Origin and Growth of the High Court

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The growth of the British power in India was the gradual transformation of trade into sovereignty. This transformation determined the manner and method of evolution of the judicial administration in his country. The idea of administering justice for the British subjects born out of necessity was gradually extended, with the growth of power, to Indians though through a circuitous channel.

After the settlement of Calcutta had been founded by Job Charnock in 1690, there was gradual increase of the British population in India and the necessity was felt of a Court, which could dispense justice to them in accordance with English law. Thus in 1726 the Major's Court was established in the town of Calcutta, which was also constituted a Court of Oyer and Terminer. Similar Courts were also established in Bombay and Madras.

These courts administered English law, which was assumed to be the *lex loci* of the Settlement. The inhabitants of the settlement resorted to the English flag and were governed by the English law, irrespective of their nationality. Outside the settlement, Indians were supposed to be living in their own country and were subject to their own laws, the task of administering which had been taken upon, since the disintegration of the Mughal sovereignty, by their erstwhile deputes and governors.

Supreme Court in Bengal

In 1773, the British Parliament passed the Regulating Act (13 Geo, III Ch.63) whereby the power to constitute a Supreme Court in Bengal for the British subjects and the employees of the Company or those of the British subjects was conferred upon Her Majesty. The Charter of 1774, in pursuance of the Regulating Act, establishing the Supreme Court in Bengal, did not, however, repeat the limitations mentioned in the Act, and this omission led to a sharp conflict of opinion about the jurisdiction of the Supreme Court. Not infrequently, the Supreme Court, without drawing any light from the Regulating Act, overstepped the bounds of its jurisdiction, and thus commenced, in Bengal, an era of confusion, described by Macaulay in his Essay, as a "reign of terror; heightened by mystery for even that which was endured was less horrible than that which was anticipated." * But for this omission in the Charter of the Supreme Court, perhaps Raja Nand Kumar would not have met his doom, nor would the Raja of Cossijurah have had to abscond, to escape the clutches of the assumed jurisdiction of the Supreme Court.

Mufassil Courts in Bengal, Bihar & Orissa

The administration of justice, established for Indians living outside Calcutta was different. In the year 1765 Robert Clive secured in perpetuity, for the East India Company, the Dewani of Bengal, Bihar and Orissa from the Moghal Emperor Shah Alam, who was still considered to be the Ruler of the Country, against a payment of Rs. 26 lacs. By this grant the Company claimed to have become the virtual sovereign and master of this territory.

The outcome of this grant was a new system of administration of justice. The proposals made by Warren Hastings and his Council on 15.08.1772 were adopted by the Government on 21.08.1772. "Under this plan, which contains some original provisions, yet preserved in our judicial code, Mofussil Dewanny Adawluts, or provincial courts of civil justice, under the superintendence of the collectors of revenue, were established in each district."*

In 1774 an alteration was made in the set-up of these courts by the withdrawal of the Collectors and appointment of provincial councils in six divisions. On 28.03.1780, however, it was decided to establish distinct courts in the six divisions, which were made independent of the provincial councils.

Under the Regulations passed on 21st August 1772 made in pursuance of the said grant, the Criminal courts, designated as Faujdari Adalats were also established and placed under the superintendence of Collectors of Revenue. Later, on 18th October, 1775 their superintendence was entrusted to Naib Nazim who appointed Foujdars to preside over the said Courts. In 1781, "the institution of Foujdars not having answered the intended purposes" a change was brought about. The criminal courts were continued in the several divisions subject, as before, to the superintendence of the Naib Nazim but the English judges of the Dewani Adalats were appointed Magistrates, with a power to take cognizance of offences, apprehend their perpetrators and commit them to the nearest criminal court for trial.

The authority of the English Magistrates so appointed was ineffective over the Zamindars and Landholders and consequently "the administration of justice in criminal cases was much impeded". On 27th June, 1787, therefore, the Magistrates were vested with authority to decide, upon complaints, petty offences such as petty affrays, abusive names, etc. The trial of serious offences, however, as before, were long delayed resulting in increase of crimes. On 3rd December 1790, therefore, Regulations were passed whereby 'Courts of Circuit' under the superintendence of English Judges, assisted by persons well versed in Mohammedan Law, were established for trying in the first instance cases of crimes and misdemeanours. The Regulations with regard to Criminal courts were consolidated and re-enacted in Reg. IX of 1793.

The Revenue Administration in this country also owed its origin to the grant of Dewani whereby the East India Company had become responsible for the collection of Revenue. Prior to 1771 the task of settlement and collection of revenue was carried on by the covenanted servants of the Company in Calcutta, Twenty-four Parganas, Burdwan, Midnapore and Chittagong. In other parts the Dewans at

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* Harington's Analysis, Vol. 1, Section II, P.20

Murshidabad and Patna were responsible for collecting the Revenue. In 1771 the Directors of the Company declared their resolution to take up the entire care and management of the Revenues through the agency of the Company's servants.

For the adjudication of questions with regard to revenue arising between the Government and the landholders and disputed claims between the landholders and their tenants or 'Ryots' the 'Mal Adawluts' or revenue courts were established. These courts were presided over by the Collector and appeals from their decisions lay to the Board of Revenue and then on to the Governor-General-in-Council. The financial occupations of the Collectors, however, disqualified them from exercising judicial functions and adjudicating upon their own acts. By Regulation II of 1793, therefore, the Mal Adalats were abolished and their jurisdiction was transferred to the Civil Courts. Collectors were only responsible for collection of revenue.

Sadar Diwani and Nizamat Adalats in Bengal Presidency

By the Regulations of 1772 the Sadar Diwani Adalat was instituted in the Presidency under the superintendence of three or more members of the council to hear appeals from the Diwani Adalats in causes exceeding the value of five hundred rupees. On 18.10.1780, a separate judge, Sir Elijah Impey, was appointed to the charge and superintendence of that court. This appointment was alluded to, by Macaulay, as being "neither more nor less than a bribe", to get rid of the conflict between the Judiciary and the Executive. By the same regulations the Sadar Nizamut Adalat was established at Murshidabad which was presided over the by a Darogah appointed by the Nazim.

