CHAPTER 4

ADMINISTRATION OF CRIMINAL JUSTICE AND THE CHANGES INTRODUCED IN IT.

Judiciary has always played a prominent part in organised and civilized societies. Right from the earliest times up to the modern, this vital part of the administrative structure has been contributing its best to smoothly run the social mechanism. During the British rule in India it was the backbone of the "Rule of Law." ¹

The administration of justice under British rule in India was the result of fusion of two different systems, the English and the indigenous.² The government pushed through the preparation and enactment of the great codes of law in order to end the confusion caused by the numerous, and often conflicting, regulations accumulated over a period of more than six decades. The codes put all the provinces, both

regulation and non-regulation, under one set of definitive laws. The administration of Criminal Justice and the changes introduced in it will be traced and analysed in the present chapter.

The judicial system prevalent in Sagar and Nermada territories up to 1834 was not very much different from the earlier Maratha system. P.M. Bird has given a detailed account of the state of judiciary in the Sagar and Nermada territories prior to their merger with the North-Western Provinces.\(^3\) Describing the structure of the civil courts, Bird has stated that there were parganas or tahsildars courts which were controlled by the commissioner. These courts were under the superintendence of the tahsildar who were not allowed to execute their own decrees.\(^4\) The district officers also generally objected to it, as the tahsildars were too overburdened with other administrative duties, they often transferred their duty of civil courts to


Mutaaddees; who had, neither responsibility nor credit among the people.\(^5\) On the criminal side, the hierarchy started from the commissioner running down to the district officers and tahsilders. The practical difficulty was that these officers were mostly engaged in general administration, hence could not pay much attention to their magisterial duties, and the justice suffered considerably.\(^6\) After the transfer of these territories to the North-western provinces in 1834, civil justice was administered by a judge and a Native judicial staff, framed after the model of the North-western provinces, consisting of principal Sadar Amins, Sadar Amins, and Munsifs, under a procedure code prepared by A.A. Roberts, who held the office of judge.\(^7\) Under the system Munsif was the lowest civil judicial officer who had the power to decide cases whose value did not exceed Rs. 1000 and the principal Sader Amins were authorised to try all suits irrespective of their value. Appeals from all these uncovenanted judicial officers were referred to the city and the zilla judges. But the cases in which the value of the amount exceeded


Rs. 5000, appeals were made direct to the Sadar Diwani Adalat, which was the highest civil tribunal in the province. 8

The criminal justice was administered according to the Act XXXI of 1841, Act XIII of 1842, Act XV of 1843 and Act X of 1854. Under this arrangement the Sadar Amins, principal Sadar Amins as well as Deputy Magistrates and Assistant Magistrates were uncovenented officers, who were authorised to deal with the cases of petty theft and petty offence and to inflict an imprisonment of not more than one month and a fine up to Rs. 50. Appeals from the courts of these officers and offences of more serious nature were referred to the city and zilla Magistrates and the joint Magistrates and above them to the Sadar Nizamat Adalat, the counter part of the Sadar Diwani Adalat. 9

The judicial setup in the Nagpur province considerably differed from that of Sagar and Nermada territories in respect to structure and functioning. Before its annexation to the British Empire, the


judicial system of the Bhonslas was prevalent. ¹⁰
"There were no regularly constituted courts of justice"
writes Jenkins, "with the exception of one in the city
of Nagpur for the trial of petty offences, established
by Modhjee Bhonsla in 1776, in which a Muslim
presided". ¹¹ Raja in person or the kamavisdars
administered justice and performed the duties of
Magistrates ¹² Patels of villages imposed small fines
for the minor offences, but the important cases were
always referred to the judicial officers of state. ¹³

The existing Maratha system of law and justice
underwent some minor changes during the period of
British management from 1818 to 1830. A court of
justice was established at Nagpur for the decision of
cases arising with in the limits of the city, which were
previously decided by the Raja himself, in civil cases
the court had the original jurisdiction to the value of
Rs. 500 and upwards. Appeals were also admitted here

¹⁰ Khan, M.A, op. cit., p.103.
¹¹ Jenkins, R, Report on the Territories of the Raja of
Nagpur, supplement 1827, p.5.
¹² Sinha, R.M, Bhonslas of Nagpur: the last phase, p.80.
¹³ Khan, M.A, op. cit., p.104.
from the subordinate courts of the city.\textsuperscript{14} The subordinate city court was presided over by daroga and appeals were made to the superintendent of police, and from him to the superior city court. This court decided civil cases up to the value of Rs. 500.\textsuperscript{15} The subordinate city court tried all offences with in its jurisdiction, except murder and treason, which came under the cognizance of the chief court. The kamavistar had the authority to try offences of minor description, but had no power to carry into effect, without the approval of the superintendent, the sentences exceeding imprisonment for three days, a fine of ten rupees and corporal punishment of fifteen stripes. The superintendent tried all cases, but were not empowered to inflict sentences exceeding imprisonment of two year without the confirmation from the Resident.\textsuperscript{16} The Resident adopted the provisions of the criminal code of Bengal on the basis of which the crime was defined and prescribed punishments were laid down.\textsuperscript{17}

