CHAPTER-1

THE HISTORICAL BACKGROUND

The richness of Indian culture was reflected in the social and political institutions designed and practiced ancient India. The judicial system of those days is no exception to this general rule. The *Brihadaranyaka Upanishad* says that law is the king of kings and that nothing was higher than law. *Dharma* or law was based on truth and justice. Law reflected the interests of the human society, the individual and social welfare. Law encouraged obedience by reward and discouraged disobedience by punishment.[1] Apastamba's *Dharmasutra* reveals that the King had the authority to rule and punish. According to Kautilya, Varuna was the moral judge par excellence and that the King was also like Varuna. As the custodian of law, the King was to administer law impartially. Apastamba's *Dharmasutra* advocates that none shall be punished in case of doubt. This has its modern counterpart in criminal jurisprudence that the benefit of doubt should go to the accused. It was the duty of the King to protect those who suffer from want in his kingdom and to guard against theft. Civil and criminal laws find their exposition in the *Arthasastra*. The four ways to settle disputes were by *dharma*, *vyavahara*, *caritra* or custom, and *raja sasanam* or royal proclamation.[2]

The sources of law, according to the *Dharmasastras* were the *sruthi*, *smriti*, *nyaya* and *sadacara*. The King was known as the *dharma pravartaka* or the enforcer of laws. Whenever there was a conflict of laws, the application of *yukti* (logical reasoning) was made. Kautilya says that the judge is given the opportunity to build up new legal sentences outside and even contrary to the sacred law. The King's power was more judicial than legislative. He administered law by establishing civil courts called *Dharmasthiya* and criminal courts known as *Kantakasodhana*. Gautama and Manu were of the view that the King must know law from competent sources. In his absence, one who is learned in the *sastras* could work as an alternative administrator of justice. Such a person was called as the *pradvivaka*. Manu and Yajnavalkya enjoin that the King should render justice with the members of the *sabha*. Jury system prevailed in ancient India. The *Vyavaharaprakasa* and *Jaiminisutra* opine that majority opinion was to prevail in a jury. Manu speaks of a court of justice having four judges. Kautilya supports the contention of Manu that the number of jurors should be uneven for the sake of getting a quick decision in case of difference of opinion.[3]

Brhaspati mentions four types of courts. They were the court in the town, a circuit court, a judge empowered to use the seal of the King and the court presided by the King himself. The ten limbs of the court were the King, the chief judge, the *sabyas*, the *smriti*, the *ganaka* or the accountant, the *lekhaka* or the scribe, gold, fire, water and *swapurusa*, who was a bailiff. The court of justice presided by the King was called the *dharmasana*. The King's court was known to Bana as the *rajakulam*. Kalhana views the King to be the highest court of appeal. The fourth Rock Edict of Asoka speaks of

the *mahamatras* and *rajukas* who functioned as judges.[4] No one, not even a relation of the king could avoid punishment if he was guilty of an offence. If persons of a responsible position and social status and officers in administration committed an offence, they had to suffer punishment higher than that of an ordinary citizen committing the same offence. The principle followed was that, greater the position and authority, the greater were behaviour expected.[5] Kings and judges constituted courts wherever they went, thus becoming accessible to the public.[6]

Legal institutions are mentioned in the Sangam works. The King was deemed to be the source of justice. He meted out justice with the help of such men as he thought fit for the job. Law courts existed in both urban and rural areas. The King directly oversaw the administration of justice in the capital city. Orders of punishment or acquittal arising out of litigation were duly carried out. Sangam texts reveal the simplicity of the judicial system. Royal proclamations were made public by beat of drum. This informed the citizens about the wishes and intensions of the monarch. The *avai* of the capital city and the *manram* of the villages served as institutions for imparting justice. Royal palaces too, were known for their spirit of legal parity and social justice. Considerable attention was accorded to the bell of justice. The *Thiruttandar Puranan* and the *Silppadikaram* speak of Manu Nitikandacholan, who on finding his son guilty of cow-slaughter sentenced him to death. The King was apprised of the guilt of his son by way of ringing the bell of justice. The *Silappadikaram* also alludes to such a bell being present at the entrance of the palace of the Pandyan ruler, Nedunjelian. When the royal court assembled for judicial purposes, it was called

arakkalam or *dharmasanam*. The judicial advisors were known collectively as *arankuru avaiyam* or *arakkalattu andanar*.[7]

Judicial advisors were expected to have legal acumen or *aram*, a sense of fairness or *semmmai*, and a kindly and charitable disposition called *tanmai*. Men of law and justice debated or pleaded before the King, who acted as the final arbitration authority. Much stress was laid of the virtue of impartiality. The King was known to have passed judicial orders without consulting the *avai*. The suit was called *kurai* and the justice meted out was called *murai*. The witness was called a *kariyan* and a piece of evidence was known as *kari*. The *Ahananuru* shows the general belief that age and experience was necessary qualification for judges. Nachinarkkiniyar praised Karikala Chola for having tried cases to the satisfaction of one and all, despite being younger than the jurists of the *avai*. If the King ignored his advisors or rejected their advice, there was no formal or constitutional remedy. When Nedunjelian ordered the execution of Kovalan, there was neither trial nor judgement, neither consultation nor advice. It was simply an arbitrary order.[8]

The *Kural* also deals with royal justice when it speaks of *senkonmai* or righteous government. It was told that the King must be easily accessible to those who seek his justice and that he must take pains to study their case and render justice accordingly. A King who fails to do so was severely condemned. Trial by ordeal was resorted to, in both civil and criminal cases. Non-payment of land revenue and taxes were considered as civil offences. Those who wanted relief had to pray for it. Offences like

failure to hand over treasure troves to the King were punished with imprisonment. Espionage and treason were considered to be fit cases for awarding capital punishment. Cruel methods were often employed as elicited by Sangam works. Even suspected criminals had to face it. The Chola King Killivalavan ordered the two children his enemy Malaiyaman to be trampled upon by elephants and this execution was arranged at a place near the *manram*. Condemned criminals were compelled to perform forced labour. The *Periplus* says that pearl fisheries were worked by condemned criminals.[9]

The punishments like imprisonment and other inflictions were more punitive than reformatory. It was believed that there was nothing wrong in the King punishing his offending subjects for the *Kural* had proclaimed that it was only like removing the weeds from a flourishing crop field. Punishing evil doers for protecting the subjects was not a stigma but a duty of the King. It was proper for a ruler to punish the guilty according to the magnitude and nature of the guilt. The prisoners were kept in chains. The prison guards were specially instructed to be insolent and offensive in their behaviour towards the inmates. Amnesty for prisoners was ordered during selective occasions like the King's birthday. Sometimes revenue remissions were also granted, wholly or partially.[10] But such remissions took place only during handful of instances.