The jurisdiction of the Dewani Adalats was defined by Reg. III of 1793 whereby British subjects were expressly excluded from their jurisdiction with certain exceptions. The designation of the Dewani Adalats established in the cities of Murshidabad, Dacca and Patna were after the name of these cities, while of those established in the several Zillahs were after the name of the district or Zillah. By Reg. V of the same year four Provincial Courts of Appeal were established which besides having Appellate jurisdiction also had original jurisdiction in certain matters. Appeals from the Zillah and City courts (Dewani Adalats) which so far lay directly to the Sadar Dewani Adalat were now to be filed in these Provincials Courts and appeals angst their decisions were to be filed in the Sadar Dewani Adalat. It is interesting to know that the Sadar Dewani Adalat ordinarily sat only for three days in a week. The Sadar Dewani Adalat and Sadar Nizamat Adalat of Bengal, were now to be presided over by the Governor General and the members of the Supreme Council.[*] The courts thus established were meant to dispense justice to Indians and had no authority over British subjects, for the Company could hardly claim to derive authority over them from the Mughal Emperor.

Courts in Banaras Province

The territory around Banaras was ceded to the East India Company by the Nawab Vazir of Awadh in the year 1775. In the Banaras Province, as it was then know, unlike Bengal the establishment of Criminal Courts preceded that of Civil Courts.

Criminal Courts

In 1781 a court of justice vested with Criminal jurisdiction was established in the city of Banaras, and in 1788, courts with similar powers were established in the districts of Ghazipur, Jaunpur and Mirzapur. The Resident at Banaras was to act as Magistrate throughout the Province of Banaras. In 1795 by Regulation, XVI the judges of the Dewani Adalats, established the same year in the city of Banaras and in the three aforesaid districts, were empowered to act as magistrates within their jurisdiction and this power so far enjoyed by the Resident at Banaras, was resumed from him. A court of Circuit, having similar powers as those in Bengal for the trial of serious offences, was created by the same Regulation, at Banaras. This Court was subordinate to the Sadar Niazmat Adalat of Bengal.

Civil Courts

Regulation VII of 1795 was responsible for establishment of Civil Courts in Banaras Province. A city court in Banaras and three Zillah courts in Jaunpur, Mirzapur and Ghazipur were established. The jurisdiction, power and authority, enjoyed by similar courts in Bengal, were extended to these courts and the rules of preocedure framed by the former were made applicable. By Reg. IX of the same year a Provincial Court of Appeal was set up in Banaras to exercise jurisdiction in Banaras Province, which consisted of the city of Banaras and the three Districts of Jaunpur, Mirzapur and Ghazipur. The Provincial Court was to hear Appeals against the judgments of the city and Zilla courts and appeals against its decisions lay to the Sudder Dewani Adalat of Bengal, Bihar and Orissa, the jurisdiction whereof was extended to Banaras Province by Reg. X of 1795.

In 1801 a major portion of the area, later known as the Agra Province, was ceded to the British by the Nawab of Awadh, and in 1803 Zilla courts were constituted in the districts of Moradabad, Bareilly, Etawah, Farrukhabad, Kanpur, Allahabad and Gorakhpur (vide Reg. II of 1803). In the same year by Reg. IV a Provincial Court of Appeal was also established at Bareilly for exercising appeallate jurisdiction over these Zilla courts.[*] Appeals against the decisions of the Provincial court of appeal also had to be filed in the Sadar Dewani Adalat of Bengal. Out of the territories ceded by the Peshwa and Daulat Rao Sindhia six districts were formed by Reg. IX of 1804.

By Reg. VIII of 1805 five new districts were formed out of the conquered provinces, within the Doab and on the right bank of Jamuna, excepting Delhi, as also out of the territory of Bundelkhand ceded by the

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[*] This constitution of the Sadar Court as provided ;by Regs. VI and IX of 1793 respectively was altered by Reg II of 1801 and the Chief Judge and other judges were appointed for presiding over these courts.

[*] For further details about the Provincial Courts of Appeal reference may be made to Harington's Analysis, Vol. I. Ps. 109 and 419.

Peshwa. These districts were Aligarh (then spelt as Allyghur) northern Zilla of Saharanpur, the southern zilla of Saharanpur, Agra and Buindelkhand. By the same regulation, Zilla courts were established in these districts. The two parts of Saharanpur were, however, amalgamated in 1806. Appeals from these Zillah courts lay to the Provincial Court established by Regulation IV of 1803 and further appeals to the Sudder Dewani Adalat. Dehra Dun and Kumaon, which had been acquired from Nepal, were brought under this legal system in 1817 (Regs. IV and X).

Due to 'defects' in the superintendence of Criminal and Revenue Administration, nine divisions were created in 1829 out of the ceded and conquered territories, later known as the North Western Provinces, and each division was placed under a 'Commissioner of Revenue and Circuit.' The provincial Courts of Banaras and Bareilly no longer remained Courts of Circuit and the power to hold "sessions of goal delivery" enjoyed by them was transferred to the Commissioners (vide Reg. I of 1829)

The amalgamation of the Civil and Criminal jurisdiction was effectuated by Reg. VII of 1831 providing for appointment of Zillah Judges as Sessions Judges whenever deemed advisable, though appeals from the orders of Magistrates lay, as before, to the Commissioner. Like the Commissioners, the Sessions Judge were subordinated to the Sudder Nizamat Adalat of Bengal.

To relieve the Zillah and City Judges against rush of work provision was made for the appointment of Principal Sadar Ameens, whenever necessary, by Reg. V of 1831. They were to try such appeals, against the decisions of Munsifs, and original suits, not exceeding five thousand rupees, as the Zillah or City Judges referred to them.

Sadar Adalats in Western Provinces

The Sadar Dewani and Nizamat Adalats were established in the Western Provinces consisting of the Province of Banaras and the ceded and conquered provinces, in 1831 by Reg. VI, ordinarily to be stationed at Allahabad, and all the nine divisions created in 1829 were placed within its jurisdiction. These courts were the outcome of discontent and disquietude caused by expense, difficulty and delay experienced by the inhabitants of these parts in prosecuting their appeals in Bengal. Though, difference in the climate of Bengal was, in the preamble of Reg. VI of 1831, attributed to be the factor deterring individuals from personally resorting to the highest appellate courts in Bengal, the vagaries of a long journey with slow means of communication available then appear to be the more probable reason. Later these courts were shifted to Agra.

