers from the early 18th century through to the middle of the 20th century, for example, the "The Great Game" in Persian lands, the "Scramble for Africa" and the "Open Door Policy" in China.

Africa, divided into colonies under multiple empires, circa 1913

During the 20th century, historians John Gallagher (1919–1980) and Ronald Robinson (1920–1999) constructed a framework for understanding European imperialism. They claim that European imperialism was influential, and Europeans rejected the notion that "imperialism" required formal, legal control by one government over another country. "In their view, historians have been mesmerized by formal empire and maps of the world with regions colored red. The bulk of British emigration, trade, and capital went to areas outside the formal British Empire. Key to their thinking is the idea of empire 'informally if possible and formally if necessary.'

Because of the resources made available by imperialism, the world's economy grew significantly and became much more interconnected in the decades before World War I, making the many imperial powers rich and prosperous.

Theories of imperialism

In anglophone academic works, theories regarding imperialism are often based on the British experience. The term "Imperialism" was originally introduced into English in its present sense in the late 1870s by opponents of the allegedly aggressive and ostentatious imperial policies of British prime Minister Benjamin Disraeli. It was shortly appropriated by supporters of "imperialism" such as Joseph Chamberlain. For some, imperialism designated a policy of idealism and philanthropy; others alleged that it was characterized by political self-interest, and a growing number associated it with capitalist greed. Liberal John A. Hobson and Marxist Vladimir Lenin added a more theoretical macroeconomic connotation to the term. Lenin in particular exerted substantial influence over later Marxist conceptions of imperialism with his work *Imperialism, the Highest Stage of Capitalism*. In his writings Lenin portrayed Imperialism as a natural extension of capitalism that arose from need for capitalist economies to constantly expand investment, material resources and manpower in such a way that necessitated colonial expansion. This conception of imperialism as a structural feature of capitalism is echoed in by later Marxist theoreticians. Many theoreticians on the left have followed in emphasizing the structural or systemic character of "imperialism". Such writers have expanded the time period associated with the term so that it now designates neither a policy, nor a short space of decades in the late 19th century, but a world system extending over a period of centuries, often going back to Christopher Columbus and, in some accounts, to the Crusades. As the application of the term has expanded, its meaning has shifted along five distinct but often parallel axes: the moral, the economic, the systemic, the cultural, and the temporal. Those changes reflect - among other shifts in sensibility - a growing unease, even squeamishness, with the fact of power, specifically, Western power

The correlation between capitalism, aristocracy, and imperialism has long been debated among historians and political theorists. Much of the debate was pioneered by such theorists as J. A. Hobson (1858–1940), Joseph Schumpeter (1883–1950), Thorstein Veblen (1857–1929), and Norman Angell (1872–1967). While these non-Marxist writers were at their most prolific before World War I, they remained active in the interwar years. Their combined work informed the study of imperialism's impact on Europe, as well as contributed to reflections on the rise of the military-political complex in the United States from the 1950s. Hobson argued that domestic social reforms could cure the international disease of imperialism by removing its economic foundation. Hobson theorized that state intervention through taxation could boost broader consumption, create wealth, and encourage a peaceful, tolerant, multipolar world order.

d. Permanent settlement and Emergence of idea of land as a commodity

The **Permanent Settlement** — also known as the **Permanent Settlement of Bengal** (Bengali: *Chirosthayi Bandobast*) was an agreement between the East India Company and Bengali landlords to fix revenues to be raised from land, with far-reaching consequences for both agricultural methods and productivity in the entire Empire and the political realities of the Indian countryside. It was concluded in 1793, by the Company administration headed by Charles, Earl Cornwallis. It formed one part of a larger body of legislation enacted known as the Cornwallis Code.

The other two systems prevalent in India were The Ryotwari System and The Mahalwari System.

Background

Earlier zamindars in Bengal, Bihar and Odisha had been functionaries who held the right to collect revenue on behalf of the Mughal emperor and his representative or diwan in Bengal. The diwan supervised the zamindars to ensure that they were neither lax nor overly stringent. When the East India Company was awarded the diwani or overlordship of Bengal by the empire following the Battle of Buxar in 1764, it found itself short of trained administrators, especially those familiar with local custom and law. As a result, landholders were unsupervised or they reported to corrupt and indolent officials. The result was that revenues were extracted without regard for future income or local welfare.

Following the devastating famine of 1770, which was partially caused by this short-sightedness, Company officials in Calcutta better understood the importance of oversight of revenue officials. They failed to consider the question of incentivisation; hence Warren Hastings, then governor-general, introduced a system of five-yearly inspections and temporary tax farmers.

Many of those appointed as tax farmers absconded with as much revenue as they could during the time period between inspections. Parliament took note of the disastrous consequences of the system, and in 1784 British Prime Minister William Pitt the Younger directed the Calcutta administration to alter it immediately. In 1786 Charles Cornwallis was sent out to India to reform the company's practices.

In 1786 the East India Company Court of Directors first proposed a permanent settlement for Bengal, changing the policy then being followed by Calcutta, which was attempting to increase taxation of zamindars. Between 1786 and 1790, the new Governor-General Lord Cornwallis and Sir John Shore (later Governor-General) entered a heated debate over whether or not to introduce

a permanent settlement with the zamindars. Shore argued that the native zamindars would not trust the permanent settlement to be permanent, and that it would take time before they realised it was genuine. Cornwallis believed that they would immediately accept it and begin investing in improving their land. In 1790 the Court of Directors issued a ten-year (Decennial) settlement to the zamindars, which was made permanent in 1793. By the Permanent Settlement Act of 1793, the Zamindars power of keeping the armed forces were taken back and they remained just the tax collectors of the land. The power of Zamindars were considerably weakened as they were not allowed to hold any court as it was brought under the supervision of Collector appointed by the company. British officials believed that investing in the land would improve the economy. They did not want to take direct control of local administration in villages because of several reasons. They did not want to annoy those people who had traditionally enjoyed power and prestige in the village. In order to keep powerful people happy and to collect better revenue, Lord Cornwallis introduced the Permanent Settlement. As per permanent system, rajas and taluqdars were recognized as zamindars. The zamindars were supposed to collect the land revenue from the peasants. As per the permanent settlement:

1. The rate of revenue was not to be increased ever in the future.
2. The company officials believed that this would give some motivations to zamindars to invest in the land.
3. Zamindars would be assured of long-term returns of continuous flow of revenue.
4. It also created a new social class of land-lords who were loyal to the British.

Overview

The question of incentivisation now being understood to be central, the security of tenure of landlords was guaranteed; in short, the former landholders and revenue intermediaries were granted proprietorial rights (effective ownership) to the land they held. In addition, the land tax was fixed in perpetuity, so as to minimise the tendency by British administrators to amass a small fortune in sluiced-away revenue. Smallholders were no longer permitted to sell their land, though they could not be expropriated by their new landlords.

Incentivization of zamindars in this case was intended to encourage improvements of the land, such as drainage, irrigation and the construction of roads and bridges; such infrastructure had been insufficient through much of Bengal. With a fixed land tax, zamindars could securely invest in increasing their income without any fear of having the increase taxed away by the Company. Cornwallis made this motivation quite clear, declaring that "when the demand of government is fixed, an opportunity is afforded to the landholder of increasing his profits, by the improvement of his lands". The British had in mind "improving landlords" in their own country, such as Coke of Norfolk.

The Court of Directors also hoped to guarantee the company's income, which was constantly plagued by defaulting zamindars who fell into arrears, making it impossible for them to budget their spending accurately.

The immediate consequence of the Permanent Settlement was both very sudden and dramatic, and one which nobody had apparently foreseen. By ensuring that zamindars' lands were held in perpetuity and with a fixed tax burden, they became desirable commodities. In addition, the government tax demand was inflexible and the British East India Company's collectors refused to make allowances for times of drought, flood or other natural disaster. The tax demand was higher than that in England at the time. As a result, many zamindars immediately fell into arrears.