\textsuperscript{14} Jenkins, R, \textit{op. cit}, p.9.
\textsuperscript{15} Ibid.
\textsuperscript{16} Khan, M.A, \textit{op. cit}, p.106.
\textsuperscript{17} Ibid.
After the annexation of Nagpur Province to the British Empire, the reforming zeal of the British officers resulted in the removal of abuses and promptness, quickness, inexpensiveness were introduced in the administration of justice. 18

Up to 1861, the rules previously existing in each section of these provinces have been acted upon, which were in no way uniform. In order to place everything on a solid and uniform basis, it was proposed that the civil procedure Act No. X of 1859 should be introduced throughout these provinces. As regards principles of law the Punjab code was prescribed as a manual for general guidance. 19 By the Resolution of 2nd November 1861 these provinces were ordered to be administered under the Non-Regulation system, the same as that which was earlier obtained in Punjab and then in Oudh. 20

The event of 1857-58 had tremendously raised the prestige of the Punjab system of non-regulation administration. That province remained tolerably quiet and firm in its loyalty when the neighbouring provinces

18. Ibid.
20. Ibid. p.18.
were ablaze with disaffection. After the reoccupation of Oudh in 1858, it was decided that its administration should continue with the comparative simplicity and flexibility of the non-regulation system.\textsuperscript{21} It simply meant the rule of a different kind of law, a law which would be simple, straightforward and more responsive to the needs of the people.\textsuperscript{22}

Meanwhile the government expedited a series of Acts, including the Indian penal Code the Criminal Procedure Code and the Police Act.\textsuperscript{23} They codified and simplified the existing laws. Their operation was extended to the whole of British India in a course of a few years. In fact the extension of the codes in the beginning of 1862 to Central Province and other similar provinces ended the non-regulation characteristics of system there. They deprived the system of its substance, namely the elastic and flexible laws; its

\textsuperscript{21} Trivedi, D.B., \textit{op. cit.}, p.219.

\textsuperscript{22} \textit{Ibid.} p.220.

\textsuperscript{23} \textit{Ibid.}, other important. Acts of this nature passed during the period included the civil procedure code, the Indian succession Act and the Indian limitation Act.
form in the shape of the concentration of all the functions of the government in the hands of Deputy commissioners, was kept in force for a long time after it had outlived its usefulness.

In Sagar and Nermada territories over all revision was effected, but not in the Nagpur province, where it was previously done. 24

The courts of principal Sadar Amins, Sadar Amins and Munsifs were abolished, and many of these officers were incorporated into new set up in the general district establishments, under the designation of Extra Assistant Commissioners and Tahsildars. 25 This resulted in a large increase in the number of courts in the interior of the districts and efficiency in the administration of justice. Under the former system some districts had 2 or 3 judges in the interior, others only one. Under the new system 2, 3 or 4 Tahsildars were placed in the interior of every district. 26 Formerly there were 19 officers of all grader empowered to decide causes, great and small, in Sagar and Nermada


25. Ibid.

26. Ibid.
territories, there are now 50 such officers. And the increase was chiefly in the distant portions of the territories, to make it convenient to the masses.

A similar arrangement was carried out in Sambhalpur also, where in place of one officer with judicial powers, three more were added. 27

In order to achieve efficiency in the administration of justice, the powers of the different judicial officers were further increased. The Judicial Commissioner was the Chief Judge, controlling all the civil and criminal courts under his jurisdiction. He was the court of Final Appeal. In the judicial matters he was independent from the executive authority of the chief commissioner so as to avoid the abuses from the combination of judicial and executive functions. 28 His decisions were only appealable to the judicial committee of the privy council. 29 With the extension of the Act XXV of 1861 and Act XV of 1862 to the Central Provinces, he was later on empowered to inflict capital punishment even

27. Ibid.


without referring it to the Chief Commissioner. His court had the same powers as the High court in Regulation Province.