By Reg. X of 1831 a Board of Revenue was created at Allahabad and the Revenue administration, hitherto under the Board of Revenue in Bengal, was taken up by it.

In the year 1833 by Reg. II the Provincial Courts of Appeal were abolished and while their appellate jurisdiction including the pending appeals, were transferred to the Sadar Dewani Adalat, the original jurisdiction including the pending suits were transferred to the several Zillah and City courts.

Formation of the North-Western Provinces

In the year 1836 the North-Western Provinces were formed out of the territory around Banaras ceded by Avadh in 1775 other territories ceded in 1801 and thereafter, the conquered territories acquired from the Maharja of Sindhia in 1803, a portion of Bundelkhand acquired from the Peshwa ; and the territory then known as the hill districts acquired in 1816 from Nepal. The ceded territories now cover the greater portion of Uttar Pradesh, the Sagar and Narbada territories ceded by the rules of Nagpur were also part of the North Western Provinces. Jhansi, which lapsed to the Company in the year 1853, also became part of the North-Western Provinces. The Delhi territory, which also formed part of the North-Western Provinces, was later transferred to Punjab in 1858.

The regulation districts, [*] the ceded and conquered districts and Bundelkhand area were all subject to the judicial and administrative Regulations of Lord Cornwallis. Collectors were confined to functions concerning revenue, while judges and magistrates dealt with the civil and minor criminal cases, subject to the control of the Sadar Diwani and nizamat Adalats.

The importance of the city of allahabad assumed a greater magnitude, when, in 1858, Lord Canning shifter the seat of the Government from Agra to Allahabad.

Formation of Avadh

Avadh was annexed to the territories of the East India Company in 1856 and the twelve districts of Lucknow, Bara Banki, Faizabad, Sultanpur, Hardoi, Rae Bareli, Pratapgarh, Unnao, Gonda, Bahraich, Sitapur and Kheri were placed under a Chief Commissioner. [*]

Constitution of High Courts in India

In the year 1861 the Indian High courts Act and the Indian Councils Act were passed by the British Parliament. The former provided for the abolition of the Supreme Courts of Judicature and the Sadar Diwani Adalats and the constitution of the High Courts of Judicature in their place in the three Presidency towns. By section 16 a power was reserved to Her Majesty to constitute similar High Courts in other territories which were not within the local jurisdiction of any of the three proposed High Courts of Calcutta, Bombay and Madras. The Indian Councils Act empowered the Governor-General to create local Legislatures in various provinces, though the exercise of this power, with regard to the North Western Provinces was not made till the year 1886.

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[*] Keith, in the 'Constitutional History of India' observes at Page 152. "The earlier acquisitions were treated as extensions of Bengal, and the regulations of that Presidency were applied thereto with necessary modifications. But areas taken from Nepal and the Delhi territory were excepted,……."

The Calcutta, Madras and Bombay high courts were established by the Royal Charter in the year 1862. In 1865, however, fresh Letters Patents were issued for these courts which are also known as the amended Letters Patent.

Charter of N.W.P. High Court

The 17th of March, 1866, marked the beginning of a new era in the administration of justice in this State. A High Court of Judicature for the North Western Provinces consisting of Chief Justice Sir Walter Morgan and five other judges was established by the Royal Charter. The position that ensured in the North Western Provinces on the eve of this memorable day, a hundred year ago, was not largely different from the conditions prevailing in the Presidencies. The dual system of justice, similar to that which had prevailed in Bengal, but with added rigour, prevailed in the North Western Provinces. Being within the Presidency of Fort William, the North Western Provinces were under the sway of the Calcutta High Court in certain spheres, while the Company's courts, with the Sadar Diwani and Nizamat Adalats at the top of the hierarchy shouldered the main responsibility of administration of justice civil and criminal.

Conferment of Jurisdiction

Broadly stated, the Charter of 1866 conferred upon the newly formed High Court, Civil, Criminal, Testamentary and Interstate as well as Matrimonial jurisdictions. The significant feature of the Charter was the amalgamation of the dual system of administration of justice and transference to the New High Court qua some matters, of the jurisdiction exercised by the Calcutta High Courts and that of the Sadar Courts with regard to the rest. The conferment of guardianship, lunacy, and testamentary and interstate jurisdictions, on this High court was made by incorporating the powers exercised by the High Court at Fort William. Judging from the amount of confusion that had been created by the adoption of a similar provision in the Charters of the Presidency High Courts, vis-à-vis their respective Supreme Courts, avoidance of this provision would have been desirable. If not to the same extent as in Bengal and other High Courts, confusion did occur in this High court as well, in some cases;* but the same has now been removed, to a great extent, by the recent pronouncement of the Full Bench of this Court, in the noted case of Reeta Rani V. Raghuraj Singh, reported in A.I.R. 1965 All. 380: 1965 A.L.J.54.

Law to be Administered by the High Court

So far as criminal jurisdiction was concerned, clause 23 of the Allahabad Charter prescribed application of the Indian Penal Code. With regard to civil cases the characteristic vagueness reappeared. Cases coming before the High Court in its extraordinary forum were to be decided according to law or equity that would have been administered by the courts of trial, until otherwise provided. On the Appellate side, the High court had to apply 'the Law of Equity and rule of good conscience,' that were to be applied by the courts of trial.

The exact connotation of the phrase 'law or equity and rule of good conscience' was not and is not easily ascertainable, particularly because it also carried a historical background. Within the Presidency towns the English law was the *lex loci,* the only exception being for Hindus and Mohammedans who were allowed the benefit of their personal laws in certain spheres. Outside the Presidency towns, Regulation IV of 1793 had provided that in suits regarding succession, inheritance, marriage, caste and all religious usages, the Hindu and Mohammedan Laws were to be applied by the courts; but this provision was confined in its application to Hindus and Mohammedans only. For other persons and other types of suits there existed no rules of guidance except that the judges were to act in accordance with "justice, equity and good conscience".