The Company's policy of auction of any zamindari lands deemed to be in arrears created a market for land which previously did not exist. Many of the new purchasers of this land were Indian officials within the East India Company's government. These bureaucrats were ideally placed to purchase lands which they knew to be underassessed, and therefore profitable. In addition, their position as officials gave them opportunity to quickly acquire the wealth necessary to purchase land through bribery and corruption. They could also manipulate the system to bring to sale land that they specifically wanted. Historian Bernard S. Cohn and others have argued that the Permanent Settlement led firstly to a commercialisation of land which previously did not exist in Bengal. And secondly, as a consequence of this, it led to a change in the social background of the ruling class from "lineages and local chiefs" to "under civil servants and their descendants, and to merchants and bankers". The new landlords were different in their outlook; "often they were absentee landlords who managed their land through managers and who had little attachment to their land

Influence

The Company hoped that the zamindar class would not only be a revenue-generating instrument but serve as intermediaries for the more political aspects of their rule, preserving local custom and protecting rural life from the possibly rapacious influences of its own representatives. However, this worked both ways; zamindars became a naturally conservative interest group. Once British policy in the mid-nineteenth century changed to one of reform and intervention in custom, the zamindars were vocal in their opposition. The Permanent Settlement had the features that state demand was fixed at 89% of the rent and 11% was to be retained by the *Zamindars*. The state demand could not be increased but payment should be made on the due date, before sunset and so it is also known as the 'Sunset Law'. Failure to pay led to the sale of land to the highest bidder..

While the worst of the tax-farming excesses were countered by the introduction of the Settlement, the use of land was not part of the agreement. There was a tendency of Company

officials and Indian landlords to force their tenants into plantation-style farming of cash crops like indigo and cotton rather than rice and wheat. This was a cause of many of the worst famines of the nineteenth century. In addition, zamindars eventually became absentee landlords, with all that that implies for neglect of investment on the land.

Once the salient features of the Settlement were reproduced all over India – and indeed elsewhere in the Empire, including Kenya – the political structure was altered forever. The landlord class held much greater power than they had under the Mughals, where they were subject to oversight by a trained bureaucracy with the power to attenuate their tenure. The power of the landlord caste/class over smallholders was not diluted in India until the first efforts towards land reform in the 1950s, still incomplete everywhere except West Bengal. In Pakistan, where land reform was never carried out, elections in rural areas still suffer from a tendency towards oligarchy reflecting the concentration of influence in the hands of zamindar families

B.Nationalist Movements in India

The **Nationalist Movements in India** were organized mass movements emphasizing and raising questions concerning the interests of the people of India. In most of these movements, people were themselves encouraged to take action. Due to several factors, these movements failed to win Independence for India. However, they did promote a sense of nationalism among the people of the country. The failure of these movements affected many people as they withdrew from Government offices, schools, factories and services. Though they did manage to get a few concessions such as those won by the Salt March in 1930, they did not help India much from the point of view of their objective.

vjv, Nizamiyat, the local nawabs of Oudh and Bengal and other smaller powers. Each was a strong regional power influenced by its religious and ethnic identity. However, the East India Company ultimately emerged as the predominant power. One of the results of the social, economic and political changes instituted in the country throughout the greater part of 18th century was the growth of the Indian middle class. Although from different backgrounds and different parts of India, this middle class and its varied political leaderships contributed to a growing "Indian" identity".^[1] The realisation and refinement of this concept of national identity fed a rising tide of nationalism in India in the last decades of the 19th century.^{[2][3][4]}

The Swadeshi movement encouraged the Indian people to stop using British products and start using their own handmade products. The original Swadeshi movement emanated from the partition of Bengal in 1905 and continued up to 1908. The Swadeshi movement which was a part of the Indian freedom struggle was a successful economic strategy to remove the British empire

and improve economic conditions in India. The Swadeshi movement soon stimulated local enterprise in many areas. Lokmanya Bal Gangadhar Tilak, Bipin Chandra Pal, Lala Lajpat Rai, V. O. Chidambaram Pillai, Sri Aurobindo, Surendranath Banerji, Rabindranath Tagore were some of the prominent leaders of this movement. The trio also known as LAL BAL PAL. The Swadeshi movement was the most successful. The name of Lokmanya began spreading around and people started following him in all parts of the country.

Indian textile industry also played an important role in the freedom struggle of India. The mechanization of the textile industry pioneered the Industrial revolution in England and soon India was producing cotton cloth in such great quantities that the domestic market was saturated and foreign markets were required to sell the production. On the other hand, India was rich in cotton produce and was in a position to supply British mills with the raw material, they required. This was the time when India was under British rule and the East India Company had already established its roots in India. Raw materials went to England at very low rates and cotton cloth of refined quality was brought back to India and sold here at very high prices. This was draining India's economy and the textile industry of India suffered greatly. This led to a great resentment among cotton cultivators and traders.

To add fuel to the fire Lord Curzon announced the partition of Bengal in 1905, and there was a massive opposition from the people of Bengal. Initially the partition plan was opposed through press campaign. The total follower of such techniques led to the boycott of British goods and the people of India pledged to use only swadeshi or Indian goods and to wear only Indian cloth. Imported garments were viewed with hate. At many places, public burnings of foreign cloth were organized. Shops selling foreign cloths were closed. The cotton textile industry is rightly described as swadeshi industry. The period witnessed the growth of swadeshi textile mills. Swadeshi factories came into existence everywhere.

According to Surendranath Banerji, swadeshi movement changed the entire texture of our social and domestic life. The songs composed by Rabindranath Tagore, Rajinikant Singh and Syed Abu Mohd became the moving spirit for the nationalists. The movement soon spread to the rest of the country and the partition of Bengal had to be firmly inhaled on the first of April, 1912.

The Non Co-operation Movement

This movement lasted from September 1920 to February 1922. The Non Cooperation Movement in India was the first of the three major movements carried out by Gandhi. The movement was started with the thought in mind that the British rule had lasted in India only because of the cooperation by Indians. If Indians refused to cooperate then India would gain Independence. The Movement soon caught national attention and millions joined the movement. People left their

offices, jobs, factories or any other business which cooperated the British. People forced their children out of the government schools and colleges. The failure of these movements made many people poor, uneducated and illiterate due to withdrawal from government offices, schools, factories and services. The name of Mahatma Gandhi began spreading around. People started following him in all parts of the country. However, the movement could not continue as anticipated by Mahatma because of the incident of Chauri Chaurah. He had hoped for a nationwide peaceful and non-violent movement.

The Chauri Chaurah incident

In 1922, there was a mob violence at Chauri Chaurah, Uttar Pradesh in which the people burned a police station and killed 22 policemen. It happened because when a group of people were demonstrating peacefully the police had fired upon them which stirred the people to attack. Because of this violent incident Mahatma Gandhi had to stop the Non Cooperation Movement.

The Dandi March or the Salt Satyagraha

The Salt Satyagraha was started by Mahatma Gandhi on 12 March 1930 from Sabarmati Ashram to 5 April till Dandi, Gujarat where he manufactured Salt, broke the Salt Law and started a nationwide Civil disobedience. The Salt March, also known as the Salt Satyagraha, began on 12 March 1930 and was an important part of the Indian independence movement. It was a direct action campaign of tax resistance and non violent protest against the British salt monopoly in colonial India, and triggered the wider Civil Disobedience Movement. This was the most significant organised challenge to British authority since the Non-cooperation movement of 1920–22, and directly followed the Purna Swaraj declaration of independence by the Indian National Congress on 26 January 1930.

Mohandas Karamchand Gandhi (commonly called Mahatma Gandhi) led the march from his base, Sabarmati Ashram near Ahmedabad, to the coastal village of Dandi, located at a small town called Navsari, in the state of Gujarat. As he continued on his 24-day, 240-mile (390 km) march to Dandi to produce salt without paying the tax, growing number of Indians joined him along the way; Initially with 78 volunteers it ended up in thousands. When Gandhi broke the salt laws at 6:30 am on 5 April 1930, it sparked large scale acts of civil disobedience against the British Raj salt laws by millions of Indians.[1] The campaign had a significant effect on changing the world and British attitude towards Indian independence[2][3] and caused large numbers of Indians to join the fight for independence for the first time.