Next to the judicial commissioner, were the several divisional commissioners, who functioned both as the Appellate Court for civil and Original Courts in the criminal matters. All appeals against the decisions of the Deputy Commissioners under their respective jurisdictions were referred to them. Thus these officers exercised the powers of civil and sessions judges in their judicial capacity. Deputy Commissioners, functioned at district level. The Deputy Commissioner presided over the chief court at the district head quarter. In civil matters he could try suits without any limit of amount and in criminal matters he exercised the powers of Magistrate. These were the courts with original jurisdiction. The offences of heinous character were first of all presented in his court. He was empowered to forward some of the criminal cases for sessions trial in the

commissioners court, if he found it necessary. The Assistant and Extra Assistant Commissioners assisted the Deputy Commissioner in discharging his duties and also exercised the powers of a sub-magistrate in criminal cases. Tahsildars where at the lowest level of the system, they were stationed at the interior of the districts. And were authorised to try civil suits up to the value of Rs. 300 and had the criminal jurisdiction to try petty offences of minor character. Appeals against the decision of these courts were made in the Deputy Commissioners courts, only if the value in civil cases was considerable or the criminal offence was some what peculiar. In addition to the regular machinery, Small cause Courts were also established in the cities of Nagpur and Jabalpur, under the provisions of Act XL II of 1860. In other stations, wherever there were more than two judicial officers besides the Deputy Commissioner it was decided that one of them shall be entirely devoted to civil judicial business and

33. AAR, 1862-63, p.19.
34. AAR, 1861-62, p.20.
35. Ibid.
exercise the functions of a judge of small causes under the Act. The purpose was to facilitate cheap and speedy justice in petty cases without appeal; in the principal places in these provinces. 37

There were also three cantonment courts at Kamptee, Jabalpur and Sagar under cantonment Joint Magistrate. These courts existed long before the constitution of the new province. The purpose of these courts was to try civil suits up to Rs. 200. In criminal matters exercised the powers of Joint Magistrate. 38

Native chiefs and Zamindars were invested with judicial powers, the principal was previously adopted in Oudh, and was regarded to be successful. Central provinces too had several characteristics for the successful implementation of that principal. 39 In many of the wild and remote districts of these provinces, especially the eastern and southern parts of the Nagpur province, Zamindars had complete authority over their people, who were their tenants and dependents.

38. Ibid.
39. Ibid.
Throughout the Sagar and Narmada Territories, their existed landed aristocracy, they exercised considerable influence upon the local population. Therefore it was considered to be both, just and politic to admit these gentlemen to have a share in the administration.  

Under section 22, chapter II of the Act XXV of 1861, Supreme Government invested the powers of Honorary Magistrate to native Zaminadars, Rajas and Respectable Individuals.

The government was deeply impressed by the degree of influence exerted by the zamindars over the people during the Revolt and the comparative ease with which it was suppressed with their help.

This policy was a very significant departure from the customary policy of the government of normally not permitting private Indian individuals to have any share in the administration. Obviously the principal reason for the new policy was political, the zamindars identified themselves with the governing race, and considered themselves to be the part of the government.

40. Ibid., pp. 32–33.

of the country. The measure would give the zamindar a greater hold over the ryots of their estates, and will strengthen the hold upon the country, to obtain information of the condition of affairs in the interiors and the British influence will reach the remote and scattered localities of the province.

Initially in 1862, 46 Honorary Magistrates were appointed, several more were added in the due course of time, and on an average efficiently discharged 28% of the criminal business. A count of Honorary Magistrates was constituted at Nagpur. It included members, from the influential class of the Native Communities, of the 14, 6 were from the Bhonsla family, 1 was the representative of Gond Rajas, 2 were leading Bankers, 2 from the Mohamedan gentry, and one was the largest cotton merchant of the country. The court House was located in the heart of the city in an old palace, which was repaired and altered for the purpose. The court possessed considerable prestige in the eyes of the

42. Ibid.

43. AAR, 1861-62, p.33.

47. AAR, 1862-63, p.24.

48. AAR, 1862-63, p.25.
people. The aggregate of the work represented about half of the criminal business of the district, and was performed to the satisfaction of both the authorities and the public. 49

The Judicial system prescribed above had many practical advantages and disadvantages. By the new codes of civil and criminal procedure, it was made compulsory to hear every case and almost every order was to be executed at an appointed time. The punctual observance of these fixed hours was beneficial to the suitors, but difficult for the officers who simultaneously had other administrative and fiscal duties to perform. 50 Hence, it was arranged in 1863, mainly at the suggestion of J. Strachey, the Judicial Commissioner, that all suits registered at the head Quarters of each District, except those which came before the deputy commissioners should ordinarily be tried by one officer whose court was called Station Court. 51