In course of time the population of India, even outside the Presidency towns, could no longer be regarded as consisting of Hindus and Mohammedans alone. Besides British subjects, aliens had settled down in India. A new class of Anglo-Indians had sprung up. The number of Indian Christians was also on the increase. On account of their peculiar situation, their mixed ancestry and the abandonment of their old moorings, the Anglo-Indians and the Christians could not fall back upon their personal laws, and even if, in some cases, they could, the difficulty of ascertaining their personal laws deterred the judges from applying them. The Courts had of necessity to fall back upon "justice or equity and rule of good conscience".

It must be remembered that unlike English jurisprudence where the distinction between equity and law was well marked, the use of this phrase in the Bengal Regulations and elsewhere was merely a directive to the courts to administer the law that was applicable, to apply the principles that reason dictated and to dispense justice which the case merited. The forms that 'justice, equity and good conscience' had assumed, in practice are by no means uninteresting. For, instance in Stephen Vs. Hume (Fulton's Reports, P. 224) Sir John Peter Grant, in his dissenting judgment was of the opinion that Mohammedan Law was applicable to Armenians in Dacca*.

High Court Functions

Soon after the issue of the Letters Patent, on 16th June, 1866, the first Rules of Practice of the Court were framed and on 18th of June, 1866 the first sitting of the Judges of the High court of North Western Provinces took place at Agra. The building and surroundings, in which the High court was situate at Agra, did not befit the dignity of the highest Court of Appeal and in the year 1869 the High court was shifted to Allahabad in the building on the Queen's Road, now Sarojini Naidu Marg, which at present houses the Board of Revenue, U.P. There is no record of any ceremony having been held at Allahabad and quietly

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* In the case reported in I.L.R. 4 All. 159, which may be cited as an instance, this court had even to ascertain the practice prevailing in the Calcutta High Court on the original side in the Lunacy jurisdiction.

* Sir George Rankin, in his book "Background to Indian Law" has admirably dealt with this subject at pages 22 to 45.

and unostentatiously the Judges commenced their duties. The name of the Law Reports was altered from ' Agra High Court Reports ' to 'N.W.P. High court Reports'.

Civil Courts in Avadh

The Civil Courts and the Court of the judicial Commissioner, in Avadh were formed by Act XIV of 1865. In the year 1871 the Oudh Civil Courts Act (XXXII of 1871) was passed by the Governor-General-in Council to consolidate and amend the laws relating to Civil Courts in Avadh. Besides constituting Civil Courts in a reformed shape, the Judicial Commissioner's Court was re-constituted as the highest court by this Act. The Judicial affiliation of Avadh to the High Court was clearly discernible in Sec. 23 of this Act which provided that if the Judicial Commissioner entertained any doubt as to the decision to be given by him he was to make a reference to the N.W.P. High Court and the case had to be decided in accordance with judgment of the High Court. The Avadh Civil Courts Act (XIII of 1879), however, omitted the provision.

Sir Walter Morgan, the first Chief Justice of the High Courts named in the Charter itself, retired in 1871 and in his place, Sir Robert Stuart became the Chief Justice

In the year 1874 by virtue of the powers conferred by Sec. 3 of 28 Vict. Ch. 15 the Governor-General-in Council was pleased to bestow upon this Court the original and appellate criminal jurisdiction in respect of European British subjects in Avadh, Jabalpur division in Central Provinces (Madhya Pradesh), the line of Railway from Allahabad to Jabalpur, Morar, and Ajmer, British Merwara as well as those residing in Rampur, Rewa, Panna, Gwalior, Bikaner and various other Ruling States. [*] Regarding Avadh this jurisdiction ceased, in 1925, when the Chief Court was created. In other respects these Indian States claimed to be sovereign and were dispensing justice according to their own laws and through their own machinery.

The Law reports so far known as 'N.W.P. High Court reports' yield place to the 'Indian Law reports' which took over the task of reporting the decisions of the High Court from the year 1876.

On 26th November 1886 the North Western Provinces were provided with a Legislature, viz. the Lieutenant Governor's Legislative Council, and the manner of enacting laws thereafter underwent a radical change. Though the voice of the people in making the laws, was faint the feeble yet the laws were chosen rather than imposed.

Sir John Edge, who later adorned the Judicial Committee of the Privy Council, became Chief Justice of the High Court in 1886. An episode, which may be of particular interest to the judicial community occurred in his regime. In July 1887 a bill was introduced in the House of Lords for amalgamation of Avadh with the North Western Provinces. The bill had passed through the House of Lords and eve4n had a first reading in the Hose of Commons. It contained a provision, in Sec. 2 to the effect that it was lawful for Her Majesty from time to time to enlarge and extend the limits of the territorial jurisdiction or the jurisdiction over persons, of any High Court of Judicature in India and further to grant such powers or make such provision "for the purposes of regulating such courts after its jurisdiction shall have been extended or enlarged". In Sec.3 the power to direct the place or places where one or more Judges of the Court may sit was vested in such local authorities as the Governor-General-in Council may nominate. There did not exist a practice of consulting the Judges about legislation concerning their jurisdiction and the proposed bill was not referred to the Judges of the N.W.P. High Court for opinion. A copy of the Bill was, perchance, sent by a personal friend of Sir John Edge from London. Sir John Edge consulted his colleagues one of whom was the distinguished Syed Mahmud and having reached the conclusion that the Bill needed some drastic Changes he took the Liberty of sending, on 21st July, 1888, a telegram to Mr. Macpherson of the India Office, commenting upon the said Bill, in the following terms:

> "We doubt words High Court Bill, purposes of regulating empower appointing Additional Judges. Deprecate Sec. 3 depriving Chief's control over composition of Benches."