The British India

The English East India Company was vigilant enough to protect its interests. Their factories had an appropriate organization for their work. They were run by Factors who were in turn organized under a President and Council. There were three such Presidents and Councils. They sat as judicial courts in dealing with their subjects. The exercise of some judicial functions did not exalt these Presidencies into administrations. The native authority was always there, alive.[11] The English East India Company introduced itself in Bengal through the construction and settlement of its factories, each of which formed an autonomous unit of administration. In 1633, two factories were established at Hariharpur and Balasore. The factories of Hugli and Kasimbazar were built in 1651 and 1658, respectively. By 1676, Patna and Dacca, too began to have English factories.[12]

An independent agency of Bengal was constituted in 1681, with William Hedges as its first Governor. But, due to the set back in the Anglo-Mughal rupture in 1686, it was once again made subordinate to Fort St. George. With the formation of an independent Presidency of Fort William in 1699, Sir Charles Eyre was appointed its first President. In 1696, Ibrahim Khan, the then Governor of Bengal, gave a general permission to foreigners to provide for their own means of defense. As a result, the English laid the foundation of Fort William, which later became the nerve center of their power. However, their acquisition of the three villages of Sutanauti, Govindpur and Kalighata, in 1698, gave them a legal foothold in the province of Bengal. They were purchased under the Mughal revenue laws by which, the English East India

Company obtained the rights of collecting land revenue from ryots, and imposing petty taxes, duties and fines. In 1717, they secured the grant of thirty-eight more villages from the then reigning Mughal monarch, Farrukh Siyar. However, on account of the opposition from the then Nawab, Murshid Quli Khan, the grant lay in abeyance till the triumph at Plassey. In 1661, the Governors and Councils in India were vested with the power to exercise, within the limits of their settlements, civil and criminal jurisdiction according to the English laws. The President and Council at Fort St. George in Madras were constituted into a regular Court of Admiralty, which also served as a general court of judicature for the settlement of Madras.[13]

The Charter of August, 1683, made an important provision regarding the judicial administration of the English East India Company. It provided for the establishment of a Court of Judicature consisting of a person learned in civil law and two assistants appointed by the Company. The Court was to determine cases of forfeiture of ships or goods for trading contrary to the Charter, in addition to mercantile and marine cases concerning persons. Cases of trespass, injury and wrongs done on the high seas were also handled by the new court. The judicial provisions of the charter of 1683 were reiterated by the Charter of 12 April, 1686, with some modifications. An important innovation was made. The Company was permitted to extend constitutional government to its Indian territories by the establishment of a municipal constitution for Madras. It signaled the development of the territorial character of the Company's rule in that important part of India. On 11 December, 1687, the King of England authorized the Company to act in this regard.[14]

By the Charter of 27 March, 1668, Charles II transferred the island of Bombay to the English East India Company for an annual rent of ten pounds. The Company was accorded full sovereign rights over the territory and the inhabitants of the island as well as the servants of the Company. Thus the English Company was empowered to make laws, orders, ordinances and constitutions for the good government of the port and island and its inhabitants. They were also given the power to exercise judicial authority. The Company got legislative and judicial authority and it was required that their laws should be consonant to reason and not repugnant or contrary to the laws of England. Moreover, they were to be as near as may be agreeable to such laws and the courts and their proceedings were to be like those used and established in England.[15]

After July, 1669, the Company enforced laws which were enacted under the Charter for the Government of Bombay. The first section of the new set of laws dealt with religious observances. The second section was about the administration of justice. It laid down the principle of trial and conviction by a jury of twelve men before deprivation of rights or the infliction of corporal punishment, and forbade commitment to prison without specific warrants. Section 3 provided for the establishment of a Court of Judicature for deciding suits in criminal matters under a judge appointed by the Governor and Council. Trials were to be by a jury of twelve Englishmen. If one party to the dispute happened to be non-English, half of the jury was to be non-English. A right of appeal was provided against the decisions of this court to the Governor and

Council. The Charter of 1698 effected changes in the judiciary. By then, the Company faced considerable trouble due to the lack of fully organized judiciaries in its settlements. Local councils were authorized to take possession of the assets of deceased servants and to dispose of them for cash for the benefit of their heirs. However, difficulties arose from this practice, too often.[16]

Criminal jurisdiction was exercised monthly in general sessions. Juries were used for major offences, but minor infractions against religion and morals were punished without jury trial. Capital sentences were considered by the Governor and Council. They were authorized to refer the matter to the President and Council at Surat. The English common and statute law was applied freely to rectify the defects in the Company's laws. The regularity of the position of the Court was established in 1677 when an appeal against its decision was considered by the Privy Council. The Company argued that the issue involved one to be decided by the Bombay Court by the verdict of a mixed jury as provided in its laws. The Privy Council upheld the contention of the Company. In 1726, the Presidents and Councils were empowered to make laws subject to the approval of the Directors. They were illegal it they conflicted with English laws and customs. The then existing English law was made applicable to Englishmen in India and to such Indians as submitted to it. Laws made in England after 1726 were to be applicable in India only if Parliament had expressly said so. In 1726, the Mayor and Aldermen of Bombay, Calcutta and Madras, constituted civil courts for the Company's European servants in India. Appeal lay from their decisions to the President and Council and finally to the King-in-Council. These courts admitted

wills and granted probates. To deal with criminal cases the Presidents and Councils were exalted into 'Justices of the peace and commissioners of oyer and terminer and gaol delivery'. As such, they met every quarter to deal with petty offences and determined such other cases as were brought before them. The authority of the courts was confined to the factory towns alone.[17]

The Royal Charters of 1723 and 1726 empowered the English East India Company to set up a Mayor's Court at Calcutta. A Sheriff and nine nominated persons were to make the Court of Mayor and Aldermen, to try all criminal cases. It was to be a court of record. Appeals from the decisions of the Mayor's Court went to the President and Council. Under certain conditions, appeal lay to the Privy Council. Three of the judicial members of the Mayor's Court were regarded as the quorum for hearing, trying and determining all civil cases. When vacancies arose, the Court elected its own alderman. In the absence of the Mayor, the senior most Alderman took the chair.[18] The President and Council were vested with the authority of appointing and dismissing judges, who in turn, exercised their judicial functions at the pleasure of the former.[19]

The President and Council were authorized to appoint the Sheriff, the Registrar and the Accountant General of the Mayor's Court. All these incumbents were liable to removal by the said authorities. The Aldermen of the Mayor's Court were liable to be dismissed by the President and Council. However, they could approach the Court of Directors or even the Privy Council for their reinstatement. The Mayor's Court was mainly engaged in cases of will probate administration, contract and debt. The Court

used to dispose of the cases as quickly as possible and only in rare cases did the litigation become prolonged. The Mayor's Court made it compulsory for the Indians to engage lawyers for the conduct of their business in the Court. Failure on part of the defendant to engage an attorney was treated as contempt of the Court. The Mayor's Court kept a strict vigilance over the conduct of the attorneys practicing at the Court. They could not resign or absent themselves for the court for a considerable period of time without the leave of absence granted for the purpose. The Court engaged attorneys for the persons who pleaded poverty having no wherewithal. Commissions were issued to respectable officers of the Company to examine witnesses and to take depositions at their places of business.[20]

Arbitration was often resorted to. Arbitrators were asked to abide by the directions of the Mayor’s Court. Appeals were to be filed within fourteen days from the reading of the decree. As a matter of discretion the Court could extend the time for appeal. The judges of the Mayor's Court when dissenting could get their dissent recorded, but not their reasons of dissent at large, at the margin of the official register. As a counterpart of the Mayor's Court (which a civil causes court), the President and five of the senior Councilors at Fort William were empowered and directed to work as Justices of the peace and commissioners of oyer, terminer and gaol delivery, holding quarter sessions and hearing, trying, determining and punishing all criminal cases. The Mayor's Court held its sitting in the last part of its life in the Town Hall of Calcutta. The Court founded at Calcutta in 1727 and re-chartered in 1753, worked for about fifty years.[21]

