INDIAN CONSTITUTIONAL ACTS

East India Company to Independence

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Commonwealth

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Ist Edition : 2003
ISBN 81-7169-764-X

Published by :
Ajay Verma
For Commonwealth Publishers
4831/24, Prahlad Street,
Ansari Road, Darya Ganj,
New Delhi - 110002
Phone : 3272541, 3257835
Fax: 91-011-3257835
E-mail : campusbooks@hotmail.com

Laser Typesetting by :
Stylish Laser Typesetter
Delhi

Printed at :
Roshan Offset Printers
Delhi-53 Ph. : 2260931

Printed at :

Preface

With the establishment of the East India Company's Government, it became essential to gear up the administrative machinery from time to time. The passage of Acts was to control various aspects of administration in order to maintain efficiency. The awakening among the people made them realise to seek participation in the affairs of the government, mostly in the post-1857 period.

In this work, all the Constitutional Acts have been taken up from the Regulating Act, 1773 to 1947 in a comprehensive way. The theme has been weaved into a few chapters having deep bearing on the constitutional machinery which form a significant part of the Legislative Assembly of India. At one time, the participants were well-known lawyers of our legal system. Obviously, therefore, several changes were made with the passage of time.

I have collected the material from several academic centres and feel much obliged to their members who helped me during my researches. This work indeed would be useful for social scientists teachers, researchers, students as well as political leaders in India and abroad.

Dr. (Mrs.) Sangh Mittra

Contents

The Regulating Act, 1773

Parliament from 1698 onwards had taken an increasingly active interest in the affairs of India and a statute of 11 & 12 Will. III (c. 12) authorized the punishment of governors of plantations in England for offences committed by them during the period of their office. It was natural therefore that the events of 1765 attracted deep interest. The Company though paying large dividends on its stock, was really in a very embarrassed condition, and this helped to enlarge the scope of parliamentary interference in the years that followed. A feeling, too, prevailed that all was not right, that there was probably oppression and probably wrong-doing, and that even where the intentions of the officials might be above suspicion, they were not administering the country in the best possible manner. Many thought, too, that a great power was being built up over which the Home Government had little or no control. To the credit of the Company it must be said that they showed the strongest wish to improve matters; often by their hasty endeavours to redress grievances they made things worse, but there was no lack of good-will. The Acts which we now come to show that the main idea that an Englishman had of dealing with the administration of India consisted too-often, then as now, in making it more like that of his own country. This fundamental notion, together with a certain vagueness partly calculated and partly the result of ignorance, will go far to explain the honest but rather unsatisfactory attempts which were made to deal with so great a problem.

In 1766 a committee was appointed to inquire into the condition of East India Company, and the report of that committee was followed by various Acts of Parliament. 7 Geo. III. c. 48 stated that members of companies or corporations for carrying on trade were after August 1, 1767, disqualified from voting until they had held stock for at least six months, save in cases where the stock had come by bequest or succession. It also said that dividends could only be declared at quarterly or half-yearly courts. These provisions were, as Sir Courtenay Elbert surmises, clearly directed against the East India Company, although it was not mentioned by name.

7 Geo. III. c. 49 was more explicit. It laid down with regard to the East India Company that no dividend was to be made for any time subsequent to June 24, 1767, but in pursuance of a vote or resolution passed by way of balloting in a General Court of the Company which should have been summoned for the purpose of declaring a dividend, and of the meeting of which General Court for such purposes seven days' notice should have been given in writing

fixed upon the Royal Exchange in London. It also enacted that it should not be lawful for any General Court of the Company at any time between May 8, 1767 and the beginning of the next session of Parliament to declare and resolve upon any increase of dividend beyond the rate of £10 per cent, per annum, being the rate at which the dividend for the half-year ending June 24, 1767 was made payable.