After making salt at Dandi, Gandhi continued southward along the coast, producing salt and addressing meetings on the way. The Congress Party planned to stage a satyagraha at the Dharasana Salt Works, 25 miles south of Dandi. However, Gandhi was arrested on the midnight of 4–5 May 1930, just days before the planned action at Dharasana. The Dandi March and the

ensuing Dharasana Satyagraha drew worldwide attention to the Indian independence movement through extensive newspaper and newsreel coverage. The satyagraha against the salt tax continued for almost a year, ending with Gandhi's release from jail and negotiations with Viceroy Lord Irwin at the Second Round Table Conference.[4] Over 80,000 Indians were jailed as a result of the Salt Satyagraha.[5] However, it failed to result in major concessions from the British.[6]

The Salt Satyagraha campaign was based upon Gandhi's principles of nonviolent protest called satyagraha, which he loosely translated as "truth-force." [7] Literally, it is formed from the Sanskrit words satya, "truth", and agraha, "force." In early 1930 the Indian National Congress chose satyagraha as their main tactic for winning Indian independence from British rule and appointed Gandhi to organise the campaign. Gandhi chose the 1882 British Salt Act as the first target of satyagraha. The Salt March to Dandi, and the beating by British police of hundreds of nonviolent protesters in Dharasana, which received worldwide news coverage, demonstrated the effective use of civil disobedience as a technique for fighting social and political injustice.[8] The satyagraha teachings of Gandhi and the March to Dandi had a significant influence on American activists Martin Luther King, Jr., James Bevel, and others during the movement for civil rights for blacks and other minority groups in the 1960s.[9]

The Quit India Movement

The Quit India movement was the final of the three major nationalist movements in India. It was started in August, 1942 by M.K. Gandhi. Though the Quit India Movement collapsed within a very short time it will be a mistake to suppose that the movement was a total failure. Firstly, the movement revealed the determination of the people to undergo any amount of suffering for the cause of the country. Secondly, the popular character of the August Rebellion was revealed through the participation of students, working class and peasants. In the opinion of Sumit Sarkar, it was the participation of the peasant community that turned the movement into a mass upsurge. Thirdly, the 1942 Movement marked the end of India's struggle for freedom and may be regarded as an apex of the freedom struggle. Fourthly, the violent mass upsurge of 1942 convinced the British ruler that their hold was sure to collapse in India sooner or later...

Result of movements

The mass movements failed in their primary objective, achieving independence for India, as they were often called off before they naturally concluded. However they sparked nationalist sentiment with the Indian populace, figures like MK Gandhi united a nation behind his non-violent philosophy and undoubtedly put crucial pressure on the British occupation. While in the later years of the Raj economic factors like the reversing trade fortunes between Britain and India and the cost of fielding the Indian armed forces abroad lumped on the British tax payer by

the 1935 Government of India act, had mounting implication for British administration, united resistance further drew light on the growing disparity of the British failures to achieve solidarity over India. Indeed, Nationalist Movements in India were merely another notch on Britain's ever scarred grip over its Raj, faced with a magnitude of issues, mass Movements attributed to but were not solely responsible for India's independence in 1947.

C.PARTITION: POLITICS AND COMMUNILISM

The Partition of British India in 1947, which created the two independent states of India and Pakistan, was followed by one of the cruellest and bloodiest migrations and ethnic cleansings in history. The religious fury and violence that it unleashed caused the deaths of some 2 million Hindus, Muslims and Sikhs. An estimated 12 to 15 million people were forcibly transferred between the two countries. At least 75,000 women were raped. The trauma incurred in the process has been profound. Consequently relations between the two states, between them and some of their people, and between some of their groups have not normalised even after more than half a century; on the contrary they have consistently worsened with each passing year. Ethnic conflict currently pervades the domestic politics of the two states and the hawks in their defence establishments have been calling the shots for quite some time. The two states have been on the verge of a nuclear war since May 1998, when both demonstrated their ability to explode nuclear devices. Such a war would in all probability seriously jeopardise human existence and civilisation in this region. Currently, South Asia is undoubtedly the most dangerous nuclear flash point in the world. My contention is that this potential for self-destruction derives from a paradigm for pathologically ethnicised politics that informs the behaviour of the involved actors. In this paper, I try to shed light on the way a pathological socio-political system comes into being. Such a system needs to be distinguished from the normal type of socio-political system in which ethnic groups, besides voluntary associations such as class-based or ideology-oriented parties and organised pressure groups, serve as bases for peaceful competition for power over goods and services in society. Even in peaceful situations, ethnic groups maintain their boundaries and both insiders and outsiders are in some sense aware of them. Some degree of tension may also exist between them, but their leaders and spokespersons are usually able to resolve such problems peacefully.[2] By contrast, pathological politics thrive on the logic of

rejection, exclusion, subordination and the threat or use of force and violence.

The significance of ethnicity as a variable in social analysis is far from satisfactorily theorised, although the current period has seen an unusual flurry in the literature. This study seeks to advance the theoretical frontiers of current understanding of ethnicity in a special, though by no means unusual situation: that in which tension and conflict, involving organised and recurrent violence, have become endemic. The main argument set forth in this study is that in the formation of a pathological socio-political system, a particular happening or event can sometimes be identified clearly and unambiguously as the determinant pivot. Its force or intensity is of such proportions that it sets in motion processes that in due course begin to liken a paradigm which, in a path-determinant manner, produces and reproduces pathological, ethnicised behaviour patterns. Rational ideas, policies and solutions, which may also be present, are set aside, rendered ineffective or eliminated by force. The pathological paradigm continues to inform and affect politics till such time that it ceases to be efficacious and useful for its practitioners, or it is undermined by a revolutionary new paradigm. The expression 'pathological politics' is used here to indicate that individuals not only prefer people of their own ethnic stock, culture, religion, language, nationality and so on, but dislike and despise those belonging to other groups. This derives not from some natural propensity, but because a host of negative historical, socio-economic and cultural facts converge to create a hostile milieu in which individuals and groups, embedded in thick social webs and networks, get trapped. Very often such situations give birth to the politics of reaction. Here, reaction is used in a double sense: as a mechanical action-reaction relationship as well as an unenlightened mode of thinking and behaving towards one another by two or more ethnic groups or states. It may result from conflicts within state boundaries or as reactions to happenings in another state. Typically minorities—ethnic, religious, sectarian or linguistic—become the main targets of state-tolerated or state-sanctioned discrimination and violence. In terms of relations between two or more hostile states, pathological politics manifests itself in state-sanctioned ultra-nationalism, promotion of terrorism across borders, and bellicose postures. The typical causes of ethnic tension and conflict are fear and anxiety, real or imaginary, that ethnic groups experience when confronted by an uncertain present and future, and concomitant perceived threats to survival posed by rival groups. During periods when state authority may

be waning and the future framework for power sharing cannot be worked out, apprehensive groups become even more suspicious thereby exacerbating the lack of mutual trust. Consequently, agreements, where they exist, are broken or ignored and violent conflict erupts. It is impossible to say whether all members of a group automatically feel such anxiety, or whether a band of ethnic activists in that group are particularly prone to such angst and play a pivotal role in expressing it on the group's behalf, or whether political entrepreneurs' ambitious leaders and intellectuals who may not share the zeal of the activists excel in articulating such feelings. Suffice it to say that without effective leadership, neither activists nor ordinary members can convert such fears and anxieties into activities and movements purporting to combat the perceived threats. This means that political entrepreneurs have the advantage of exaggerating and manipulating such fears in the pursuit of their political ambitions. As a pathological situation develops and takes shape, politics can be reduced to sheer gut reactions. The 'enemy' becomes a faceless, indiscriminate lump of individuals, an ethnic mass, a target requiring and justifying punitive pre-emptive action.