An Act passed in 1754 authorized the Court of Directors to empower the Company's Presidents and Councils and the Commander-in-Chief, the right to assemble and hold courts-martial for dealing with military offences. An appeal against the decision of the local courts-martial lay to the King's Court in England. Till 1765, the Europeans outside factory towns of Bengal were liable to be tried in the Nawab's Court. However, this became impossible after the British victory at Buxar. As a result, the English servants of the Company outside the factory towns could be tried only in England. The immunity of the servants of the Company from the jurisdiction of the Nawab's Court was soon extended to their Indian agents and servants. This produced complete judicial anarchy in Bengal, Bihar and Orissa.[22] The judges of the Mayor's Court were bound to work according to the laws of England, at least with respect to the Europeans. Unfortunately they had little knowledge, education or training in those laws. They were ordinarily junior servants of the Company.[23]

In Madras, the Mayor and Aldermen constituted a civil court while the former and three senior Aldermen were Justices of peace with criminal jurisdiction. Appeals went to the Admiralty Court. The power of this Court to inflict capital punishment was conceded by the Council in 1712. The Admiralty Court existed between 1688 and 1689 and from 1692 to 1704. In the interim period a temporary court of the Governor and four justices, held sway. After 1704, the admiralty jurisdiction was exercised by the Governor and Council. It also heard appeals from the Mayor's Court. The Mayor's

Courts erected under the authority of the Company were superseded by the Mayor's Court, established under the Charter of 1726.[24]

After considerable chaos for some time, orderly judicial procedure was restored in Bombay, by 1716. A new Court of Judicature was established. It was composed of the Company's servants including four Indians, representing the Hindus, Muslims, Portuguese Christians and the Parsees. Three English judges were to sit for cases between Englishmen. The jury system was absent. The Court of Bombay exercised wide jurisdiction in both civil and criminal matters. Capital sentences were referred to the Governor and Council. The Court of 1718-28 differed from that of 1672-90. The latter was definitely constituted by the laws of the Company while the former was established by the order of the Governor and Council. The earlier Court used juries while the new one was essentially a Company's Court as the Bench consisted mainly of members of the Council. However, it was an improvement on the haphazard system of 1698-1718 and it paved the way for the birth of the Mayor's Court in 1728. When the Mayor's Court asserted power, it led to a dispute in 1730 with the Council, which denied its right to deal with issues of religion or caste. The Mayor was dismissed from his post as Secretary to the Council as punishment for his insistence on his judicial independence. Fortunately, the Company upheld the authority of the Court against the Council. The Mayor and Aldermen as grand jury, were able to express their views freely to the Governor and Council.[25]

The Supreme Court of Fort William was the result of section 13 of the Regulating Act, 1773.[26] A Charter of Justice in this regard was issued on 26 March, 1774. The Court established in 22 October, 1774, began functioning during January 1775.[27] It consisted of a Chief Justice and three judges who were to be Barristers in England or Ireland of not less than five years standing. It was declared to have fully power and authority to excise and perform all civil, criminal, admiralty and ecclesiastical jurisdiction. The new court was to have jurisdiction over all British subjects residing in Bengal, Bihar and Orissa.[28] The Governor General and Council, the Chief Justice and judges of the Supreme Court were empowered to act as Justices of Peace for the settlement of Calcutta and the subordinate factories. The Governor General and Council held quarter session, four times a year. These quarter sessions were a court of record. All offences and misdemeanors which were laid in the Supreme Court were tried by a jury of British subjects resident in the town of Calcutta. The Supreme Court was not competent to hear, try or determine any indictment or information against the Governor General or any of the members of the Council for any offence except treason or felony committed by them in Bengal, Bihar and Orissa. Only the Kings Bench was competent to try the Governor General, his councilors, the Chief Justice and the other judges.[29]

The Court of the King's Bench in England was empowered to inquire into and determine any crime, misdemeanor or offence committed by the Governor, a judge of the Supreme Court or any of the English servants or subjects or any of the inhabitants of India. As a result the Court of the Kings Bench was enabled to issue the writ of *mandamus* on the judges of the Supreme Court of Calcutta, for the examination of

witnesses in India and to send such records to England. The Court of the Kings Bench could likewise require the Governor General in Council, to examine witness in India and send the records to England when causes of action involved the Chief Justice and other judges of the Supreme Court.[30]

The Act of 1781 effected important changes in the then system of judicial administration. It was enacted that the Governor General-in-Council were not to be subject to the jurisdiction of the Supreme Court. Further the Court was not to have any jurisdiction in any matter concerning the revenue collection. The Supreme Court was authorized to frame suitable forms of process to be used in native causes. The Governor General in Council exercised appellate jurisdiction through the *Sadr Diwani Adalat*. It was authorized to deal with revenue collection. No jury was allowed in such cases.[31]The Act of 1781 clearly defined the jurisdiction of the Supreme Court and the legislative and administrative powers of the Governor General and Council. As far as revenue matters were concerned, only the excesses committed in its administration were cognizable by the Supreme Court.[32]

In 1793, revenue administration was divorced from judicial functions. *Zilla* Courts each presided over by an English judge came into being. Appeals from these courts lay to the provincial courts of appeal at Calcutta, Patna, Dacca and Murshidabad. The *Sadr* Court consisted of the Governor General and Council. Appeals arising from its verdicts went to the King in Council. The judges of the provincial courts sat in the court of circuit, which were four in number. Their sentences of death or imprisonment for life

required the approval of the *Sadr Nizamat Adalat* under the Governor General and Council. The right of pardon remained with the Governor General and Council.[33]

The Chief Justice and judges of the Supreme Court were forbidden to accept directly or indirectly any present, gift or donation on any account what so ever. They were also not to indulge in any traffic or commerce. The jurors of the Supreme Court were appointed by the King unlike those of the Mayor's Court who were appointed by the Executive Government of Fort William. The Supreme Court was also competent to render justice against the English East India Company. This was simply impossible under the Mayor's Court. The judges of the Supreme Court were to be, unlike those of the Mayor's Court, Barristers in England or Ireland. In April 1777, the office of the Advocate General was created and Sir John Day was appointed to the post.[34]

A Recorder's Court was established in Bombay under the Act of 1797. It was transformed into a Supreme Court by the Act of 1823. Its jurisdiction was based on the same principles as that of the Supreme Court at Calcutta. The Supreme Court of Bombay came into being in 1823. The Supreme Court of Madras was created by the Charter of December 26, 1801, to replace the Recorder's Court consisting of the Mayor, three Aldermen and a Recorder, created by the statue of 1797, with jurisdiction similar to that of the Supreme Court at Calcutta.[35]

The Charter Act of 1833 declared the Indian possessions of the Company to be held by it in trust for the British Crown. Administration became centralized. The Governor General of Bengal gave place to the Governor General of India. Centralization was most marked in the matter of law. Bombay and Madras lost their right to make their own laws. The Governor General in Council reinforced by the fourth ordinary member with legal qualifications became the only law-making body in India. These laws were applicable to all things and persons in British India, and in the case of servants of the Company, anywhere in allied India. They were enforceable in all the courts in India, the Company's or the Kings.[36]