The next day Sir John Edge sent a detailed letter to Sir Alfred Lyle at the India Office, a copy of which was endorsed to Mr. Macpherson and to Sir Auchland giving in detail the reasons for his protest. In his letter Sir John Edge, speaking for himself as well as for his colleagues adversely commented upon the proposed bill. With regard to Sec. 2 he remarked "It appears to Straight, Tyrell, Mahmud and me that the words 'for the purpose of regulating such court' limit the power conferred on Her Majesty by the earlier part of Sec. 2 of the Bill. We doubt very strongly whether Her majesty could under Sec.2 alter the constitution of the Court by making it consist of a Chief Justice and six judges instead of a Chief Justice and five judges. Th8is is a matter which requires very careful consideration. This point may possibly have escaped the attention of those who advise the Secretary of State." With regard to the matter of prescribing the place or places of sitting of judges Sir John Edge observed "As we read Sec.3 of the bill it will be for the Lieutenant Governor and not for the Chief Justice to give directions as to the particular judges who from time to time shall sit at Lucknow, if a Bench is to sit there. I do not know if the other Chief Justices have been consulted about Sec.3 of the bill. I have not. The strong feeling of the judges here is that it should be for the Chief Justice to determine from time to time which judges should sit at Lucknow. Personally I have no objection that the responsibility for the efficient disposal of the judicial work at Lucknow should be on the shoulders of the Lieutenant Governor and not on mine. Time will show whether this departure from the lines of Sec. 14 of the 24 and 25 Vict. Chap. CIV will work well or ill for the interests of the public and the Government."[*]

Remarkable as it may appear, the said Bill was dropped and another Bill was substituted in its place which left matters of details to be provided by a supplemental charter. It is noteworthy that this time a copy of the new Bill was formally sent to the High Court on 9th January, 1889 for its comments.

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[*] Vide Notification of the Government of India, Home Department (judicial) No. 1203, dated 23rd September 1874.

[*] Both the telegram and the letter of Sir John Edge are preserved in the High Court Records.

After deliberation, the judges sent their comments on 15th January, 1889. Justice Mahmud expressed his views in a separate memo as he differed with the opinion formed by other judges on vital points Amongst the points of difference was an important suggestion made by him with regard to clause 27 of the Letters Patent. Justice Mahmud was of opinion that the principle of seniority of the Judge in relation to the prevalence of his opinion had already been abrogated by Sec. 98 C.P.C. in cases of First Appeals, Second Appeals and other Miscellaneous proceedings and since it was doubtful whether it covered proceedings such as Review applications coming before a Bench of the High Court consisting of more than two Judges, hence in his view clause 27 of the Letters Patent was accordingly to be deleted or modified.[$] This suggestion of Justice Mahmood, though disregarded by his colleagues was accepted by his successors and was incorporated in the amendment of the Letters Patent in 1928. Much time of Legislatures of this sovereign republic of India spent over amending and validating Acts, could be saved if obtaining of the opinion of the judges upon proposed bill was made an inviolable practice, at least with regard to matters concerning their jurisdiction.

In 1890, by Act XX known as the North Western Provinces and Oudh Act, the Revenue Administration of Avadh was brought under the Lieutenant Governor of North Western Provinces while the Board of Revenue for the North Western Provinces was constituted as the highest authority in Revenue administration of Avadh and was renamed as the Board of Revenue of North Western Provinces and Oudh. By Act XXI of 1891, the appointment of Additional Judicial Commissioners for Avadh was provided.

On 18th January 1898 the Rules of the High Court were reframed, and these rules were more detailed than the first set of Rules framed in 1866.

Formation of United Provinces

The year 1902 saw the amalgamation of the Provinces of Agra and Avadh which were together known as United Provinces of Agra and Avadh which were placed under the charge of a Lieutenant Governor. However, in 1920 the United Provinces became a Governor's Provinces.

In the year 1905 the question of alteration of the designation and the seal of the Court prescribed by the Letters Patent came under consideration. The Attorney General and the Solicitor General of England who were consulted, were of the opinion that this could be done by an Act of Governor-General-in-Council. On 16th August 1905 deliberation amongst the Judges took place. While agreeing with the proposal to amend the Letters Patent the Judges unanimously disagreed that this could be accomplished by any means short of an Act of Parliament, and out of the reasons advance by them one being that Her Majesty could alter the Letters Patent only within three years as provided by section 17 of the Indian High Court Act (24 and 24 Victoria, Ch. 104). It was pointed out that if the opinion of the Law officers the Crown was correct, the Governor General could do that which Her Majesty could not do.[*] The opinion of the learned judges seems to have prevailed for the designation of the High Court was not altered till the power to issue amending Letters Patent had been conferred by an Act of Parliament.

The problem of arrears in this High Court had emerged even towards the close of the last century though not to the degree it exists today, and a sixth Puisne Judge had to be appointed in 1908. Interesting as it may be, in an appeal some time afterwards not only the validity of this appointment was challenged but even the constitution of the High Court was attached, on the ground of the appointment. The objection was negative in the judgment in Emperor Vs. Chure (ILR 36 Alld. 168 AIR 1914 Alld.85).

New Building

There was shortage of accommodation, and the then existing building could not accommodate the Benches so much so that the judges had at times to sit in Chambers. As long back as the year 1890 even the rooms allotted to the Advocates and Vakils had to be resumed and on several days the judges had to sit in chambers due to paucity of court rooms. The shortage must have increased with the appointment of the sixth Puisne Judge, and in the year 1911, the foundation of the present building of the High Court was laid by Sir John Stanley, Chief Justice. The actual construction of the building, however, could not be commended till the year 1914 and looking at the enormous size and the architectural majesty and splendor, it is admirable that the constructions were completed in less than $2^{1}/_{2}$ Years. Due to the difference in the climate conditions the plan of the building of the High Court had necessarily to be different from those of the Calcutta or Bombay High Courts. In those days mechanical devices of cooling a building were not available and a significant feature of the present High Court was the double roofing with the famous Allahabad tiles on the top, to mitigate the effects of the phenomenal heat of this part of the country. On 27th November 1916, the new building was opened by Lord Chelmsford, the then viceroy, at an imposing ceremony. At the function which was held in which was held in the morning, Sir Henry Richards, the Chief Justice, some time also the Vice-Chancellor of the Allahabad University, delivered his opening address and referred to the progress of the High Court during the preceding 50 years and to the increase in the size of the Court and the work. The increase of work in this Court had been almost in a geometrical proportion and can be judged from the fact that while there were 350 subordinate courts in the year 1866 their number had increased to 1276 in the year 1915.