Criminal Procedure Code introduced a change in

49. Ibid.
50. AAR, 1862-63, p. 21.
51. Ibid.
the viva voce examination of witnesses. Earlier the judge recorded the notes of evidence with his own hand and dispensed the vernacular record, but now an elaborate vernacular record was rendered obligatory in almost all cases. Judicial Commissioner, J. Strachey remarked "The system of disposing of criminal trials viva voce, under which the vernacular record of the evidence was altogether dispensed with, has unfortunately been done away by the code of criminal procedure. During the first three quarters of the year the system was working well; I should have hoped to see it greatly extended, and I think that its obliteration is much to be regretted. This is almost the only point by which I believe that the efficiency of our courts had suffered by the introduction of the Code. I look upon this loss as a very serious one. The most petty case of causing hurt, the most petty theft and the most trivial case of intimidation and insult, must be tried under the elaborate procedure laid down for the trial of the most important and difficult cases."52 This caused considerable delay in disposal of cases and tended to swell out the records unnecessarily.

In the courts of assistant and extra assitant commissioners, record of evidence was made in English by

52. AAR, 1862-63, p.25.
the judge with his judgement in brief along with his signature. Thus, the substance of the case was always beneficial for appellate courts to form a correct estimate of its value.53

As regards the criminal cases the judicial commissioner held the view that "in the courts of sessions judges all trials involving sentence of death, or transportation for life, were to be recorded with evidence in English, and not in vernacular. The courts of magistrates should also record all evidence with full particulars in English".54 But in the case of lower courts he preferred the vernaculars.55 He also stressed on the careful recording of evidence so that the proceedings could be sufficiently full and clear to enable the appellate courts to form a proper estimate of the value of evidence.56 The Chief Commissioner, concurring with the view of the judicial commissioner, ordered in June 1862 to adopt the proposed system in the

54. Ibid.
55. Ibid.
56. Ibid.
civil cases provisionally and experimentally.\textsuperscript{57}

A provision was also made to confer magisterial powers to the civil surgeons-in-charge of certain jails. Under it the civil surgeons were entrusted with powers of a subordinate magistrates of the 1\textsuperscript{st} class. These powers, were to be exercised in subordination of the magistrate of the district or the officer, what ever his description, who occupies that position.\textsuperscript{58} These officers (Civil Surgeons) were empowered to punish prisoners with stripes, those guilty of breaking jail discipline. But before assuming such powers they were to pass an examination in the vernacular and in the jail manual.\textsuperscript{59}

The non-regulation form of administration had the tendency to over work the officers. They could hardly devote sufficient time and attention to their judicial duties. The administrative needs of a new province often drew out officers into the interior and away from their court rooms.\textsuperscript{60} It was very difficult to keep any

\textsuperscript{57} \textit{Ibid.}  
\textsuperscript{58} \textit{Home Deptt, A progs, 23\textsuperscript{rd} Oct. 1863, No.63-64.}  
\textsuperscript{59} \textit{Home, Judl, A progs, 16\textsuperscript{th} June 1860, No.5-8.}  
\textsuperscript{60} \textit{Trivedi, D.B, O.p.cit, p. 223.}
routine.

Another drawback of the system of entrusting all types of work to the same officers was that the judicial work was by nature more exact and more open to scrutiny than executive work. Judgements were subject to review by the appellate courts. Judicial returns indicated with fair accuracy the amount and quality of work disposed of. Executive work was not susceptible to such minute scrutiny. 61

The concentration of all the functions in the hands of the same officers led to divided responsibility. They were responsible for judicial work to the judicial commissioner, for all other business they were under the Chief Commissioner. This often led to difficulties. It was impossible to impose full measure of discipline and work because of the absence of unity of control. 62

As the province settled down and as the incidence of crime increased the load of work on the officers increased very much. The number of judicial officers


was insufficient for a province of the size and population of Central Provinces. Such a heavy burden of judicial work, when added to their duties in other branches of the government must have caused a great strain on the officers.

The structural readjustment along with the day to day judicial execution simultaneously remains a curious and interesting tale in the whole history of judicial administration in the central provinces.

Before the transfer of the government to the crown the criminal administration was in a chaotic condition. The police was often oppressive, inefficient and corrupt.63

The enactments, in 1859 of the civil procedure code, in 1860 of the Indian Penal Code followed in 1861 by the Police Act and the Criminal Procedure Code, were among the first fruits of the new period. The last three laws unified and simplified the criminal law and defined the duties of the magistracy and the police.

The criminal procedure code of 1861, as in 1898, has remained basically unchanged. Among all the laws of India said J. Strachey "There is no one more important than this which regulates the machinery by which peace and order are maintained and by which crime is prevented and punished".\(^6^4\) The working of the administration of criminal justice has been discussed in the next chapter.

\(^6^4\) AAR, 1862-63. p.25.