On the eve of the National Uprising of 1857, there were three Supreme Courts, at Bombay, Calcutta and Madras. They consisted of a Chief Justice and two judges, each. They administered English law or such Indian law as was made applicable to the British subjects in India. Indians in the Presidency towns were subject to these courts. These courts soon degenerated into tools of racial discrimination. The British subjects of the Crown could be prosecuted only in the courts set up at presidency towns. The Supreme Courts acted as the highest court of appeal in India for such cases. This system practically denied justice to an Indian in cases against a European. In criminal matters, Englishmen and Indians were subject to different courts and to a different procedure. Another English court that decided Indian cases existed outside India. Appeals, both from the Supreme Courts and the appellate civil and criminal courts of the Company went to the Privy Council, when the value of the suit was five hundred pounds or where special leave to appeal had been obtained. The Privy Council had

succeeded to this appellate jurisdiction originally vested in the King's Court in 1813. Not many appeals were taken to England.[37]

The Company had its own sets of courts in all the provinces. In Bengal, the North-Western Province, Bombay and Madras, there were *Sadr Diwani Adalats* and *Sadr Foujdari Adalats* sitting in appeal over the lower courts. Below them were the district and sessions courts in every judicial district. The same officers filled both the offices heard criminal cases of serious nature and decided civil suits beyond a certain limit. They heard appeals against the decisions of the lower civil and criminal court. The collector- magistrates were the head of the magistracy in the districts and heard all cases concerning rent and rights in land, although cases with regard to these matters could also be lodged in the civil courts. In most of the districts, there were Assistant Sessions or Assistant District Judges as well. Besides Europeans, Indians too occupied various positions in the judiciary.[38]

The Indian High Courts Act, 1861 was enacted by the British Parliament on 6 August 1861. In all, it had nineteen sections. As a result of this legislation, the then Supreme Courts and *Sadr Adalats* ceased to exist and their records were handed over to the High Courts. Each High Court was to have a Chief Justice and not greater than fifteen judges. Barristers of not less than five years standing and Pleaders of *Sadr* Court or High Court, of not less than ten years standing were eligible to become judges of the High Court. In addition to it, covenanted civil servants of not less than 10 years standing, who, had served as *zilla* judges for minimum 3 years of that 10 year period,

and those who had served as Principal *Sadr Ameen* or judge of Small Cause Court or above, for not less than five years, were also qualified to adorn the Bench. One-third of the judges of a High Court, including the Chief Justice, were to be Barristers. At the same time, covenanted civil servants were to constitute not less than one-third of the number of judges of any High Court. The High Court enjoyed sweeping jurisdiction over a plethora of realms– civil, criminal, admiralty, testamentary, intestate, matrimonial, original and appellate. High Courts exercised superintendence over all the courts subject to its jurisdiction. It was empowered to call for returns, transfer suits or appeals, make general rules to regulate the practice and proceedings of lower courts. The territorial jurisdiction of a High Court was subject to an order of the King in Council made on the advice of the Privy Council.[39] A civil suit was generally acceptable to the judicial committee of the Privy Council if it covered a value of not less than Rs.10, 000 and a criminal case if the High Court itself certified that it was a fit case for further consideration.[40]

In cities where the High Court existed, there were other courts to try small causes, presided over by Magistrates. A First Class Magistrate could fine up to Rs.1000 or sentence a person to two years imprisonment; a Second Class Magistrate could fine up to Rs.200, or sentence an offender to 6 months imprisonment; a Third Class Magistrate could fine up to Rs.100, or pass a sentence of one month imprisonment. The courts of small causes held their sessions throughout the year and they send all cases beyond their powers, to the High Court. The civil and criminal courts of a district were presided over by the District & Sessions Judge. He was empowered to pass

sentence in any civil or criminal case. However, death sentences required the approval of the High Court. A Joint or Additional or Assistant Sessions Judge, used to assist him in criminal cases. All cases tried before a High Court or before a District Court of Sessions were heard by a jury consisting of twelve members. The jury heard the proceedings of the case before proclaiming its verdict. The accused, after hearing his sentence, had the opportunity to make an appeal to the appellate jurisdiction of the High Court for a retrial, or obtain its permission to appeal to the Privy Council.[41]

The Indian High Courts Act of 1865 empowered the Governor General to transfer any territory or place from the jurisdiction of one High Court to another. The Indian High Court Act raised the number of judges to twenty. The Governor General was empowered to appoint additional judges for a period of not to exceeding two years. The salaries of judges were to be paid out of Indian revenues.[42] The Government of India (Consolidating) Act of 1915 empowered the High Courts to adjudicate upon matters concerning revenue on their appellate side; they could not do so on their original side.[43]

On an address from a Provincial legislature, the Crown could constitute a High Court, or re-constitute such a court or join two High Courts. On agreement of the Governments concerned, the Crown was empowered to extend the jurisdiction of a High Court to an area in British India outside the particular province. The legislature of a province wherein is the chief seat of the High Court, was not empowered to alter its jurisdiction outside the province. The power to do so rested with the legislature having

authority over the area in question. The power of the courts to compel the performance of executive functions was limited. The High Court may require any specific act to be done or forborne by any person holding a public office where such dong or forbearing is under any law for the time being in force clearly incumbent on such person in his public character and the order is applied for by a person where property, franchise or personal right is in danger and no other remedy is available. The Court could not compel the performance in a particular manner of an act left to the discretion of an officer but it could compel such discretion to be exercised fairly, in a proper manner. But, no such order was possible against the Secretary of State in Council or any local government.[44]

Before 1919, the High Courts were free to exercise their powers without much hindrance as there was no formal assignment of administrative responsibility between the Centre and the provinces. After the advent of the Government of India Act (1919), High Courts were included in the Provincial List. Hence, the financing of the High Courts became a charge on the provincial revenues which came to be voted by the local legislature.[45]

The Chief Justice was to decide who among the judges was to sit alone, or without him. The Advocate General of Bengal was a law officer of the Government of India. However, his counterparts in Madras and Bombay were the law officers of the respective provinces only. This was an indication of the primacy of the Calcutta High Court. The Chief Justice of the Calcutta High Court received an annual salary of

Rs.72,000 which was higher than that of his counterparts of Madras and Bombay, who were given only Rs.60,000. However, the other judges in the three High Courts received the same salary of Rs.45,000 per annum.[46]

The Government of India Act of 1935 vested the administrative control of the High Courts with the provincial governments. Expenses continued to be charged on the provincial revenues. Despite this, the legislature had no control over the budget of the High Courts. The salary of the judges of these courts was too, a non-votable item. The tenure of a judge was till the attainment of sixty years of age.[47]

The Federal Court was set up in 1937, to interpret the Constitution and to settle in the exercise of its exclusive original jurisdiction, disputes between the Federation and its constituent units. It possessed only a limited appellate jurisdiction from an order of a High Court where the High Court happened to certify that the case involved a substantial question of law as to the interpretation of the question. Apart from such cases, appeal lay directly from the High Court to the Privy Council in much the same way as before.[48] Judges are appointed by the Crown and they held office until the age of sixty-five. A judge was liable to be removed on the ground of misbehavior or of infirmary, if the Privy Council on reference by the Crown so recommends. A case had to be heard by three judges sitting together. All judgments had to be delivered in open court with the concurrence of the majority present at the hearing. The administrative expenses of the Federal Court was charged on the federal revenues.[49] The Federal Court usually refused to grant special leave to appeal to the Privy Council, when its

own decision was unanimous. But the Privy Council did grant special leave to appeal to the Crown after the Federal Court had turned down the request.[50]