The Government of India Act of 1915 (5 &6 Geo. V, Ch. 61) as amended by the Amending Act 1916 (6&7 Geo. V, Ch.37) empowered His Majesty the King of England to make amendments in the Letters Patent from time to time as may be necessary. This High Court continued under its original name till 1919 when on 11th March, a supplementary Letters Patent was issued whereby the High Court was named as the High Court of Judicature at Allahabad, the designation which continues up to the present day.

[$] Reference may be made to the original Minutes of meeting preserved in the High Court Records.

[*] for reference see the original Minutes of meetings

On 29th October, 1919 Sir Grimwood Mears was sworn in as Chief Justice. His regime, which lasted for about thirteen years, the longest that any Chief Justice has so far enjoyed in this High Court was not devoid of events. On 12th December, 1921 the Prince of Wales visited the High Court and a reception to welcome him was held in the High Court by the Bench and Bar. Lord Reading, the Viceroy of India, visited the High Court on 1st November, 1923 and a function for welcoming him was held in the High Court and was attended by the judges and lawyers of this court and other distinguished persons.

Chief Court of Avadh

As already mentioned by U.P. Act 4 of 1925 the Chief Court was established in Avadh, consisting of a Chief Judge and four or more Judges, to be appointed by the Governor General. It was declared as the highest court of civil and criminal appeals and revisions. Mr. Justice Stuart a Judge of the Allahabad High Court was appointed the first Chief Judge of the Chief Court of Avadh.

The Letters Patent of the High Court contained a provision that opinion was in the majority the view of the senior Judge was to prevail, while on the other hand section 98 of the Code of civil procedure contained a provision that where a Bench consisting of two Judges while hearing an appeal was faced with a difference of opinion between the Judges, on a point of law, they had to state the point and refer the matter and the appeal was then to be heard on that point only; be one or more other Judges, in accordance with whose opinion the appeal was to be disposed of.

In the Bombay High Court a curious situation had arisen in a Letters Patent appeal against the decision of a Single Judge. On a difference of opinion between two Judges constituting a Bench the matter was referred to two other Judges, against whose decision an appeal was filed before the Privy Council. It was contended by the appellant before the Judicial Committee that the procedure adopted by the High Court in referring the matter to two other Judges was ultra vires and vitiated their decree, as the provisions contained in section 98, C.P.C. did not control the provision in the Letters Patent with regard to the prevalence of the opinion of the Senior Judge. The contention prevailed and relying upon an allahabad decision reported in ILR 26 All. 10 the Privy Council advised His Majesty to set aside the decree passed by the Bombay High Court and the case was remanded to the High Court for decision according to law.*

In accordance with the Report of the Civil Justice Committee, the Govt. of India, in 1925, suggested that section 98, C.P.C. should be amended so as to include Second Appeals. The committee did not propose any alteration of the Letters Patent. The opinion of the learned Judges of this court was sought on the question of amending either sec. 98 or the Letters Patent to bring them in conformity with each other.

The opinion of the majority of the judges was, firstly that there should be a uniform provision for Letters Patent appeals and appeals governed by the Code of Civil Procedure and further that Judges should have power to refer question both of fact as of law Secondly the rule contained in the Letters Patent, to the effect that if Judges differed amongst themselves the decree of the trial Court would prevail, should be deleted as it might lead to a travesty of justice e.g. in some cases the Judges may be agreeing to modify the decree, but there might be a difference as to the nature of the modification. The recommendations of the judges were accepted and on 9-12-1927 the Letters Patent were amended. Clauses 10 to 27 were deleted and replaced by new clauses. As a result of the amendments Special Appeals from judgments in Second Appeals were permissible provided leave was granted for such appeals, though previously appeals could be filed without leave. Further Special appeals, in case of difference of opinion amongst the Judges divided equally, and where the differing, Judges did not constitute a majority of the strength of the High Court, were abolished and, last but not the least, the original rule of prevalence of the opinion of the Senior Judge was abolished and in the new rule a reference to a larger Bench was provided for, though the differing Judges were also to be included in the latter bench. Time had shown the foresight for Justice Mahmood who had correctly predicted the anomaly of clause 27 of the Letters Patent. It is gratifying that posterity had accepted his valuable suggestion.

Upon the retirement of Sir Grimwood Mears in 1932 Sir Shah Mohd. Sulaiman took over as Chief Justice. Besides his undoubted brilliance, he had the distinction of being the first Indian to be appointed as Chief Justice of this Court and probably the second in India the first being Sir Shadi Lal in Lahore High Court. Sir Shah Sulaiman later adorned the Bench of the Federal Court and enjoyed the distinction of belonging to the first batch of judges of that court.

The Government of India Act, 1935 vested all the High Courts with the power of superintendence over the subordinate courts and Tribunals, within their territorial jurisdiction. This power is now embodied in Art. 227 of the Constitution.

On the 24th July, 1935 His Excellency the Viceroy, Lord Willingdon, visited the High Court and a welcome address, in his honour, was presented to him in the chief Justice's Court.

In 1937 on the elevation of Sir Shah Mohd. Sulaiman to the Federal Court, Sir John Gibb Thom became the Chief Justice. He was a great champion of the independence of Judiciary. During his time the Chief Secretary made the mistake of sending a Circular letter to the various Sessions Judges in U.P. commenting upon the adverse effect on the administration by the frequent grant of bails. Being in a fix, a Sessions Judge forwarded the letter to the High Court for advice. The matter was taken up by Chief Justice Thom who made a very strong objection asking the Government to withdraw the letter and send an apology from the Chief Secretary within a week failing which he would be liable for contempt of Court. The Chief Secretary immediately withdrew the letter and tendered an apology.