7 Geo. III. c. 57 was very important. It recited that the Company had proposed that a temporary agreement should be made in relation to the territorial acquisitions and revenues lately obtained in the East Indies, and that the East India Company was to pay £400,000 per annum for two years from February 1, 1767. In return the territorial acquisitions and revenues were to remain in the possession of the Company. This was it is said the first time that the British Parliament recognized the new possessions of the Company.

8 George III. c. 11 prolonged the regulation as to the 10 per cent, dividend until February 1, 1769.

The provisional agreement with the Company had to be either continued or ended, and by 9 Geo. III. c. 24 the payment of £400,000 a year to the exchequer was extended for five years from February 1, 1769, the territorial acquisitions remaining in the Company's power for a like period. The Company were not to increase their dividend by more than 1 per cent, in any one year, and it had not to exceed 12½ per cent, per annum in any case. Provision was made that if the dividends were reduced the payments by the Company would be reduced, and the balance after, practically, the discharge of their obligations had to be lent to the British Government at 2 per cent, per annum.

A session later a statute 10 Geo. III. c. 47 indicated that attention was being devoted to the details of the Company's affairs. Penalties were fixed for illicit trade; voting was regulated; and an important proviso stated that any of the Company's servants guilty of oppressing any of His Majesty's subjects beyond the seas or of any other crime or offence, might-be tried in the King's Bench just as if the offence had been committed in England.

The terrible financial straits to which the Company was reduced, coupled with rumours of mismanagement, no doubt led everyone to think that something must be done in the way of change. News, too, of the great famine in Bengal of 1770 told in the same direction. An inquiry was held in 1772, and 13 Geo. III. c. 10 prevented to Company from sending any commissioners to India for six months from December 7, 1772, unless allowed to do so by Act of Parliament. Then came the famous Regulating Act of 1773, 13 Geo. III. c. 63, of which we must now give a brief summary.

It was described as an Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe. In future the twenty-four Directors were to be chosen for four years instead of annually. No person who had been employed in the East Indies was to be chosen a Director until he had returned and resided in England for at least two years. A proprietor who held £1,000 worth of stock and had held it for at least twelve months had to have one vote in the Court of Proprietors, those who held £3,000 worth two votes, those who held £6,000 worth three votes, and those who held £10,000 worth four votes.

For the Government of the Presidency of Fort William in Bengal there were to be appointed a Governor-General and four councillors and the whole civil and military government of the presidency and also the ordering management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa were, during such times as the territorial acquisitions and revenues should remain in the possession of the Company, vested in the Governor-General and Council of the Presidency of Fort William in Bengal in like manner to all intents and purposes as the same were or at any time therefore might have been exercised by the President and Council or Select Committee in the said kingdoms.

The opinion of the majority of the Governor and Council was to prevail, but if the votes were equal, the Governor-General was to have a casting vote. The Governor-General and Council were to have the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay, and Bencoolen respectively, so far and in so much that it should not be lawful for any President and Council of Madras, Bombay or Bencoolen for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian princes or Powers, without the consent and approbation of the Governor-General and Council first had and obtained, excepting in cases of imminent and dangerous necessity, or where the Presidents and Councils might have received special orders from the Company.

The Directors were to inform the Government of all news that they received as to the revenue civil and military affairs of the Company.

Warren Hastings was to be the first Governor-General and Clavering, Monson, Barwell, and Francis were to be the councillors. They were to hold office for five years from the time they took over their posts. They were to be removable by the King at the request of the Directors, and the Directors were to nominate their successors.

The King was empowered to establish by Charter or Letters Patent a Supreme Court of Judicature at Fort William consisting of a Chief Justice and three judges who were to be appointed by the Crown. The Court was to have jurisdiction over all British subjects resident in Bengal, Bihar and Orissa; and it had authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours or oppressions, and also any suits or actions against any of His Majesty's subjects in Bengal, Bihar and Orissa, and any suits against any person in the Company's service. There was, however, this exception, that no indictment or information could be heard save for treason or felony which was directed against the Governor General or any of his Council, and they were not liable to arrest or imprisonment. As to Indians, the Supreme Court could hear and determine suits of subjects of His Majesty against Indians residing in Bengal, Bihar, or Orissa on a contract or agreement where the matter in dispute was over five hundred rupees and where the Indian had agreed that in case of dispute the matter should be settled in the Supreme Court. Such suits might be brought either originally or by way of appeal. An appeal was to be provided by the Charter to the King in Council. The Governor-General, the Members of Council, and the judges were to act as justices of the peace, and to hold Quarter Sessions.