It is argued below that the roots of pathological politics in the intra-state and interstate politics of India and Pakistan are to be traced to the bloody division of the British Indian Empire in 1947. On the one hand, Partition was a gory culmination of more than fifty years of mutual suspicion and fear harboured by ethnic ideologues and activists from the three communities of Hindus, Muslims and Sikhs. In the past, communal tension and conflict occasionally resulted in violent confrontations, but such events remained small-scale and marginal. Mainstream politics remained essentially constitutional and peaceful. Partition thus supplanted the normal model with an extremist model of conflict resolution. On the other, it became the inevitable backdrop of post-independence politics of India and Pakistan. Thus for more than fifty years now it has served as the implicit or explicit rationale of anti-minority politics in the two countries and has driven them to belligerent interaction many times. In this particular sense, Partition epitomises pathological politics. It has operated as an ideology of menacing majoritarian nationalism. However, despite the overall growth of a pathological socio-political system, the trajectories along which the two states and their societies have travelled in the last fifty-three years have been quite different. Such difference derives from the attitudes towards Partition of the erstwhile leaderships in the two countries, the national self-definition that the two movements were premised upon, and the constitutional formula adopted by each country

upon which to ground their politics. The present enquiry therefore seeks answers to the following questions:

- * how and why has the Partition of India bequeathed a legacy of pathological politics?;
- * what are the similarities and differences in the profiles of the Indian and Pakistani ethnicised identities and politics, and how do we explain them?

Conflicting Nationalisms and Communal Apprehensions in Colonial India

Under the leadership of Mohandas Karamchand Gandhi, the Indian National Congress (1885) embarked from 1915 onwards upon a protracted freedom movement, combining peaceful civil disobedience and mass action into an effective strategy of resisting colonial rule. Muslims were to be found at all levels in the Congress, but it was predominantly upper-caste Hindus who were its mainstay. Congress leaders and cadres were incarcerated several times. However, the movement remained confined to the limited question of self-rule and later independence. The Gandhian vision of a nation was communitarian-pluralist comprising the various religious communities of India. The second major leader, Jawaharlal Nehru, empathised with Fabian socialist ideas. His vision of an independent India was that of a modern secular nation-state based on universal citizenship and individual rights, sustained by progressive economic development and expanding modern education under a planned and centrally directed system. Many other leading members of Congress were sympathisers or members of Hindu cultural movements and nationalist parties. The Congress wanted to keep India united, but for a number of reasons failed to convince the Muslim League that its brand of nationalism would not mean the permanent majoritarian rule of Hindus. Although the Congress Party was Hindu-dominated, the stronghold of Hindu cultural nationalism was the Hindu revivalist movements and parties. In 1921, Balkrishna Shivram Moonje expressed regret that Hindus were divided into watertight compartments with hardly any sense of community between them. On the other hand, the Muslims formed one organic community, religiously well organised and disciplined. This observation exaggerated Muslim unity, but the caste divisions among Hindus were indeed proverbial. Hindu ethno-nationalist leaders, most of who came from the upper castes of Brahmins or Kshatriyas, were deeply worried that lower-caste Hindus might convert to Islam or Christianity. One of the leaders of the Hindu Mahasabha movement (founded 1915),

Vinayak Damodar Sarvarkar, presented in 1923 the idea of 'Hindutva'. It was an ethno-cultural category purporting to bring Hindus of all castes within a 'communitarian' fold. Non-Hindus had to assimilate into it by accepting Hindu culture and India as their object of prime loyalty. They could, however, retain their religions as personal beliefs. The Rashtriya Swayamsevak Sangh (RSS), founded in 1925 by Keshwar Baliram Hedgewar adopted semi-military styles of organisation to instil 'martial arts' among Hindus. Both the Hindu Mahasabha and RSS looked upon Muslims as the main threat to Indian unity. His successor Madhav Saashiv Gowalkar wrote in 1938:

The foreign races in Hindustan must either adopt the Hindu culture and language, must learn to respect and hold in reverence Hindu religion, must entertain no ideas but those of the glorification of the Hindu race and culture, or may stay in the country, wholly subordinated to the Hindu Nation, claiming nothing, deserving no privileges, far less any preferential treatment not even citizen's right. It is interesting to note that the term 'race' was used to denote religious communities; most Hindus and Muslims are otherwise of the same mixed ethnic stock. In volume 1 of his four-volume study, History of Partition of India, the Pakistani historian K.K. Aziz argues that the Hindu revivalists in Punjab had in the 1920s already suggested the partitioning of India on religious lines. It is, however, important to point out that before the Partition of India, rightwing Hindu ethno-nationalism remained a marginal tendency. The sizeable Muslim minority of India related to the question of Indian nationalism from a position of disadvantage. It was not only smaller in numbers as compared to the Hindus, but also economically and educationally less advanced. The Muslim League founded in 1906, largely in reaction to the growing power of the Congress, remained a moderate communal party of the modern, educated gentry until 1936. It confined its activities to ensuring Muslim representation in the various consultative and legislative bodies through separate electorates (granted in 1909 whereby Muslims elected Muslim members of the various representative bodies) and to pleas for greater employment quotas for Muslims in the services. In 1930, at the annual session of the Muslim League at Allahabad, Sir Muhammad Iqbal put forth the idea of a separate Muslim state to be created in the Muslim-majority zone of north-west India. He based his argument on a novel 'two-nation theory', according to which India consisted of two separate and distinct nations—Hindus and Muslims. In his scheme, complete separation from the rest of India was not, however, an absolute requirement. Nonetheless, it is important to note that although the top

leaders of the Muslim League did not propagate the creation of a theocratic state, such an idea was not entirely foreign to some. For example, Raja Sahib Mahmudabad, one of the most trusted lieutenants of the Muslim League's leader, Mohamed Ali Jinnah, wrote a letter in 1939 to the historian Mohibul Hassan in which he said:

When we speak of democracy in Islam it is not democracy in the government but in the cultural and social aspects of life. Islam is totalitarian there is no denying about it. It is the Koran that we should turn to. It is the dictatorship of the Koranic laws that we want and that we will have but not through non-violence and Gandhian truth. Jinnah, acclaimed by his followers as the Quaid-i-Azam (Great World Leader), excelled as a political strategist rather than as an ideologue. It is therefore problematic to attribute a consistent position to him on the type of Muslim state he wanted, although creating a theocratic state was foreign to his constitutional sensibilities. However, without his relentless eloquence Muslim nationalism and the demand for Muslim self-determination could not have been set forth so authoritatively. The main Muslim ideologue of pathological nationalism was a mysterious figure, Chowdhary Rahmat Ali. Rahmat Ali enrolled as a student at Cambridge University in his mid-thirties. In 1933 he wrote a pamphlet 'Now or Never' in which he presented the idea of a separate Muslim state, Pakistan, to be created in north-western India. He started lobbying conservative British politicians to support his various political schemes. The kernel of his litany was that Hindus and Muslims were two different nations with entirely irreconcilable worldviews, sense of history and destiny. Under no circumstance could they live together in peace in one country. Later, he began to advocate the creation of a pan-Islamic superstate. The greater Pakistan was to include Punjab, Afghanistan (consisting not only of the North West Frontier Province but also Afghanistan), Kashmir, Iran, Sindh (including Baluchistan), and Turkey (and other Turkish speaking areas of central Asia, once known as Turkestan). The word 'Pak' means pure or chaste in Urdu. Thus such a state suggested the creation of pure Muslims, pure Islam and a pure state. He also wanted several smaller Muslim states to be created in different parts of India, where Muslims, although in a minority within a larger Hindu-majority region, were nevertheless concentrated in pockets within them. It is intriguing to note that Rahmat Ali was despised and rejected by the Muslim League leaders who found his ideas unsophisticated and drastic. He was never welcomed into its fold and died a broken man in Cambridge in 1950.[17] One should bear in mind that the Islamic clerics, the various ulama,

were not major players at that time. The radical Sunni Deobandis (founded 1867) worked out an equation with Congress and joined the struggle for a united India. The future ideologue of Islamic fundamentalism or Islamism in Pakistan, Abul Ala Maududi (1903-79) rejected both the territorial-secular nationalism of the Congress and the ethno-cultural nationalism of the Muslim League. For him, an Islamic polity could only be based on faith. The Sikh community, rooted essentially in Punjab, was nowhere in a majority. The main Sikh party, the Akali Dal, and other minor tendencies allied with the Congress in the latter's opposition to the Muslim League's demand for a separate Pakistan. According to the 1941 census, the total population of India (including that of British India and the Indian princely states and agencies) was 383,643,745. It consisted of 206,117,326 caste Hindus, 48,813,180 scheduled castes (so-called untouchables) and 25,441,489 scheduled tribes Hindus; 92,058,096 Muslims; 5,691,477 Sikhs (concentrated in Punjab); and all the rest. As for British India, the total population was 294,171,961, comprising 150,890,146 caste Hindus; 39,920,807 scheduled castes and 4,165,097 scheduled tribes Hindus; 79,398,503 Muslims; 4,165,097 Sikhs; and other groups] Only about 10 per cent of the population of British India was enfranchised.