Malabar

After the occupation of Malabar, the Joint commissioners endeavored with untiring zeal to formulate a framework for the rejuvenation of the general administration, revenue collection and judiciary. Emphasis was laid on the institution of regular courts of law, both civil and criminal. Marquis Cornwallis and his successor Sir John Shore attached great importance to the success of the nascent system in Malabar. The correspondence between Cornwallis and Sir Robert Abercrombie reveals that they felt the institution of a regular administration of justice to be advantageous to the English. Mr. Farmer, Major Dow, Mr. Page, Jonathan Duncan, Charles Boddam and others did the preliminary preparations for the administration of justice. The supervisors and superintendents were given judicial authority along with executive and police functions. The periodical circuits of the above officers formed a distinctive feature of the new judicial system. Preparation of the civil code was undertaken by the Joint Commissioners. The provincial courts or *Adalats* were empowered to frame standing rules and orders for the administration of justice subject to their ratification by the Chief Magistrate in the Court of Appeals. All subjects of litigation of a civil nature were tackled by the provincial *Adalat* Courts.[51]

The Commissioners defined the composition and functions of the different tribunals of criminal judicature. They were the local subordinate courts for towns and districts, native criminal court, the court of the Magistrate and the Chief Magistrate. The Jurisdiction of native Magistrates was limited to petty cases. Provincial Magistrates remitted cases to provincial *Foujdary* Courts.[52]

Lord Cornwallis changed the then judicial practices and effected a separation of the revenue and judicial functions of the district collector. The apex court of the Presidency was separately designated as *Sadr* and *Foujdari Adalat* in its dual capacity of a civil and criminal court. The institution below was designated as Provincial Court when it dealt with civil suits and as Circuit Court when it decided criminal cases. The *zilla* court which came next was again a civil and magisterial court. The appointment of native Commissioners was left to the discretion of the *zilla* judges. They relieved much of the burden of the *zilla* judges in the trial of pretty suits. The native Commissioners had to submit a monthly report to the *zilla* judge. There were four Provincial Courts of Appeal, each having three English judges. In 1802, the *Sadr Adalat* was constituted. In 1807, Commissioner ceased to be the Chief Judge and the later was selected from among the covenanted civil servants.[53]

Travancore

The administration of justice was a subject of anxious care on the part of the rulers of Travancore. In the ancient days, there was no separate judiciary. The *naduvazhis* and

the *desavazhis*, administered justice in conformity with *maryada*, ie, the custom. Executive officers like the *sarvadhikaryakar*, the *valia sarvadhikaryakar* and the *dalawa*, too, exercised judicial powers. The *melvicharippukar* was the only officer whose functions were purely judicial.[54] The *Vyavaharamalika* of Mahishamangalam Sankaran Nambuthiri, composed in 1496 came to be widely acknowledged as an authoritative compilation of laws. It dealt with the rules of procedure for trial and punishment with detailed expositions of old texts.[55]

The Maharaja was the fountain head of the judicial establishment. At times, he combined in himself all the three powers, executive, judicial and legislative. The King was the highest court of appeal. During the reign of Marthanda Varma (1729-58), the partisans of the pretenders, the Ettuveettil Pillamar and others, were tried at Kalkulam, in royal presence. They were charged with treason and criminal conspiracy. Two cadjan leaves confiscated from their messengers were produced as the evidence against them. All the forty two accused, pleaded guilty. They were all hanged to death at a place known as Mukhamandapam, a few miles north-west of Kalkulam. However, the convicted Brahmins were spared from the death penalty. They were banished from Travancore, after having them declared, outcaste.[56]

The *chattavariola* was the precursor of the Gazette notification of the modern period. The earliest *chattavariola* of which we have any record is the one issued by Dharmaraja (1758-98) in 1776.[57] Sections 52 to 55 of the above document say that the complaints of petitioners shall be decided reasonably by the district *cutchery* and that

no petitioner shall be detained to his inconvenience. It was also told that cases shall be decided within eight days, beyond which the district officers shall be liable to pay for the expenses of the petitioner. According to sections, 57 and 58, complaints made by female petitioners shall be heard and settled at once. This was to ensure minimum inconvenience for the womenfolk.[58]

When Balarama Varma (1798-1810) was at the helm, the unpopular triumvirate [59] consisting of Jayanthan Nambuthiri (the then *dalawa*), Sankaranarayanan Chetty and Mathu Tharakan, were handed over to the assembly headed by Velu Thampi and others, who formed a people's court for trial. The ex-*dalawa* was disgraced and banished from the country, while, his two associates were imprisoned after having their ears severed.[60]

Dalawa Velu Thampi constantly moved from place to place, on circuit, accompanied by a select few of his subordinates. On receiving serious petitions during his circuit, he heard those cases and single handedly conducted both the chief and cross examination, in presence of the *shastri* and the *mufti*. Finally the verdict was pronounced. All this hardly took four or five hours. Velu Thampi himself used to witness the execution of his sentences before leaving the area.[61] His impartiality can be known from an incident wherein he ordered the thumb of a *provertyakar* (village officer) to be chopped off, for having manipulated land records to the advantage of a relative of Velu Thampi.[62] His successor Ummini Thampi established the *insuaff cutcheeries* to deal with the dispensation of justice.

Later, these were abolished by Colonel John Munro who combined in himself the offices of the *diwan* and the Political Resident. The need for an entirely new scheme of judicial administration was acutely felt. The Royal order of September, 1811 was a step in the right direction. The Principal Court having four judges including the *diwan*, came into being.[63]Five subordinate courts, each having three judges, were created to function under the Principal Court. They were located at Padmanabhapuram, Thiruvananthapuram, Mavelikkara, Vaikom and Alwaye.[64]The Principal Court examined and corrected the proceedings of the subordinate courts. It also tried and determined appeals from these courts. Death sentences awarded by the subordinate courts were forwarded to Principal Court for its careful examination. The latter was empowered to order a re-trial or a revision of the sentence of the subordinate courts. In case of litigious appeals, the Principal Court was at its discretion to impose suitable fines upon the appellant.[65]The next phase of judicial reform was inaugurated in 1814, when, the Appellate *Huzur* Court was constituted. It had five judges including the *diwan* and heard appeals from the seven *zilla* courts which had already been in existence since 1812. Their number was later reduced to five. There was a provision for two *sastris* in the Appellate *Huzur* Court. In 1817, this was reduced to one. The new institution practically worked as an appendage of the regime.[66]

The reign of Maharaja Swathi Thirunal Rama Varma (1829-46) saw the codification of laws of Travancore, at the behest of Cunden Menon. As a result, eight regulations were adopted. In compliance with the fifth regulation, the Appeal Court was

established. It was to have four judges, who were to be aided by a *sastri* and a *mufti*. Bhagawanta Rao, a *munsiff* from Malabar was installed as the First Judge of the Appeal Court. The directives of Cunden Menon come to be enforced as the law of Travancore from 1836, onwards.[67] Bhagawanta Rao remained as the First Judge for over a year. He was succeeded by Sankaranatha Pandala Jyotsyar.[68] The presence of all the four judges, was deemed necessary during the investigation of cases. However, two of them with the aid of the *sastri* and the *mufti* were competent enough to decide.[69] The seventh and eighth regulations, framed by Cunden Menon, authorized the Appeal Court judges to perform the work of the session's court. The judges of the Appeal Court on circuit were empowered to impose fines up to two hundred rupees and imprisonment up to three years. [70]

The Appeal Court was transformed into the *Sadr* Court in 1862. Krishnan Parameswaran Namboodiri became the First Judge of the *Sad*r Court. In 1864, Sadasiva Pillai from the Nagarcoil Court was made the First Judge of the *Sadr* Court. He had earlier been the *zilla munsiff* at Madurai. In 1866, the *Sadr* judges received a hike of one hundred rupees in their pay. Regulation I of 1047 M.E (1872-73) provided for the opinion of the most senior judge to prevail over the other judges, in the event of a split verdict. The *Sadr* Court was given appellate and revisionary powers over the magistracy [71].