The Governor-General, the councillors, and the judges were not to take presents or to engage in private trade. And no person holding civil or military office under the Crown or the Company was to accept or take from any Indian princes or Powers or their agents, or any of the natives of Asia, any present, with the exception of councillors-at-law, doctors, or chaplains in the way of their professions.

No collector, supervisor, or any of His Majesty's subjects employed in the collection of revenue or the administration of justice in Bengal, Bihar, or Orissa, or their agents or servants were to buy or sell goods by way of traffic, or to be concerned in the inland trade in salt, betelnut, tobacco, or rice, excepting on behalf of the Company; but this was not to restrain His Majesty's subjects from trading in Calcutta.

No subject of His Majesty was to take more than 12 per cent, per annum for a loan.

Those who were dismissed or who resigned from the service of the Company were not to stay in the country and trade. Servants of the Company might be fined and imprisoned by the Company, and then sent to England. Offences were to be tried by a jury of British subjects resident in Calcutta.

The Governor-General and Council might make such regulations as appeared just, and they were to be valid when they were registered in the Supreme Court. But appeals might be made to King in Council, who might repeal such rules.

If any Governor-General, President, Governor, Member of Council, Chief Justice, or judge of any of the Company's settlements in India, or any person who was or had been employed by or had been in the service of the Company should commit any offence against this Act or against any of His Majesty's subjects or any of the inhabitants of India, he might be tried for such offence in the Court of King's Bench in England.

Such was this famous Act. It was followed by 13 Geo. III. c. 64, which gave the Company the sum of £1,400,000 as a loan on certain conditions and relieved it from its liabilities under the statutes passed in 7 & 9 Geo. III. The Letters Patent establishing the Supreme Court of Judicature at Fort William were dated March 26, 1774. They settled, as had beenfore shadowed in the Regulating Act, the various details regarding the Supreme Court, abolishing as to Calcutta the legal provisions of Charter of 26 Geo. II.

The Supreme Court then was to consist of a Chief Justice and three puisne judges, who were to be appointed by the King under the Great Seal and to act under and during His Majesty's pleasure. They were to be barristers of at least five years' standing, and those first appointed were named in the Letters Patent. In authority they were to be in the position of judges of the King's Bench in England. Writs, summonses, rules, orders, etc., were to run in the King's name. They were to nominate three persons yearly to the Governor-General and Council for them to select one as Sheriff. They were to appoint such subordinate officers as were necessary, but the Governor-General and Council must approve of the salaries. They were to admit and enrol advocates and attorneys-at-law and to settle the Court fees subject to the approval of the Governor-General and Council. The jurisdiction of the Court was carefully defined on the lines already laid down, but it was provided that it should not be

competent to try any suit against a person who had never been resident in Bengal, Bihar, or Orissa, or against anyone resident in Great Britain or Ireland unless the action was commenced within two years of the time when the cause of action arose, and unless the sum to be recovered was not of greater value than 30,000 rupees. It could try cases against inhabitants of India residing in Bengal, Bihar, and Orissa upon any contract or agreement in writing entered into by any of these "inhabitants" with any of His Majesty's subjects, where the cause of action was over 500 rupees in value, and where the "inhabitant" had agreed in the said contract that in case of dispute the matter should be decided in the Supreme Court; this either originally or by way of appeal. The method of procedure is detailed : The plaint filed by the partly agrieved, the precept to the Sheriff commanding him to summon the defendant to answer, the return of the Sheriff, the appearance or plea of the defendant, the hearing with evidence, the judegment and execution. The Court had powers of arrest and of taking bail, and the method by which the Company could be sued under the Charter of King George II was improved by the requiring the appointment of an attorney to represent the Company instead of the Governor.