Partition and Preceding Events

After World War II the British were in a hurry to leave India. The elections of winter 1945-46 were thus in point of fact about the future political shape of an independent subcontinent. Congress sought a mandate to keep India united while the Muslim League stood for a separate Pakistan. Emotive and sensationalist slogans such as 'Pakistan Ka Naara Kaya? La Illaha Il Lillah (What is the Slogan of Pakistan? It is that there is no God but Allah)' and 'Muslim Hai to League Mein Aa' (if you are a Muslim then join the Muslim League) were raised. Hindus and Sikhs were demonised as infidels and exploiters. Muslims who opposed the Muslim League were portrayed as renegades to Islam. In some cases fatwas (religious rulings) were issued to the effect that such persons should be denied a proper Islamic burial. On the other hand, support was solicited from Sunnis, Shias, the Ahmadis, Muslim Communists and anyone who was registered in the census records as a Muslim. The election results vindicated the contradictory claims of both parties. Congress secured 905 general seats out of a total of 1,585 while the gains of the Muslim League were even more impressive. It won 440 seats

out of a total of 495 reserved for Muslims. It is to be noted that Muslims in the Hindu-majority provinces also voted massively in favour of the Muslim League. The Cabinet Mission of 1946 sent by the post-war Labour Government of Clement Atlee failed to convince the two rival parties to agree upon a formula of power sharing within a united India. The factor that sealed the fate of unity was the eruption of large-scale communal violence following Jawaharlal Nehru's ill-considered press statement of 10 July 1946 in Bombay declaring that Congress would enter the Constituent Assembly 'completely unfettered by agreements and free to meet all situations as they arise'. On 29 July 1946, Jinnah gave the call to direct action to Muslims to protest the alleged anti-minority attitude of Nehru. On 16 August 1946, communal massacres, initiated by hotheads despatched by the Muslim League chief minister of Bengal, Hussain Shaheed Suhrawardy, took place in Calcutta, which left thousands of people, mostly Hindus, dead and homeless. The Hindus retaliated with great ferocity. More Muslims died in the counter-attack. The Calcutta killings proved a contagion, and communal riots broke out in many parts of India. The real explosion, however, originated a few months later in the key Punjab province, where the Muslim (57.1 per cent), Hindu (27.8 per cent) and Sikh (13.2 per cent) groups maintained an uneasy peace until the beginning of 1947.[24] In the third week of January 1947, the Muslim League started its 'direct action' in Punjab against the non-Muslim League government of Khizr Hayat Tiwana. On 3 March, the Sikh Akali Dal leader, Master Tara Singh, gave what in effect was a call for an all-out confrontation with Muslims. It resulted in immediate clashes between Hindu-Sikh and Muslim demonstrators. The first large-scale, organised communal clashes took place in the Rawalpindi area. On the night of 6-7 March, Muslim gangs attacked a number of Sikh and Hindu villages, the campaign continuing until 13 March.[26] It left more than 2000 mainly Sikh and Hindu men, women and children dead. Muslim League cadres were identified as the culprits behind it. At that point, the Sikh leaders demanded that Punjab be also divided on communal lines if Pakistan was granted to the Muslims. On 6-8 March, the All-India National Congress Committee passed a resolution demanding the division of Punjab into two provinces so that the predominantly Muslim part may be separated from the predominantly non-Muslim part. Congress also demanded the partition of Bengal. The British Government announced the partitions of India, Bengal and Punjab on 3 June 1947. Congress, the Muslim League, representatives of the Sikhs and the

various other minor religious and caste groups negotiated the actual demarcation of the Pakistan-India border before the Bengal and Punjab Boundary Commissions. These deliberations served as the basis for the Radcliffe Award of 17 August 1947 (Pakistan and India had already become independent on 14 and 15 August, respectively). The Radcliffe Award did not satisfy any of the major contestants, and has subsequently been criticised and even condemned by various disgruntled actors. The riots and pogroms, which accompanied Partition, were most harrowing in the Punjab and effectively led to the first successful post-war experiment in massive ethnic cleansing in the world. At that critical moment Muslim League, the Sikh Akali Dal, RSS and Congress cadres became vicious killers.[29] However, some 30-35 million Muslims stayed on in other parts of India while in East Pakistan some 23 per cent of the population continued to be Hindu. Some half million Hindus stayed behind in Sindh in West Pakistan (since December 1971 the only part which constitutes Pakistan).

India

The failure to keep India united left the Congress ideal of a composite Indian nation in shambles. Millions of Hindu and Sikh refugees were devastated by that traumatic experience. Many objected to the Muslim presence and wanted Muslims driven away to Pakistan. At that critical moment, Gandhi, Nehru and many other stalwarts of the freedom struggle became a bulwark against the forces of reaction and revenge, and although attacks on Muslims continued for some time in many parts of India, they were small-scale occurrences. When discussion began on the constitution, the notion of a modern individual-rights-oriented civic and composite nation prevailed. The Hindu ethno-nationalist lobby argued in favour of a Hindu cultural hegemony in terms of national identity, but was overruled. It can be asserted, however, that the trauma of Partition made everybody in the Congress High Command overly sensitive to the question of unity

The Constitution and Education System

The high point of the Nehruvian model was the enshrinement of universal

values and norms in the Indian Constitution, which came into force on 26 January 1950. Its declarations on human rights and freedoms were quite radical. Universal citizenship was granted. Public office was open to all citizens. Some 23 percent of jobs (i.e. the ratio of those groups in the Hindu population) were later reserved by law for the so-called untouchable castes and tribes. In 1955 the Untouchability (Offences) Act, was passed. It criminalised the practice of untouchability. The constitution therefore clearly sanctioned a secular-democratic model of the polity.[31] Although various amendments were subsequently made, the basic structure has remained unchanged. The rational-modernising elite chose the educational system to gradually foster a democratic national identity. Liberal and Marxist scholars (many of Muslim origin) dominated until recently prestigious Indian social science and humanities university faculties and institutes. Their interpretation of the freedom movement was largely imbued with the emancipatory ethos of the European Enlightenment. Not surprisingly, the Hindu communal organisations and parties were very critical of such a foundation of Indian nationalism. The current BJP-led government seems to have decided to promote an educational agenda that will project a pro-Hindu bias in the production of knowledge and education. At the provincial level, such changes have already been introduced, typically identifying former Muslim rulers as responsible for all the ills of society.[32]

Hindu Nationalism and the Growth of Hostility to Minorities

Congress had completely sidelined rightwing Hindu ethno-nationalists during the freedom struggle and alienated them from the state in the early years. Consequently they had to devise strategies to advance the project of Hindutva from outside the state. The loss of life and property and expulsion from their ancestral homes left in Pakistan were blamed on the Congress's willingness to concede Partition. Muslims as a whole were held responsible for the vivisection of the motherland. Such propaganda did boost the fortunes of the rightwing parties somewhat. For example, in 1943 the total membership of the RSS was only 76,000. In 1948 it had soared to 600,000.[33] In electoral terms, however, such gains did not mean that a major challenge to Congress could be mounted. Rather, initially a major set back resulted from the involvement of the RSS in the assassination of Gandhi. The Hindu ethno-nationalists were infuriated over Gandhi's insistence that the Indian government pay 550 million rupees to Pakistan as compensation for losses incurred during