Regulation III of 15 August, 1879, resulted in the remodeling of the *Sadr* Court. The number of judges was reduced from four to three. A single judge, as such, got more

powers. He was empowered to dispose cases or reverse judgment for another judge or the whole court, to hear and decide on appeals whose value exceeded seven hundred rupees, to call information from a lower court or correct any error of law or practice. He was also entitled to transfer a case from one court to another and dispose small cause appeals and references. If the opinion of a single judge goes against an earlier judgment of the court, then the verdict had to be reserved for the whole court. A two-judge bench was to hear and dispose all regular and special appeals and referred criminal cases where capital punishment or imprisonment for life was awardable. Such serious criminal cases were to be referred to the *Sadr* Court by the *zilla* Courts. If the sentence awarded exceeded seven years, the convict was entitled to be heard by a two-judge bench of the *Sadr* Court. When it came to questions of fact, only one appeal was allowable. In 1874, Chellappa Pillai became the First Judge of the *Sadr* Court. It was due to his efforts in concert with Arianayagam Pillai of the Alleppey Sub-Court, which led to the codification of all the then existing laws. In 1056 M.E(1881-82), two regulations were passed, which, resulted in the near total adoption of the Indian Penal Code and the Criminal Procedure Code as the law of Travancore [72].

The *Sadr* Court was transformed into the High Court in 1882. It functioned from within the present Secretariat building. The High Court consisted of one Chief Justice and four judges, assisted by a *pandit*. A. Ramachandra Aiyar became the first Chief Justice of the Travancore High Court. A single judge was empowered to call information from the subordinate courts, correct errors of law or practice, revise the calendars and examine returns in the criminal cases and those submitted by the civil courts. He was

also enabled to refer any point of law to a Division Bench. A two-judge Bench had, comparatively, more powers in the new set-up. It was empowered to hear appeals from the *zilla* and the session's courts and could transfer cases from one court to another. In civil cases, when there was disagreement between judges in a Division Bench, the case, which could otherwise be appealable to the Sovereign, was referred to the Full Bench consisting of all the five judges, for disposal. There was to be no appeal against its verdict. In cases of a special character or involving an important point of law, a Full Bench consisting of all the five judges, was referred to and the decision of the Court was deemed to be final [73].

In the matter of appeals to the Sovereign from the decrees of a Division Bench of two judges, provision was made for referring such appeals to a judicial committee comprising of the remaining three judges of the High Court, if the subject matter of the suit in the court of first instance and in appeal was valued at five thousand rupees and more. If the judgment of the Division Bench affirmed the decision of the subordinate court, an appeal lay to the Sovereign. This was to be feasible only if the case involved some substantial question of law. The judicial committee which heard the appeal was to submit their opinion to the Maharaja, through the *diwan*. In 1061 M.E (1885-86), the then Viceroy, Lord Dufferin notified that the decrees of Travancore Courts might be executed in India as if they had been made by the courts in British India. A similar arrangement was arrived at with Cochin too. Soon a set of rules prescribing the mode of executing foreign decrees in Travancore and laying down the form in which, Travancore decrees should be forwarded for execution outside, was formulated. A

reciprocal system of services and processes, free of cost between Travancore and British India was introduced in1064 M.E (1888-89). After more than two decades, in 1088 M.E (1912-13), it was declared by means of a Royal Proclamation that the British-Indian Government should sue and be sued in Travancore in the name of the Secretary of State for India in Council. A regulation passed in 1061 M.E (1885-86) authorized a single judge, while sitting as a vacation judge, to dispose applications for staying execution of civil court decrees and criminal court sentences[74].

By a regulation of 1065 M.E (1889-90), a reconstitution of the High Court took place. The number of judges was reduced from five to four. A single judge was empowered to hear and dispose regular appeals in suits of the value of two thousand five hundred rupees and above, with the provision of further appeal to the Sovereign, which was heard by three judges sitting as a judicial committee. Regulation 1 of 1067 M.E (1891-92) abolished the system of intermediate appeals. A three judge bench was to hear and decide all appeals from the decisions of the district courts. From 1068 M.E (1892-93) onwards, the judges of the High Court began to conduct regular inspection of the subordinate courts. Until 1894, there existed a 'Royal Court of Final Appeal' corresponding more or less to the judicial committee of the Privy Council in England. After its abolition, the said functions were to some extent exercised by a Full Bench of the High Court [75].

The year 1071 M.E (1895-96) saw the passage of an Act aimed at providing greater protection to judges, magistrates and others acting judicially. It was declared that no

person acting judicially was to be sued in court for any act done or ordered to be done by him in the discharge of his judicial functions, whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have authority to do so[76]. The Travancore Penal Code was passed by Regulation I of 1074 M.E (1898-99). Regulations II and III during the same year amended the Criminal Procedure Code. In 1081 M.E (1905-6), new rules for enrolment as *vakil* were made. Only Barristers-at-Law, Attorneys of British High Courts and graduates in law were permitted to be enrolled. Regulation I of 1086 M.E (1910-11) raised the minimum value of appeals to be heard and determined by a Full Bench of three judges from Rs.2500 to Rs.5000, subject to the formal approval of the Maharaja. Regulation VIII of 1087 M.E (1911-12) invested a single judge of the High Court with power to hear and decide every application, for determining in which of the several courts a suit shall be heard, for the admission of an appeal in *forma pauperis* or presented after the expiry of the period of limitation, and for the transfer of any suit, appeal or other proceedings from one civil court to another. The above two regulations were aimed at reducing the workload of the High Court. The arrears of appeals in the High Court which was five hundred and eighteen in 1084 M.E (1908-9) rose to nine hundred and fifty by 1088 M.E (1912-13). Two additional judges were appointed temporarily for one year between 1913 and 1914. A similar measure was resorted to in 1092 M.E (1916-17) [77].