Amalgamation of Avadh Chief Court with the High Court

After the attainment of independence by India, the historical anomaly of existence of the two highest courts of appeal within the same Province, the territories known as Agra and Avadh having come under one local Governement as far back as the year 1902, was keenly felt. By the U.P. High Court

Amalgamation Order, 1948, the Chief Court of Avadh was amalgamated with the High Court of Allahabad and the new High Court was conferred the Court of Allahabad and the new High Court was cofferred the jurisdiction of both the Courts so amalgamated. The Chief Justice of the Allahabad High Court, Sri B.Malik was appointed the Chief Justice of the new High Court and the Chief Judge and the Judges of the Avadh Court were appointed Puisne Judges of the new court. Shri Ghulam Husain, who was later elevated to the Supreme Copurt, was the Chief Judge of the Avadh Court at the time of the amlgamation. By the Amalgamation Order the jurisdiction of the Court under the Letters Patent and that of the Chief Court under the Avadh Courts Act was preserved. The seal of the new Court was to be provided by the Chief Justice, but the laws in force immediately before with respect to the forms of writs and other processes used by the High Court at Allahabad, with necessary modifications were adopted by the new High Court. By section 14 of the order it was provided that the new High Court and the Judges were to sit at Allahabad or at such other places as the Chief Justice with the approval of the Governor might direct, provided however, that two Judges at least were to sit at Lucknw, unless the governor with the concurrence of the Chief Justice, was to direct otherwise. The power of directing any case of class of cases arising in the territory of Avadh to be heard at Allahabad was reserved to the Chief Justice. There was no corresponding provision for transferring cases to Lucknow Bench.

On the 26the July, 1948 an impressive ceremony took place at Allahabad to commemorate the amalgamation of the two courts, at which the Governor, Smt. Sarojini Naidu, the Chief Minister Shri G.B.Pant, Hon'ble Lal Bahadur Shastri, the beloved Late Prime Minister, the Judges and the ex-Judges of our High Court were present. Dr. Sachidanand Sinha, President of the constituent Assembly were prevented by his ill-health from attending the ceremony but the glowing warmth of his feelings is visible in his message running as follows:

> "But as seniormost Advocate enrolled in 1896, I may be permitted to offer you and to your Hon'ble colleagues my heartiest felicitation on this historic occasion and to convey my best wishes for maintaining highest judicial traditions."

Pt. Jawahar Lal Nehru could not forget his association, paternal and personal with this court. He ad been on the rolls of this High Court, but the demands of the recently assumed office of Prime Ministership of India did not permit his personal presence on that occasion. In his message while contrasting the tendency of disintegration growing in certain other States, he observed:

> "Contrary to this general trend we have a process of unification in the united Provinces where the High Court at Allahabad and the Chief Court at Lucknow are being amalgamated to form a single powerful High Court in the whole Province. . . ."

Though in Allahabad, Sir Tej Bahadur Sapru, on account of his continued illness, was incapacitated from adding grace to the function.

After the messages sent by various distinguished and eminent personages had been read out by the Registrar, the Advocate General, Shri P.L. Banerji, who was the doyen of the Allahabad bar, nay a prize of the entire legal profession, delivered a brilliant speech which was followed by the address of the Chief Justice. In the afternoon of 26th July, the first meeting of the Judges of the amalgamated High Court took place.

Amalgamation of Rampur, Banaras and Tehri-Garhwal

In July, 1949 the States Merger (Governors' Provinces) Order, 1949 was passed which was, in November, amended by the States Merger (United Provinces) Order 1949, whereby the powers of the Government of some Indian States specified in the Schedule, which had vested in the Dominion government were transferred to the adjoining Governors' Provinces. In Schedule VII, Rampur, Banaras and Tehri-Garhwal were the States specified, and by sec. 3 the said States were to be administered in all respects as if they formed part of the absorbing province.

As a necessary corollary, the Merged States Laws Act was passed by the Governor General in Council. By this Act various enactments specified in the schedule were made applicable to the merged States.

As for the local laws the U.P. Merged States (Application of laws) Act, 1950 was passed on the 16th March, 1950. This Act replaced the U.P. Merged States ((Application of laws) ordinance, 1950 hereby certain laws had been extended to the merged States of Banaras, Rampur and Tehri Garhwal, administered as part of Uttar Pradesh. The jurisdiction of the Allahabad High Court was extended to the merged State of Tampur by sec. 12 of the States Merger Order. The Ijlas-I-Humajun, which was the Privy Council presided over by the Ruler, the High Court of Rampur and the Civil Courts were abolished and all proceedings pending in the Ijlas-I-Humajun stood transferred to the Allahabad High Court, while the proceedings, pending before the High Court of Rampur stood transferred to the District Judge, Rampur.

In the case of Benaras the Governor, on the 30th November, 1949 under the authority delegated to him by the Central Government issued the Banaras State (Abolition of Privy Council and Chief Court) Order 1949 whereby these courts in the Banaras State were abolished and all the appeals and other proceedings pending before these courts stood transferred to the Allahabad High Court. The subordinate courts were substituted by other district courts by means of a separate order.

Similarly the jurisdiction of Allahabad High Court was extended to Tehri-Garhwal by the Tehri-Garhwal (Abolition of Huzur's Court and High Court) Order, 1949 and the pending appeals were transferred to the Allahabad High Court.

The Republic Day Celebrations on the 26th January 1950 could not be held on a scale which justified the occasion as the Judges of this court had gone to Lucknow to take oath. However, the first anniversary of the Republic of India was celebrated on a very grand scale on 26th January 1951. Chief Justice Simmons of the Supreme Court of Nebraska, U.S.A., visited the High Court in August, 1953.

The work in this High Court was increasing beyond proportions and the question of appointment of Additional Judges was pressing not only the High Court but the Government of the State. The building which was originally built for 7 Judges could hardly serve the need of a High Court the maximum strength whereof was prescribed by the Constitution to consist of 24 Judges. The sanctioned strength in the year 1954 was of 22 Judges and times were not far ahead when both the maximum strength and the sanctioned strength of the High Court was to be increased, as was in fact done. It was in the fitness of things that the High Court building should have been extended. The growth in numbers was not confined to the Bench. The High Court Bar continued to swell by new entrants. The few chambers which were allotted to the lawyers and the small halls given to the three Associations of the Bar were hardly able to cope with this increase.

As a result of the co-operation of the Chief Minister, Sri Govind Ballabh Pant, extensions were made in the High Court Building with the result that the High Court could be proud of having 17 court rooms including the magnificent new Centre Court known as the chief Justice's Court and 25 Chambers for Judges. Besides a new Judges' Library and a meeting hall which is situate by the side of the Chief Justice's Chamber, for deliberations amongst the Judges was also provided for.