It is interesting to note that the Court was to be a Court of Equity in the English legal sense of the word, and that it was to have full power to administer justice in a summary manner as nearly as might be according to the rules and proceedings of the High Court of Chancery in Great Britain. It was also to be a Court of Oyer and Terminer and Gaol Delivery in and for Calcutta, the factory of Fort William, and the factories subordinate thereunto just as though it were in England. For this purpose the Sheriff had to summon Grand Juries and criminal justice was to be administered as in Great Britain. The jurors and criminals must be either subjects of His Majesty or in the service of the Company or of any of His Majesty's servants. The Court of Requests and the Court of Quarter Sessions erected by the Charter of 26 Geo. II and the justices, sheriffs, and other magistrates thereby appointed were put under the control of the Supreme Court in the same way as inferior courts and magistrates in England were under the control of the Court of King's Bench; and the Court was empowered to issue writs of mandamus, certiorari, procedendo, or error, in case of need, directed to such courts or magistrates, and to punish wilful disobedience.

The Court might also exercise ecclesiastical jurisdiction in the cases of British subjects resident in Bengal, Bihar, and Orissa, as it was exercised in the diocese of London so far as circumstances required or admitted, and in particular it had power to grant probates of wills and to deal with the estates of intestates and of insane persons. Further it was to be a Court of Admiralty for Bengal, Bihar, and Orissa, and all other territories and islands adjacent thereunto, and which then were or ought to be dependent thereupon, in the same fashion as though the English Court of Admiralty were exercising its jurisdiction in England. It had also the right to try by a jury of British subjects resident in the town of Calcutta and to punish all treasons, murders, piracies, etc., committed on the high seas within the jurisdiction of the Court in the same way as the High Court of Admiralty in England.

Civil appeals were to lie to the King in Council as in the case of other colonies. The petition must be presented within six months and the matter in dispute must be over 1,000 pagodas in value. Criminal appeals required the consent of the Court before they were

made. The Governor-General and Council and the judges of the Supreme Court were exempt from arrest save for treason and felony, but their goods and estates were subject to legal process. The Mayor's Court of Calcutta and the Court of Oyer and Terminer and Gaol Delivery there granted by the Charter of 26 George II were abolished. The sittings of the courts were regulated and the rules of practice and standing orders had to be sent for approval to the Privy Council in England.

This very important statute has been criticized on many grounds, and with reason.

In the first place it is vague and perhaps purposely vague; though no doubt some of its vagueness comes from its assuming that no one would read so much into it as people afterwards tried to do. Which was to be supreme, the Governor-General and the Company or the Supreme Court? How far, it has been asked, could the High Court question the legality of acts performed by the agents of the Company? Mill thought that if the Court had such a power it became the virtual government, though American analogies show us that such is by no means necessarily the case. We might also ask what under the statute were the powers of the Governor-General and his Council, and we should get no definite answer. And certainly the arrangement by which the Governor-General's will could be over-ridden by a majority of the Council was bound to result in difficulty, as indeed events soon showed.

The jurisdiction of Court was by no means clearly defined. As Sir Courtenay Ilbert says, it had authority over British subjects and over persons employed by the Company. But who were included in these categories? It was not at all certain. The author of *Thoughts on Improving the Government of the British Territorial Possessions in the East Indies* (1780) says :

"The jurisdiction of the Supreme Court of Justice established at Calcutta by the Act of the 13 Geo. III. c. 63 is extended with respect to natives 'to all persons who are or have been employed by, or shall then have been directly or indirectly employed, in the service of the said United Company or any of His Majesty's subjects.' The number of persons who fall within the description of being actually employed, or having been formerly employed in the service of Europeans, is very considerable, and this description was for some time interpreted by the judges to comprehend all persons connected with the collection of the rents, and also to such of the natives as were imprisoned by those collectors. Writs of Habeas Corpus were accordingly granted to public debtors so imprisoned. This was found to affect the public revenue of the country most essentially, and has at last been settled by a species of compromise between the Supreme Company and the Supreme Court."