The High Court was conscious of its privilege and status. In 1917, when the then British Resident H.L. Braidwood happened to cast aspersions on the sentence awarded in a criminal case, the then Chief Justice K. Raman Menon, took exception to

the observation made by the Resident. During this confrontation, Sir M. Krishnan Nair held the office of the *diwan*. He himself was a former Chief Justice of the High Court. The Chief Justices of the High Court held regular correspondence with the *diwan*, regarding all aspects of judicial administration including the matter of recruitment of personnel into the judiciary[78]. The High Court was transferred to a new location on 31 May, 1943. From then on the Sri Mulam Buildings at Vanchiyoor began to house the Travancore High Court. Many other courts in the capital city were brought to the new court complex. The first Chief justice of the Travancore High Court was A. Ramachandra Aiyer, who later headed the Chief Court of Mysore. K. Krishnaswami Rao was working as a sub-judge in the Madras Judicial Department, before coming to Travancore. T. Sadasiva Aiyar held the office of the Chief Justice for 5 years and later became a judge of the Madras High Court. The appointment of M. Krishnan Nair was the first instance of direct recruitment from the Bar; he belonged to the Calicut Bar. Later, he also adorned the office of the Diwan of Travancore. His successor K. Raman Menon was formerly the Chief Justice of the Chief Court of Cochin. R. Viraraghava Aiyengar was the first native of Travancore to become the Chief Justice of the High Court. Alexander Varghese was a judicial officer in the Madras Judicial Service prior to his joining the Travancore Bench. Joseph Thaliath who had a long and distinguished service in the Travancore High Court had earlier served as judge of the Chief Court of Cochin. The new building of the High Court was inaugurated during the tenure of T.M. Krishnaswamy Aiyar. U. Padmanabha Kukillaya was the Head *Sirkar Vakil* for a decade, before ascending the Bench. He was succeeded by Puthupalli S. Krishna Pillai who was the last Chief Justice of the Travancore High Court.

Cochin

Instructions regarding laws and legislations in Cochin were conveyed for the guidance of the officers concerned through the medium of written instructions called *variolas*. However, regular courts of law were established after the advent of British supremacy. The treaty concluded between the English East India Company and Tipu Sultan in 1792, brought Cochin under the former's supremacy. Early in 1793, a Commission consisting of W.S. Farmer, Jonathan Duncan, Charles Boddam and Alexander Dow, sought detailed information from the Raja, regarding the then civil and criminal law of Cochin and the medium through which it was administered. The establishment of British supremacy was not immediately followed by a code or laws or a system of judicial administration. The British influence first exhibited itself in the issue of certain ordinances or precepts to the officers of the State. The differentiation in the functions of the public servants had not taken place, though several limitations were placed on the powers which they had once possessed.[79]

It was in 1811 that a clear separation of judicial and administrative machinery was ushered in. Revenue officials were relieved from the work related to the administration of justice. The *kariakars* were divested of their judicial authority. However the *chattavariola* of 1812 provided for the *kariakars* to continue to have the complaints of suitors enquired into by *panchayats* and to have them disposed of according to equity and good conscience. The *chattavariola* constituting the courts was finally promulgated in 1813. A *Huzur* Court consisting of four judges, including the *diwan* was established at Ernakulam. Two smaller courts having three judges each were

established at Trichur and Thrippunithura. All disputes were to be settled according to the *Dharmasastras* and the custom of the land, unless otherwise directed.[80]

Complaints against public servants in the discharge of their duties were forwarded to the *Huzur* Court to be submitted to the *diwan* for disposal. The *tanna naick*, who was responsible for the working of the Police in a *taluk*, was also charged with the service of processes issued by the courts. They were to give effect to the decrees of courts in conjunction with the *kariakar*, who was the Chief Revenue Officer of the *taluk*. Generally, all matters were to be enquired into in public by subordinate courts, appeals against their decisions lying to the *Huzu*r Court. The *hukmnama* in this regard had provisions for enforcing the attendance of parties, for executing decisions without any application from parties, for referring disputes, both civil and criminal to *panchayats* for their disposal etc. Later, the jurisdiction of the courts was also defined. Suits exceeding 300 *fanams* in value and all suits against the white Jews were made directly cognizable by the *Huzur* Court. All other suits were to be disposed of in the first instance by the subordinate courts, appeals lying to the former from their decisions.[81]

Lieutenant Blacker, the Assistant Resident held the reins of Government between 1814 and 1818. He issued several *hukmnamas* which were basically aimed at setting the procedure, the practice and the jurisdiction of the courts. The *hukmnama* of 1815 introduced the provisions for the collection of court fess (*dasturipanam*). *Achadiolas* introduced by this *hukmnama* corresponded to the court fee stamps of today. Charges of murder were directly cognizable by the Huzur Court. A *hukmnama* issued by

Lieutenant Blacker in 1816, fixed the procedure applicable to criminal cases. The decisions of the two inferior courts in criminal cases were subject to confirmation by the *Huzur* Court. Another, *hukmnama* issued in 1816, contained detailed rules regarding the procedure of the civil courts. It had a provision enabling parties to appear by pleaders. All the decisions of the two inferior courts were subject to confirmation by the *Huzur* Court. The appeals by defendants against the decision of the inferior courts were admissible only on his furnishing security for the decretal amount.[82]

In 1818, Nanjappa Iyer became the *diwan* of Cochin. One of the earliest acts of his administration was the Proclamation establishing the two *zilla* courts and the Appeal Court. The Huzur Court gave way to the Appeal Court. All matters civil and criminal were enquired into and disposed of by *zilla* courts, which were finally subject to confirmation by the Appeal Court.[83] The constitution of the courts remained unchanged for quite a long time. Regulation I of 1010 M.E (1835), which was passed for extending the jurisdiction of the courts, left the constitution of the courts, virtually untouched. In 1861, minor changes were effected in relation to the jurisdiction of the courts.[84]

However the Regulation I of 1057 M.E (1881-82) considerably modified the constitution of the courts. As a result, new classes of courts were constituted. They were the Raja's Court of Appeal Court, the *zilla* court and the *munsiffs* courts. The maximum and minimum limit respectively, of the *munsiffs*' and the *zilla* courts' jurisdiction was fixed at Rs.500. In cases of immovable and movable property valued

below Rs.1000 and Rs.3000 respectively, a Bench of two judges was to hear and dispose appeals against the decisions of the *zilla* courts. Suits of higher value were to be heard and disposed of by a single judge of the Appeal Court. It was generally heard by the two other judges of the Appeal Court. In cases where the State was not a party the *diwan* had the power to direct the appeals to be heard by the two judges of the Appeal Court in association with himself.[85]

Regulations II and III of 1076 M.E (1901) effected major changes in the constitution of the courts. The former gave birth to the Chief Court. The Raja's Court of Appeal ceased to exist as a regular court of appeal. A Full Bench of all the three judges of the Chief Court was to hear appeals against the decisions of the District judge. However, Regulation IV of 1079 M.E (1904) introduced a modification by which to two judges of the Chief Court was empowered to hear and finally dispose of cases. Being the Civil Courts Regulation, Regulation III of 1076 M.E (1901) increased the jurisdiction of the *munsiffs* from Rs.500 to Rs.1000. The limit of the small cause jurisdiction of the District *munsiffs* was raised to Rs.50. The appellate small cause jurisdiction of the District *munsiffs* was no longer provided for but in its place instead, a provision was introduced to bestow original small cause jurisdiction on District Judges up to a limit of Rs.200. Regulation I of 1010 M.E (1835) enacted elaborate provisions pertaining to the procedure of the civil courts. A Code of Civil Procedure was enacted in 1039 M.E (1863-64) on the lines of the British Indian Act VIII of 1859.[86]