The opening ceremony of the new Wing of the High Court was performed by Dr. Rajendra Prasad, President of India and in the Chief Justice's Court, a welcome address on behalf of the Judges was presented by the Chief Justice. Then followed the welcome speech on behalf of the Bar delivered by Sri K.L. Misra, Advocate General, who after paying rich encomiums to the President pointed out that not only was the Chief Justice's court room largest in Asia, but the State over which the High Court administered justice was the largest State in the country.

Reminded of the past when he himself used to frequent courts Dr. Rajendra Prasad observed in his speech that it was a matter of deep satisfaction to him to be in the midst of the lawyers and the Judges and to see some faces which were familiar to him.

On the retirement of Shri B.Malik, Shri O.H. Mootham, now Sir O.H. Mootham was appointed as Chief Justice. He was the last Englishman to be the Chief Justice of this High Court. His association with this court has not ceased even after his retirement and he still continues to send New year greetings to the High Court and the Bar. His genial temperament and judicial outlook will long be remembered by all who came in contact with him. He, it must be said, was very anxious to reduce the arrears in this court and adopted various measures for the same.

An episode of some interest might be narrated at this juncture. The oath taking ceremony of a Chief Justice had been invariably held at Allahabad. Sir Grimwood Mears and other Chief Justices had been administered oath in open court at Allahabad and in deed the Governor had himself come to Allahabad for administering oath to Sir S.M. Sulaiman and Sir Iqbal Ahmad and again to Chief Justice B.Malik. Upon the amalgamation and re-orientation of this court in 1948 oath was given at Allahabad by Smt. Sarojini Naidu, the governor. A departure was made; by the Governor, when Chief Justice Mootham had to be sworn and it was proposed to hold the ceremony at Government House at Lucknow. The Bar of this court made a representation against this proposal to the President of India. The Bar Library even passed a resolution on January 10, 1955 protesting against this proposal and prohibiting its office bearers from joining the function at Lucknow. The views of the Bar, did not go unheeded but since the ceremony had already been fixed it was held at Lucknow. However, when the occasion recurred at the appointment of Mr. Justice Desai in February, 1961 as the Chief Justice, the Governor authorized Mr. Justice V. Bhargava who was the seniormost Puisne Judge to administer oath to him.

In December, 1956 the Law Commission of India chose Allahabad as the venue for its sitting. The Commission had co-opted two eminent lawyers from this State, namely Shri Kirpa narain of Agra and Shri Jagdish Sarup of Allahabad. Various Judges and lawyers of this Court were interviewed and after deliberations the Commission submitted a detailed report suggesting reforms in the sphere of law from the University up to the Central Government.

Lord Denning, in his tour of India included a visit to our High Court. A warm welcome was given to him by Chief Justice Mootham and the Judges as well as the Bar of this Court.

In February 1961 Mr. Justice Desai was appointed as the first I.C.S. Chief Justice of this Court. In his time the largest number of appointments to the Bench, numbering twenty-five were made. On his appointment as Chief Justice, Shri K.L. Misra, Advocate General in his welcome address on behalf of the Bar, said:

> "My Lord, I cannot help remarking on this occasion that in the long history of this court you are the first member of Indian Civil Service to become Chief Justice. The India Civil Service when it was the steel frame of a foreign rule carried with it both glory and the stigma of that foreign rule. But because of the large number of Judicial appointments even in the highest courts, the Indian Civil Service in the days of its departure is becoming the steel frame of the administration of justice in India."

The Rules of this Court had preserved the provision of the Letters patent permitting a Special Appeal against the decision of a single judge hearing a Second Appeal provided he certified it as a fit case for further appeal. It was a beneficent provision and had seldom been misused. Litigation in the Supreme Court being for too expensive for the average citizen, the necessity of this remedy was self-evident. In 1962 by the U.P. High Court (Abolition of Letters Patent Appeals) Act XIV of 1962 such Special Appeals were abolished and the prohibition extended even to those Second Appeals which were pending in the Single Judge jurisdiction at the time of the enforcement of the Act. However, inconvenienced one may fee, the wisdom of our Legislature is, I suppose, not open to doubt.

The historic controversy that had arisen over the jurisdiction of the High Court to examine the validity of punishments imposed by the Legislature for its contempt, deserved a detailed mention. The necessity has been diminished by the opinion of the Supreme Court, given under Art 143 of the Constitution. The controversy is also too recent for inclusion in historical introspection.

Every now and then we find a wave of concern in the minds of people about the arrears in this court. Perhaps it would not be out of place to remind them of the size of this State with the highest population in India, of the number of big cities, the comparative uneven distribution of wealth, the increasing activities of the State and their continuous impact on the life of the citizen and the consequent volume of work which finds entry into the High Court every year. Without encumbering this article with statistics, I might mention that as many as twenty-two Courts are now working at Allahabad and another six at Lucknow. Day in and day out, the Judges toil, with the co-operation of Bar to bring down the graph. The progress made, to say the least, is not disappointing.

Upon the retirement of Chief Justice Desai in February 1966, Sri Justice V. Bhargava succeeded him. On his elevation to the Bench of the Supreme Court in August 1966, however, he parted company with us.

At the close of the hundred year of the High Court Mr. Justice Nasirullah Beg was sworn in as Chief Justice. The close of a century is seldom so closely followed by the emergence of new ideologies. The concept of a joint partnership with equal rights and responsibilities, between the Bench and Bar, though professed often times, was never before ushered into the domain of reality. Happily enough, the disappointment of yesterday is now the hope of tomorrow and nothing better justifies our optimism than the assurance of Chief Justice Beg conveyed in the following words:

> "I shall make an attempt to convert my cherished dream of administration of justice as being a joint partnership between the bench and the Bar into a living reality … I also propose to constitute an Inspection Committee consisting jointly of Judges and lawyers and the Registrar. This Committee shall be entrusted with the task of supervision of the staff of this Court. Lawyers being in constant touch with the members of the staff would be in the best position to point out their deficiencies and suggest remedies for the same."*

Let us hope that something sublime would emerge from the combination of the two limbs; something that would make both, the worthy human agents of the Supreme Dispenser of Justice. Our destination is same and so is our bridge to reach it.

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* Speech delivered by the Chief Justice on the 24the of September, 1966 at the Oath taking ceremony.