Mr. Boyle, in his letter to Warren Hastings of February 16, 1779, shows how difficult the position had become. He says :

"The Legislature in passing the Act of Parliament for the regulation of Indian affairs, seems studiously to have left the Provincial Courts in possession of the same authority which they before held, and subject to the same control, no appeal to the Supreme Court is allowed."

This was quite an arguable position, though it was not that taken up by the Supreme

Court. No action could be brought by a British subject against an inhabitant of the country unless by his consent in a civil suit. And, indeed, it seems certain that Dr. Firminger is right in his general conclusion :

"That the Court was not intended to hold 'an unlimited jurisdiction throughout the Provinces' is clear from the repeated references to "European and British subject,' to natives under the protection or in the employment of British subjects. The Supreme Court was in fact to occupy the position of the Mayor's Court founded in 1727, and rechartered in 1753, and its institution was believed to be necessary because the Mayor's Court, composed of functionaries appointed in Calcutta, had been found an insufficient deterrent to wrong-doing on the part of the Company's officials. The Mayor's Court had authority to try causes in which the Company itself was a party, but the judges in that Court were removable at the pleasure of the President and Council. The judges (or aldermen) of the Mayor's Court had generally been junior servants of the Company; and it was theirs to decide, without any professional knowledge of the law, cases affecting the property, the liberty, and the lives of British subjects and their native dependents. The process of an appeal from that Court to the King in Council had been intolerably tedious, and from time to time the Mayor's Court had been compelled to delay justice until counsel's opinion could be sent from England to determine vexed questions. The institution of the Supreme Court was, therefore, an act of reformation rather than of innovation. It was not intended to supersede or to trespass upon the judicature deriving their authority from the Mogul constitution, or to settle the question of the Mogul sovereignty by practically driving it into limbo. The Directors, no doubt, looked on the Supreme Court as an instrument of the kind they had long coveted, to terrorize their servants in Bengal. Its establishment enabled them to take the trial of alleged offences of its servants out of the hands of a complacent Council Board, and to have such cases determined by the awe-inspiring puisne judges of the Crown."

The question of the law which was to be administered was not settled in the Act, probably because the assumption was that the Court set up was meant for those who were actually or constructively British subjects and therefore required English law. That there was any idea, though such was often suggested, of introducing English law with all its technicalities throughout the whole of Bengal, Bihar, and Orissa, no one will believe, but a sufficient advance was made in the direction by the wide construction of the term British subject to cause considerable alarm. An example of this will be found in the *Observations upon the Administration of Justice occasioned by some late Proceedings at Dacca.* The passage runs :

"Instead of framing a new Code of Law for this new Institution, the English laws are introduced in their full extent, and with all their consequences; without any restriction or modification whatever, to accommodate them to the climate and manners of Asia; without any regard to religious institutions or local habits, or to the influence of other laws handed down from the remotest antiquity, and fixed in the hearts of the people; without any latitude allowed to the magistrate to relax, compress, or change their application, according to the exigency of these circumstances, upon a more attentive observation of them. But all are transplanted entire into the opposite quarter of the globe, to be administered by judges

educated under them and wholly unacquainted with the religion character or manners of the people over whom they were to preside."

On the other hand, some of the inhabitants of Calcutta professed to be horrified that they were not to have trial by jury in civil cases, though it was pointed out that they had not had that form of trial in the Mayor's Courts.