Partition.[34] Accordingly, he began a fast unto death to put pressure on the government. On 31 January Nathu Ram Godse, a member of the RSS, murdered Gandhi. Nehru decided to deal firmly with the Hindu ethno-nationalists. The RSS was banned, although it reappeared in 1952 in the form of Jana Sangha. In the 1960s some other avenues for a Hindu political revival were tried. The Vishwa Hindu Parishad (VHP) was founded in 1964 ostensibly as a cultural movement purporting to inculcate pride among Hindus in their great culture and civilisation. Initially the VHP identified the proselytising activities of Christian missionaries as a major threat. It is intriguing to note that the VHP movement was sustained with considerable assistance from the Hindu diaspora, especially the large Indian/Hindu population of North America consisting of successful professionals and other upwardly mobile groups. Support from the UK has also been significant.[35] The VHP and its various student and labour affiliates have been able to acquire political clout and infiltrate the state machinery and important cultural and media institutions. However, the most significant boost to Hindu great nation chauvinism came initially from another quarter: the Congress government led by Mrs Indira Gandhi. In December 1971 India defeated Pakistan in the latter's eastern wing, where a rebellion had been going on since March of that year. In 1974 India exploded a nuclear device. Mrs Gandhi began to be hailed as a great stateswoman. Sycophants began to raise slogans such as 'India is Indira and Indira is India'. However, in 1974 popular strikes, demonstrations and agitations broke out in protest against price rises, unemployment and bad government. The government retaliated by suspending many of the normal parliamentary practices and civil liberties. The Hindu ethno-nationalists made capital out of the situation by joining the democratic opposition. On 5 April 1980, some of them came together and founded the Bharatiya Janata Party (BJP).[36] A shift in the Congress electoral strategy could also be noticed. Instead of relying upon its traditional supporters, the so-called vote-banks comprising the various social and religious minorities such as the Dalits and Muslims, Mrs Gandhi began to cultivate the more traditional upper caste voters. In the 1980s, the BJP, RSS, and the rabidly anti-Muslim Shiv Sena in Maharashtra and several other such parties and organisations began to evolve a martial discourse based on the mythical Mahabharata Epic and other heroic tales with a view to instilling militancy and a sense of collective nationalism. The idea of Hindutva or Hindu nation, first propounded by Sarvarkar in the 1920s, was revived. It asserted that only Hindus were trustworthy and loyal citizens of India; and further, that Nehruvian secularism had been

harmful to Hindus, while it pampered the minorities.[37] In particular, hostility was directed against the Muslims, who constitute some 13 per cent of the total Indian population. It is important to note that the vast majority of Indian Muslims are converts from the poorest sections of Hindu society. They have been the main sufferers of the Partition Syndrome. They are grossly underrepresented in education and employment. Discrimination is therefore institutionalised in practice if not in theory. It is, however, their portrayal as a fifth column and therefore a security threat that makes them most vulnerable to hostile propaganda. Thus, even the liberal mass media gave sensational coverage to a report that some Dalits had converted to Islam in Tamil Nadu in 1981. Exaggerated reports of Arab money donated to Islamic organisations and the alleged rapid growth rate of the Muslim population also figured prominently in media discussions.[38]

The galloping Hindu cultural revival struck terror among the minorities. Anti-Muslim attacks became larger, more frequent, and more gruesome. The xenophobia and paranoia, which typifies such a pathological frame of mind, proved to be a self-fulfilling prophecy. However, Muslims did not mount the first challenge. It was the Sikhs of Punjab who were attracted to the idea of a separate Sikh state, Khalistan. The Khalistanis argued that Partition gave India to the Hindus and Pakistan to the Muslims therefore Sikhs should be given Khalistan. The Khalistan conflict came to a head in June 1984 when Mrs Gandhi ordered the Indian army to flush out the Sikh leader Sant Jarnail Singh Bhindranwale and his militants who had been occupying the holiest Sikh shrine, the Golden Temple at Amritsar since 1982. The military action was successful but it cost a great deal in human lives. On 31 October 1984, Mrs Gandhi was assassinated by two of her Sikh bodyguards. Immediately Hindu gangs began to hunt down Sikhs all over India. In the capital Delhi alone at least 3,000 Sikhs were butchered.[39]

The Sikhs had barely been crushed when another major separatist movement emerged in the predominantly Muslim-majority Indian-administered Kashmir. India and Pakistan had inherited the Kashmir dispute at the time of Partition. Its resurgence proved even more difficult for India to bring under control. The Kashmir conflict continues to claim lives almost every day and India has not been able to bring the situation under control despite extreme repression and the deployment of hundreds of thousands of soldiers and security forces.[40] India's worries have been compounded further by the re-emergence of separatist insurgency among a number of different Christian tribal peoples in the smaller north-eastern border states (provinces of India). The Indian government

and mass media have been alleging that the Pakistani secret services, especially the Inter-Services-Intelligence (ISI) help the Sikh, Kashmiri and other separatist movements in India with training, arms and other facilities. From time to time some Indian Muslim is arrested on charges of working for the ISI. This undoubtedly helps portray all Muslims as pro-Pakistan and a subversive factor in Indian society. While the anti-minority policies of the Hindu right have been steadily growing, a major worry for the BJP, which seeks power through the electoral process, has been the alienation of a significant number of Dalits and the so-called Other Backward Castes (OBCs), a rather large segment of peasant and other castes, which occupy a position between the upper castes and Dalits. The BJP had been seeking ways and means of enveloping such social strata into its fold of Hindu cultural nationalism. An emotive cause or symbol was found in the long, drawn-out dispute between Hindus and Muslims over the site of the Babri mosque in Ayodhya. It was alleged that the god Rama had been born there and a temple existed on that spot before the mosque was built in 1528. Consequently in the 1980s the BJP, VHP and other communal entities launched a campaign to dismantle the mosque. The Bajrang Dal (established in 1984), a youth wing of the VHP, employed mainly for agitation purposes and demonstrations, played the leading role in mobilising mass action and other activities in favour of the campaign.[42] In early December 1992, the BJP and its supporters the VHP, Bajrang Dal, Shiv Sena and other fanatical groups finally arrived in Ayodhya after a long countrywide march in which thousands of people joined, including OBCs and other traditionally alienated sections of Hindu society. The mob easily overpowered the rather small police force, climbed onto the top of the mosque and demolished it in a few hours. The Congress government under Narashima Rao seemed to have let the event take place mainly for opportunistic electoral reasons. The demolition of the mosque was accompanied by mob attacks on Muslims all over India and several thousand were killed. Suddenly India was in the midst of perhaps the most serious communal conflict since the partition. There was a fierce reaction in Pakistan and the old temples in Punjab were razed and some Hindus were also killed. The Hindu ethno-nationalists have plans to destroy some 3000 other mosques built allegedly on Hindu temples and holy places.[43] Building the Ram Mandir is part of the BJP's election manifesto. The BJP has subsequently been increasing its electoral support and is currently the biggest party in a coalition government of 25 parties. Thus far it lacks parliamentary support for realising such a project. In fact moderate sections of the BJP have been trying to woo the Muslim vote bank and have made some gains. However, the Shiv Sena

leader, Bal Thackeray, has recently demanded that Muslims should be disenfranchised. The 20 million-strong Christian community had most of the time escaped the type of animosity faced by Muslims since they had played no role in bringing about the division of India. Some conversions to Christianity had continued to take place, mainly among the aborigines. Attacks upon churches and mission-run schools had been taking place, but after Sonia Gandhi (Italian-Catholic by birth) became the leader of the Congress Party in the late 1990s, the Hindu Right has been peddling a Christian conspiracy to annexe India. The last couple of years have witnessed a dramatic increase in church burning, killing of Christians and a countrywide campaign against missionaries. Thus on the night of 22 and 23 January 1999, the Australian missionary Graham Stuart Staines and his two sons were burnt alive in Monouharpur in Orrissa.[45] Finally, the most enduring cleavages in Hindu society remain as deep as before: those between the twice-born upper castes, the assertive OBC groups and the Dalits. Attacks against Dalits continue to take place frequently all over India.

Pakistan

A notorious ambiguity about the purposes for which Pakistan was created was it to be simply a national state of Muslims or a theocratic Islamic state based on Sharia (dogmatic Islamic law)? It characterises its travails with national identity. Jinnah had never provided any clear answer to this question. Pakistan can therefore be described as an unimagined nation. The elite that came to power in Pakistan lacked political vision and preparedness. It did not allow democracy to be institutionalised. Recurrent military-bureaucratic take-overs and a host of bizarre decisions contributed to the fostering of a pathological political culture at all levels of state and society. Such a tendency was aggravated by the traumatic loss of East Pakistan in late 1971 through a popular local rebellion backed by an Indian military intervention.