The Regulation IV of 1010 M.E (1835) appointed the judges of the Appeal Court as circuit judges for the trial of session's cases. One of the judges of the Appeal Court held quarterly sessions at Ernakulam and half yearly sessions at Trichur for the trial of cases committed by the criminal court. The circuit court had the power to award imprisonment for three years, thirty-six stripes and a fine of Rs.200. All cases deserving heavier punishments were to be referred by the circuit judge to the Appeal Court. The powers of the circuit were raised by the Regulation I of 1036 M.E (1860-61). Regulation I of 1043 M.E (1868) abolished the circuit or sessions courts, and reconstituted the *zilla* criminal courts to try and dispose of cases of every description, the sentence being referable to the Appeal court for approval if they exceeded three years imprisonment, thirty-six stripes or a fine of Rs.200. The Regulation reconstituted the Appeal Court, which was to consist of three or more judges. There was also a provision for the appointment of a *pandit* to the Appeal Court.[87]

As regards the power of the Appeal Court, sentences subject to confirmation of the King were limited to those of death and imprisonment for life. The Appeal Court and the civil courts subordinate to it were able to refer any question of Hindu law for the opinion of the *pandit*. By virtue of Regulation I of 1043 M.E (1868), the Appeal Court and the *zilla* courts were to be guided by the Indian Penal Code in the exercise of their criminal jurisdiction. A system of laying court fees came into being in 1764. It was then known as *peramper*. Later, it came to be known as *dasturipanam*. The *Hukmnama* of November 1814 enacted provisions for the collection of court fees by means of *acchadiyolas* or stamped cadjans. The judges of several courts were themselves the

ex-office vendors for the sale of such cadjans.[88] The *hukmmama* of May 1816 had a provision enabling parties to appear by a representative. However no qualifications were prescribed for *vakils* until the posting of the Regulation I of 1041 M.E (1865). The High Court of Cochin was inaugurated on 18 June, 1938. Its first Chief Justice was V.D. Ouseph.

END NOTES

1. Haripada Chakravarti, *Criminal Justice in Ancient India*, pp.3-26.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. S. Radhakrishnan, *The Cultural Heritage of India, Vol.2*, p.447.
6. K. Srikantan, *Administration of Justice in Ancient India*, p.61.
7. N. Subramanian, *Sangam Polity*, pp.188-208.
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. S.R. Sharma, *A Constitutional History of India*, p.8.
12. B.B. Misra, *The Judicial Administration of the East India Company in Bengal 1765-1782*, pp.4-132.
13. *Ibid.*
14. A.B. Keith, *A Constitutional History of India 1600-1935*, pp.11-35.
15. *Ibid.*
16. *Ibid.*
17. S.R. Sharma, *op.cit.,* pp.14-15.
18. A.C. Patra, *The Administration of Justice under the East India Company in Bengal, Bihar and Orissa,* pp.33-41.

19. B.B. Misra, *op.cit.,* p.138.
20. A.C. Patra, *op.cit.,* p.33-41.
21. *Ibid.*
22. S.R. Sharma, *op.cit.,* pp.14-15.
23. B.B. Misra, *op.cit.,* pp.137-138.
24. A.B. Keith, *op.cit., pp.46-48.*
25. *Ibid.*
26. B.B. Misra, *op.cit.,* p.187.
27. A.C. Patra, *op.cit.,* p.105.
28. B.B. Misra, *op.cit.,* pp.187-191.
29. *Ibid.*
30. A.C. Patra, *op.cit.,* p.106.
31. A.B. Keith, *op.cit.,* pp.88-90.
32. A.C. Patra, *op.cit.,* p.107.
33. A.B. Keith, *op.cit.,* pp.107-109.
34. B.B. Misra, *op.cit.,* pp.191-205.
35. A.B. Keith, *op.cit.,* p.150.
36. S.R. Sharma, *op.cit.,* pp.59-77.
37. *Ibid.*
38. *Ibid.*
39. Abdul Hamid, *A Chronicle of British Indian Legal History*, pp.155-159.
40. B.B. Misra, *The Administrative History of India 1834-1947*, pp.531-532.
41. H.E. Hennessy, *Administrative History of British India*, pp.167-168.
42. P. Mukherji, *Indian Constitutional Documents vol.1*, pp.412-415.

43. Abdul Hamid, *op.cit.,* p.164.
44. A.B. Keith, *op.cit.,* pp.426-434.
45. B.B. Misra, *op.cit.,* p.562.
46. Dipasri Banerji, *Aspects of Administration in Bengal 1898-1912*, pp.169-170.
47. Abdul Hamid, *op.cit.,* p.166.
48. B.B. Misra, *op.cit.,* p.563.
49. A.B. Keith, *op.cit.,* pp.420-423.
50. S.R. Sharma, *op.cit.,* p.270.
51. T.K. Ravindran, *Malabar under Bombay Presidency*, pp.2-29.
52. *Ibid.*
53. T.K. Ravindran, *Cornwallis System in Malabar*, pp.3-25.
54. T.K. Velu Pillai, *Travancore State Manual, Vol.4*, p.75.
55. V. Nagam Aiya, *Travancore State Manual, Vol.3*, p.546.
56. P. Shungoonny Menon, *A History of Travancore from the Earlist Times*, p.124.
57. V. Nagam Aiya, *op.cit.,* p.546.
58. B. Sobhanan, *Rama Varma of Travancore*, p.71.
59. B. Sobhanan, *Diwan Velu Thampi and the British*, p.11.
60. P. Shungoonny Menon, *op.cit.,* pp.296-303.
61. *Ibid.*
62. *Ibid.*
63. T.K. Velu Pillai, *Travancore State Manual, Vol.4*, p.76.
64. P. Shungoonny Menon, op.cit., p.373.
65. T.K. Velu Pillai, *op.cit.,* pp.82-83.
66. *Ibid.*

67. P. Shungoonny Menon, *op.cit.,* p.413.
68. Nittu, Vol.29, dt. 1011/2/23.
69. T.K. Velu Pillai, *op.cit.,* p.84.
70. V. Nagam Aiya, *op.cit.,* p.442.
71. T.K. Velu Pillai, *op.cit.,* p.85.
72. V. Nagam Aiya, *op.cit.,* p.443.
73. T.K. Velu Pillai, *op.cit.,* p.90-91.
74. Ulloor S. Parameswara Aiyar, *Progress of Travancore under HH SriMulam Thirunal*, pp.416-21.
75. T.K. Velu Pillai, *op.cit.,* p.102.
76. T.K. Velu Pillai, *Travancore State Manual, Vol.3*, p.672.
77. Ulloor, *op.cit*., pp.427-30.
78. Lekshmi Reghunandan, *At the Turn of the Tide*, *Appendix.F.*
79. N.V. Subbarama Iyer, *The Unrepealed Regulations*, pp.iii-iv.
80. C. Achuta Menon, *Cochin State Manual*, pp.445-6.
81. *Ibid.*
82. N.V. Subbarama Iyer, *op.cit.,* p.viii.
83. P. Sankara Menon, *Cochin and Her Courts of Law,* pp.105-6.
84. N.V. Subbarama Iyer, *op.cit.,* p.viii.
85. P. Sankara Menon, *op.cit.,* p.126.
86. N.V. Subbarama Iyer, *op.cit.,* p.x.
87. C. Achuta Menon, *op.cit.,* pp.449-55.
88. N.V. Subbarama Iyer, *op.cit.,* pp.xii-xiii.