It must be remembered that the Act gave very narrow legislative powers to the Council. It was allowed to make regulations for Calcutta and other factories and places subordinate thereto with the consent and approval of the Supreme Court. The common opinion has been that English Criminal Law was introduced into India in 1726 when the Mayor's Courts were established by Charter, and this view Sir James Fitzjames Stephen thinks is confirmed by the contents of the statute 9 Geo. IV. c. 74, which introduced into the presidency towns a great part of the Criminal Law as it was in 1828. Impey's theory was that it had been introduced into Calcutta three times : in 1726, in 1753, and in 1774; so that the law in India would depend upon the date of the offence. But there was always the modifying clause "as nearly as the conditions and circumstances of the place and the persons will admit." Perhaps if we add that it was partially introduced in 1661 also this view is the more likely to be correct.

The Supreme Court not only absorbed the powers of the Mayor's Court, it also took the place of the Phoujdari Court; and for the time it left the Sudder Dewani Adawlut with nothing to do. We must remember that when the office of Naib Soubah was revived, an order passed on October 18, 1775 directed that the occupant of the post Mahomed Riza Khan was

"to superintend the Phoujdari Courts, and the administration of Criminal Justice throughout the country, and to enforce the operation of the same on the present establishment, or to new-model or correct it. As the Board wish that he shall have full control of the Criminal Courts in the character of Naib Soubah, they propose to remove the Nizamut Adawlut now at Calcutta, to be held in future at Murshidabad."

This step rendered any general supervision of the Provincial Criminal Courts on the part of the Supreme Court impossible.

That such a vague statute and charter could only lead to dispute was obvious from the beginning. Sir James Fitzjames Stephen has ably summarized the three main issues between the High Court and the Company.*

1. The claim of the Court to exercise jurisdiction over the whole native population to the extent of making them plead to the jurisdiction if a writ was served upon them. This claim resulted finally in the famous Cossijurah Cause in 1779-80. What it came to was this : A zamindar owed money, and his creditor having tried in vain to get it from him through the Board of Revenue in Calcutta, sued him in the Supreme Court; making an affidavit that the zamindar was employed in the collection of the revenues, so as no doubt to bring him with greater certainty under the jurisdiction. The Company issued an order to the landowners to the effect that they were only subject to the Supreme Court if they were servants of the

* Nuncomar and Impey, II, 236, etc. Every Student of Indian Constitutional History ought to study this remarkably lucid and powerful book.

Company or if they had by their own consent placed themselves under its jurisdiction, and that otherwise they were to pay no attention to anything the Court might do. When the Sheriff tried to carry out the orders of the Court by force and to arrest the zamindar, the Governor-General and Council prevented him from doing so by an armed military force. The contention of the Council was that the Court's jurisdiction was outside Calcutta strictly limited to a few special cases. Indeed, the Council went farther, and put their case on the ground that Parliament had no right to legislate for the natives of India, though they weakened their position by saying that had the Court come to them they would have pointed out those subject to its jurisdiction and have enforced its process. The Court answered that they never asserted jurisdiction over the zamindars as such, and that if there was any doubt as to the jurisdiction, the question could easily have been referred to the Privy Council at home and decided. The result of the whole discreditable business was that the Company did not disapprove of the action of the Council and that therefore the Council may be said to have carried their point.

2. The second point at issue, one of great importance, was that of the jurisdiction of the Court over the English and native officers of the Company employed in the collection of the revenue in respect of corrupt or oppressive acts done by them in their official capacity. Here the Regulating Act was so clear that grumble as they might the Council could not question the authority of the Court.

3. The third question consisted in the right of the Supreme Court to try actions against the judicial officers of the Company for acts done in the execution of their legal duty. Here the Court was in a strong position, and the legality of its action was maintained. The great case is the well-known Patna Cause, a complicated matter in which Impey's action as judge afterwards formed one of the grounds of impeachment against him. Very heavy damages were given by the Supreme Court to Naderah Begum in an action against the nephew of her late husband and the officials of the Patna Council acting as a court of justice. Incidentally, this famous decision showed that the Provincial Councils were only nominally exercising their judicial functions; they had not the necessary trained men and handed such work over to subordinates who dealt with it in a very imperfect fashion.