The Constitutional and Legal Structure

However, the first authoritative statement made on 11 August 1947, that is only three days before independence, in the Pakistan Constituent Assembly by Jinnah deviated from the main thrust of the Muslim League's propaganda in favour of cultural nationalism. To the utter surprise of

many, he made the following observation in a long address:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. I think we should keep that in front of us as our ideal and you will find that in due course Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State. This patently secular and territorial idea of nation contradicted the rationale for the creation of Pakistan as a state for a cultural nation. The controversy that it caused has been generating ever more confusion as time goes by. While the fundamentalists usually dismiss it as irrelevant and an aberration, mainstream Muslim modernists argue that he was actually operating within an ideal Islamic framework of tolerance and justice for non-Muslims within an Islamic state.[47] Marginalised secularists, leftists and oppressed minorities, however, raise it to the level of a sacred covenant that his successors have allegedly broken. It seems that Jinnah's wording reflected his usual political sagacity rather than a firm ideological position. Communal violence was at its worst at that time. The Radcliffe Award was about to be announced and one could guess that it would result in population movement on a gigantic scale. The speech probably purported to discourage mass migration, uprooting and further communal violence. However, it is doubtful whether in the wake of the communal riots such a prescription enjoyed any real credibility in Muslim-Pakistani society, Jinnah's prestige and authority notwithstanding. In this regard, it is significant to bear in mind that Jinnah never again reiterated such a commitment although he lived for another year. After his death on 11 September 1948, the idea of a secular state never again received much attention in mainstream Pakistani politics. Rather, Islamic idiom became a central feature of official rhetoric. One can even argue that once the initial euphoria was over and a framework for national identity and nation building had to be found, the Pakistani leadership felt constrained to distinguish itself from India. There were undoubtedly other issues to be dealt with by the government of Prime Minister Liaquat Ali Khan (d. 1951) but maintaining distinctiveness from Congress and secular India must have been an important consideration. Thus the Objectives Resolution moved in the Pakistan Constituent Assembly by Prime Minister Liaquat Ali Khan on 7

March 1949 proclaimed the novel idea that sovereignty over the entire universe belonged to God. Democracy was to be practised, but within 'Islamic limits'. The minorities were assured that their legitimate interests would be safeguarded, and that provisions would be made for them in accordance with Islam freely to profess and practise their religions and cultures.[48] Although such proclamations sounded like innocuous 'boasts', in the longer run they proved to be constraints that facilitated the politics of exclusion of different religious minorities and deviant sects from the category of nation. Thus the first constitution of Pakistan adopted in 1956 contained a commitment to bringing all laws into conformity with Islam. In 1973 the third constitution was adopted. Unlike the first two constitutions that only required the president of the republic to be a Muslim, the third also required the prime minister to be a Muslim. It further obliged them to take an oath testifying their belief in the finality of Prophet Muhammad's mission

d.Changing notions of Justice and gender

Men's and women's experiences of crime, justice and punishment

Virtually every aspect of English life between 1674 and 1913 was influenced by gender, and this includes behaviour documented in the Old Bailey **Proceedings**. Long-held views about the particular strengths, weaknesses, and appropriate responsibilities of each sex shaped everyday lives, patterns of crime, and responses to crime. This page provides an introduction to gender roles in this period; a discussion of how they affected crime, justice, and punishment; and advice on how to analyse the **Proceedings** for information about gender.

In the twenty-first century western world, the idea that women and men naturally possess distinct characteristics is often treated sceptically, but this was an almost universally held view in the eighteenth century. Ideas about gender difference were derived from classical thought, Christian ideology, and contemporary science and medicine. Men and women were thought to inhabit bodies with different physical make-ups and to possess fundamentally different qualities and virtues. Men, as the stronger sex, were thought to be intelligent, courageous, and determined. Women, on the other hand, were more governed by their emotions, and their virtues were expected to be chastity, modesty, compassion, and piety. Men were thought to be more aggressive; women more passive. These differences were echoed in the faults to which each sex was thought to be prone. Men were prone to violence, obstinacy, and selfishness, while women's

sins were viewed as the result of their tendency to be ruled by their bodies and their emotions, notably lust, excessive passion, shrewishness, and laziness.

Expectations of male and female conduct derived from these perceived virtues and weaknesses. In marriage, men were expected to rule over their wives, and all property (except in some cases property acquired by the woman before marriage) belonged to the husband. Men were the primary wage earners, while women were expected to be primarily responsible for housework and childcare, though both sexes participated in all these activities. Women's paid employment was typically low status, low paid, and involved fewer skills and responsibilities than men's. The types of work available to women were confined to a few sectors of the economy where the work could be seen as an extension of women's domestic responsibilities, such as domestic service, the clothing trades, teaching, and nursing. In politics, women possessed virtually no formal rights, though they could exercise influence informally. Beyond employment, women's public roles were generally confined to the exercise of their moral and domestic virtues through participation in religion and charity.

However, one should not exaggerate the differences between the sexes, since there were a number of activities, both public and private, engaged in by both. Particularly among the poor, men and women were forced to do whatever was necessary in order to survive, both in unpaid work such as housework and childcare, and in employment for financial gain such as street selling (pictured) and some aspects of weaving.

There were a few opportunities to step outside accepted gender roles. Both men and women occasionally dressed in the clothes of the opposite sex to participate in masquerades, and women occasionally dressed as men in order to gain access to opportunities (such as military service) otherwise denied to their sex. Within London's homosexual subculture, men sometimes cross-dressed as women and adopted effeminate characteristics.

The Nineteenth Century: Separate Spheres?

It is often argued that the late eighteenth and early nineteenth centuries witnessed a significant change in gender roles, which led to the emergence of "separate spheres" in the nineteenth century. The growing influence of evangelical ideology placed an increasing moral value on female domesticity, virtue, and religiosity. It is argued that increasingly public life and work was confined to men, while women were expected to stay at home. New ideas about the female body led to a decline in the belief that women were the more lustful sex; now women were idealised as

mothers (“the angel in the house”), while those who failed to meet expectations were censured as prostitutes with uncontrollable sexual desires.

Recently historians have begun to question some aspects of this story, pointing out that these ideas of gender difference were for the most part very old, and that women were not excluded from work and public life in the nineteenth century. Women were excluded from some occupations and activities, but they entered new ones, for example authorship, teaching, and charity work. Working-class women still had to work to support themselves and their families, though the range of occupations available to them may have narrowed and some work, such as “sweated labour” in the textile trades, took place in the home. Towards the end of the century new jobs outside the home became available, and many women became clerks, typists, and shop assistants.

It is true that the concept of the respectable male “breadwinner”, who had the responsibility for providing financially for his entire family, was increasingly influential in this period. Consequently, women were frequently expected to give up their jobs when they got married. With the development of empire and a new wave of prosecutions of homosexuals in the 1890s, men were increasingly expected to demonstrate the masculine traits of muscle, might, and sexual attraction to women, combined with chivalrous concern for the weaker sex.

While gender differences may thus have been accentuated, the spheres of male and female activity were by no means totally “separate”, even at the end of the nineteenth century. As the **Proceedings** indicate, both men and women were present in many aspects of public and private life.

Feminism and the Suffragettes

From the mid-nineteenth century women’s inferior social position was increasingly questioned by feminist writers and in campaigns to eliminate discriminatory practices. Women (and some men) demanded, with some success, increased employment and educational opportunities for women, reform of married women’s property law, more equitable divorce laws, and repeal of the Contagious Diseases Acts, which subjected alleged prostitutes to examination for venereal disease.

From 1866, the suffrage movement campaigned to get women the vote, which had been given to property-owning men by the 1832 Reform Act, and was extended to working-class men in 1867 and 1884. During this campaign arguments for the female vote developed into critiques of the

ideology of separate spheres and the understandings of masculinity, femininity, and sexuality on which it was based. Women, it was argued, should no longer be defined as “the sex”, simply as receptacles for male sexual activity.