The Governor-General and Council tried to improve matters and on April 11, 1780 they issued *Regulations for the Administration of Justice*. The object was to embody the rules of 1772, to prevent friction between the revenue and the judicial authorities, and to try to secure that justice should be done. The business of the Provincial Councils was divided into two parts. The revenue business continued to be under the direct care of the Provincial Councils, but the judicial business which consisted of suits between private persons were to be decided in Dewani Adawlut Courts over which a covenanted servant of the Company, with the title of Superintendent of the Dewani Adawlut, was to preside. There were to be such courts at Patna, Dacca, Dinajpore, Burdwan, Murshidabad, and Calcutta. Provisions were laid down to try and avoid difficulties with the revenue authorities, and if the amount at stake were large, an appeal, which must go through the chief of the Provincial Council, lay to the Governor-General and Council in the Sudder Dewani Adawlut. Impey gives some account of these courts and says that when he wrote, early in 1780, the Sudder Adawlut here

mentioned was a revival of the old Sudder Adawlut which had been discontinued since the Regulating Act; and the Adawlut procedure, he added, was that the appeals were determined by the Board as a whole on the recommendation of the Keeper of the Khalsa Records, the members of the Council not hearing evidence at all.

This was not a satisfactory way out of the difficulty, and Hastings seems to have left that it was so. He therefore on September 29, 1780 proposed a new scheme by which the Sudder Dewani Adawlut should be presided over by the Chief Justice and should not only receive appeals in all causes exceeding a certain amount, but also exercise a general oversight in connection with the proceedings of all the inferior courts. This was carried by the casting vote of the Governor-General, and the necessary regulations were issued on November 3, 1780. This able and enlightened project coincided, it must be remembered, with the restoration of the collectors to their old position of importance. It would have lessened the friction between the Council and the Supreme Court, and have gradually fused the Sudder Dewani Adawlut and the Supreme Court together in the same way as was effected eighty years later.

Unfortunately the scheme was wrecked owing to Impey's having, without proper authority, accepted the appointment; it carried a large salary, made him a servant of the Company, and thus destroyed to some extent the independence of his position. It is clear that the Company's officials might come before the Supreme Court, though they were not likely to do so after the Cossijurah Case, and it might be felt that the Supreme Court owing to Impey's position as a salaried officer of the Company was not one of impartiality. On the other hand, as Dr. Firminger very properly points out, had the Sudder Dewani Adawlut been made really effective, it was unlikely that a case would arise in which the Chief Justice would feel the embarrassment of his position. But personal factions were too strong, and although Impey at once proceeded to reform the Diwani Courts* the Directors in 1782 ordered the Council to resume its jurisdiction. In May of that year the House of Commons voted for the recall of the Chief Justice, and one of the articles of his impeachment was his acceptance of the judgeship of the Sudder Dewani Adawlut. The result of these troubles was an inquiry into the whole question by Parliament in 1781 and resulting legislation.

21 Geo. III. c. 65 prolonged the Company's monopoly and laid down various regulations as to financial and military matters.

21 Geo. III. c. 70 was more important because it dealt with some at least of the points at issue. The preamble spoke of doubts and difficulties as to the meaning of the Regulating Act, of dissensions between the judges of the Supreme Court and the Governor-General and Council of Bengal, and of the fears and apprehensions which have disquieted the minds of those subject to the Government of India; it adds that

"it is expedient that the lawful government of the Provinces of Bengal, Bihar and Orissa should be supported, that the revenues thereof should be collected with certainty, and that

* He drew up a valuable code (Regulation VI of 1781) relating to the civil procedure in the 18 courts which had just been established and in four only of which the collector was judge. It was reissued as amended in 1787.

the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges."

It then goes on to provide as follows :

1. The Governor-General and Council of Bengal, acting as such, are not to be subject to the jurisdiction of the Supreme Court.

2. If an action is brought against anyone in the Supreme Court for acts done by order of the Governor-General and Council in writing they can plead that order in justification.

3. But with respect to such an order as extends to a British subject the Court should have as full and complete jurisdiction as if that Act had not been made.

4. The Governor-General and Council and anyone acting under their orders were to remain liable to complaint before any competent court in England.

5. If anyone made a complaint to the Supreme Court against the Governor-General and Council or those acting under their order and would execute a bond under suitable penalty with another person considered responsible to prosecute the complaint in Great Britain within two years, they were to have certified copies of the orders complained of and other facilities secured by the Regulating Act.

6. Such certified copies were to be accepted as evidence in the courts at Westminster.

7. All suits save those before Parliament had to be commenced within five years of the offence of the arrival of the party complained of in England.

8. The Supreme Court was not to have or exercise any jurisdiction in any matter concerning the Revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage or practice of the country or the Regulations of the Governor-General and Council.

9. And for removing all doubts concerning the persons subject to the jurisdiction of the said Supreme Court it was enacted that no person should be subjected to the jurisdiction of the Supreme Court by reason of his being a landowner, landholder, or farmer of land, or of Land Rent, or for receiving a Payment of Pension in lieu of any Title to, or ancient Possession of, Land or Land Rent, or for receiving any compensation or share of profits for collecting of rents payable to the public out of such lands or districts as are actually farmed by himself or those who are his undertenants in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof within the provinces of Bengal, Bihar and Orissa or for or by reason of his becoming security for the payment of the rents reserved or otherwise payable out of any lands or farms, or farms of land within the provinces of Bengal, Bihar and Orissa.

10. No person for or by reason of his being employed by the Company or the Governor-General and Council or by any person deriving authority under them, or for or on account of his being employed by a native or descendant of a native of Great Britain should become subject to the jurisdiction of the Supreme Court in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between party or parties, except in

actions for wrongs or trespasses and also except in any civil suit by agreement of parties in writing to submit the same to decision of the said Court.

11-16. Proper Registers of the natives employed by the Company and by British subjects to be kept and none who are not so registered to be employed.

17. The Supreme Court in actions between Hindu and Mohammedan inhabitants of Calcutta dealing with inheritance and contract should determine them by Hindu and Mohammedan Law respectively and where one party only was a Hindu or Mohammedan by the laws and usages of the defendant.

18. The rights and authorities of fathers of families and masters of families according as the same might have been so exercised by the Hindu or Mohammedan Law should be preserved to the Hindus and Mohammedans respectively within their families, nor should any acts done in consequence of the Rule and Law of Caste respecting the members of the said families only be held and adjudged a crime although the same might not be held justifiable by the laws of England.

19. The Supreme Court might frame such forms of process and make such rules and orders for the execution thereof in suits against the natives as should suit their religion and manners.

20. Such forms were to be transmitted to one of the Secretaries of State for His Majesty's approval.

21. The Governor-General in Council was to be still a court and its determinations on appeal as before were to be final save on to His Majesty in civil suits the value of which should be £5,000 and upwards.

22. This Court should determine on all offences, abuses and extortions committed in the collection of the revenue and should punish for the *same short* of death *maiming or* perpetual imprisonment.

23. The Governor-General and Council should have power to frame regulations for the Provincial Courts and Councils. Copies were to go to the Directors and to one of Secretaries of State. His Majesty might amend them in Council.

24. No action was to lie in the Supreme Court against judicial officers in the Country Courts for any decree or for consequent action taken.

25-26. Rules were laid down as to information brought against judicial officers for corruption.

27. The Patna Cause settled.

28. The Governor-General and others indemnified.

This Act then made a bold attempt to settle the difficulties to which the ill-advised and ignorant policy of the framers of the Regulating Act had given rise. It checked any attempt to introduce English law wholesale into India. It recognized the Sudder and Provincial Courts as institutions having an independent existence. It upheld the authority of the Governor-