From 1905, frustrated at the lack of progress, the suffrage campaign turned militant. Under the leadership of Emmeline and Christabel Pankhurst, the Women's Social and Political Union staged demonstrations and engaged in acts of vandalism such as breaking windows by throwing stones. Some of those arrested were tried at the Old Bailey: see the trials of Emily Davison in 1912 and Emmeline Pankhurst in 1912 and 1913. Some of those imprisoned (including Pankhurst) went on hunger strikes. In May 1913, Davison jumped in front of the King's horse on Derby Day and was trampled to death. World War I intervened, but women over the age of 30 were finally given the vote in 1918.

In every study of serious crime ever conducted, men's and women's criminality has appeared different. Women are always accused of fewer, and different, crimes from men, and this was also true at the Old Bailey. Women account for only 21% of the defendants tried between 1674 and 1913, but this figure masks a significant chronological change. While women accounted for around 40% of the defendants from the 1690s to the 1740s (and, highly unusually, over half the defendants in the first decade of the eighteenth century), over the course of the period this proportion declined significantly, so that by the early nineteenth century only 22% of defendants were women and by the early twentieth century the proportion had declined to 9%. By this point serious crime had come to be perceived as essentially a masculine problem. Increasingly, female deviance was perceived as a consequence and aspect of sexual immorality rather than crime, and was addressed through other agencies of protection and control.

Throughout the period, female defendants in the **Proceedings** account for a significant proportion of the accused in only a small number of offences, particularly certain kinds of theft (pickpocketing, shoplifting, theft from lodging houses, theft from masters, and receiving stolen goods) and coining, kidnapping, keeping a brothel, and offences surrounding childbirth. On the other hand, relatively few women were accused of deception, other sexual offences, breaking the peace, and robbery.

The explanation of these patterns is complicated. Certain offences were legally or practically sex-specific: only men could be guilty of rape (though women could be accessories) and except in very rare circumstances of sodomy, while women were most likely to be accused of infanticide, concealing a birth, and unlawful abortion. Although prostitution itself was not tried at the Old Bailey, keeping a brothel was, and women account for about a third of those prosecuted.

Beyond this, there are two sets of explanations for the gendered pattern of prosecutions at the Old Bailey: different attitudes towards male and female criminality; and different patterns of crime actually committed, owing to contrasts in the lives led by women and men.

According to their prescribed gender role, men were expected to be violent and aggressive, and consequently male deviance was perceived to be more threatening, was more likely to be interpreted as crime, and was more likely to be prosecuted. Because women were generally perceived to be more passive, they were not thought to be prone to criminality, and therefore the crimes they did commit were seen as unusual, rather than as part of a general pattern. At this time only a small fraction of crimes were actually prosecuted, and the less threatening crimes were least likely to be formally prosecuted. Although women who stepped far outside expected gender roles (through the use violence towards children, for example) were prosecuted severely, most crimes committed by women were likely to be dealt with by less formal judicial procedures, such as informal arbitration and summary prosecution, or at the Quarter Sessions courts, and such cases do not appear in the Old Bailey records.

Gender in the Courtroom

Appearing as a defendant at the Old Bailey must have been a significantly more intimidating experience for women than it was for men. All court personnel, from the judges and jury to lawyers and court officials were men; the only other women present would have been witnesses or spectators in the gallery (the latter were empanelled whenever a jury of matrons was needed in order to determine the validity of a convicted woman's plea that she was pregnant). There is some evidence that juries treated evidence presented by female witnesses more sceptically than that delivered by men (and female testimony was more likely to be omitted from the **Proceedings**). At the same time, other evidence suggests that juries may have been more reluctant to convict women since, as explained in gender and crime, female crime was generally perceived as less threatening than that committed by men. The legal principle of the **feme covert**, by which women could not be held responsible for crimes committed in the presence of their husbands (since they were presumed to be following their husbands' commands) was not often applied, but it may have led juries to exonerate some married women, particularly when their husbands were convicted for the same crime.

Only about a seventh of the victims or prosecutors of crime at the Old Bailey were women. The most important reason for this is the fact that theft was the most common offence prosecuted, and most marital property was deemed to be in the possession of the husband. Thus, even if a woman's clothes were stolen, if she was married her husband would have been labelled as the victim of the crime. It is also possible, however, that women on their own were reluctant to prosecute cases in the male-dominated environment of the Old Bailey courtroom. Women

account for a higher proportion of the victims who used less formal legal procedures such as summary jurisdiction and informal arbitration to prosecute crimes.

Gender and Punishment

The pattern of punishments for convicted women was significantly different from that for men, though when punishments for the same offence are compared the differences are not so great. There are some legal reasons for these differences, many of which reflect ideas about gender at the time:

- Before 1691, women convicted of the theft of goods worth more than 10 shillings could not receive benefit of clergy. Unlike men, such women had to be sentenced to death (in practice, they were often acquitted, convicted on reduced charges and sentenced to a lesser punishment, or pardoned).
- Women convicted of treason or petty treason were sentenced to death by being burned at the stake (until 1790); men convicted of the same offences were to be drawn and quartered. There appears to have been a reluctance to open up women's bodies in public.
- Women sentenced to death who successfully pleaded that they were pregnant had their punishments respited, and often remitted entirely. From 1848, reprieves granted to pregnant women were always permanent.
- Following the suspension of transportation to America in 1776, a statute authorised judges to sentence male offenders otherwise liable to transportation to hard labour improving the navigation of the Thames (they were incarcerated on the hulks), while women, and those men unfit for working on the river, were to be imprisoned and put to hard labour.
- The public whipping of women was abolished in 1817 (having been in decline since the 1770s), while the public whipping of men continued into the 1830s (and was not abolished until 1862).
- Only men could be sentenced to military or naval duty, or receive this punishment as the result of a conditional pardon.

The ideas behind these differences--women's unsuitability for hard outdoor labour and military service, concerns for their children, and the growing reluctance to punish women physically in public--also shaped punishment patterns more generally. Owing to the desire to populate the colonies with those capable of building up their economies, for example, many fewer women were selected for transportation than men, especially after 1787 when transportation to Australia began. In addition, women were much less likely than men to be sentenced to death, public whipping or the pillory (no women were sentenced to the pillory after 1762), sometimes even when convicted of the same offences.

Sentencing decisions were no doubt influenced by the ever present perception that female criminality was less threatening than male criminality, in part because it was committed less frequently. Since one of the main purposes of punishment in this period was thought to be deterring others from engaging in crime, punishing women served a less useful purpose than punishing men. But in certain circumstances female criminals appeared more threatening than men, and the court punished them accordingly. By the early nineteenth century, as serious crime came to be "masculinized", most crime committed by women was seen as essentially a sexual rather than a criminal form of deviance, and those few women who were identified as serious criminals were sometimes punished more harshly than men. In effect, such women suffered for transgressing their expected gender roles.

Researching Gender in the Proceedings

There are four principal ways of analysing gender in the **Proceedings**.

- Using the statistics search page, it is possible to count types of crime, punishment, verdict, and number of cases per year or decade, breaking down the figures by either defendant gender or victim gender. This will allow you to see how general patterns of crime, verdicts and punishments varied according to the gender of those involved. Note that there may be some cases that fall into the "unclassified" category, because there was no evidence in the trial to indicate a gender or the victim was an institution or collectivity.
- Searching by crime, you can find all the cases of gender-specific crimes like infanticide, rape, and sodomy.
- Using the custom search page, you can find all cases meeting specific criteria which involve defendants and/or victims of a specified gender. For example, selecting defendant's occupation/status="servant" and defendant="male", you will find a large number of trials involving male servants, and much valuable contextual information about their lives.
- Using the keyword search, you can search for words or short phrases which were used to describe men and women, or particularly male or female attributes, and look at the contexts in which such terms were used. Try "female", "masculine", "mother", "boy", "girl", "elderly man", etc. Not all terms will generate useful results, but many will. Words like "chaste", "compassion", "courage", "lazy", "meek", "modest", "obstinate", and "proud" will also produce interesting results, though such words were rarely used to describe only one sex - that itself is a significant finding.

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