Chapter X

LAW AND ORDER SYSTEM
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Together with the reorganisation of revenue administration, the English East India Company took measures to create the needed institutions to enforce law and order in its attempt to consolidate its imperial sway. This required organisation of law courts, police force and prison administration. It appeared that nowhere the feudal distinctions were so pronounced as in the working of traditional institutions. It cannot be denied that the inhabitants by tradition recognised the need for justice and courts. Yet in practice they operated them in a crude form. The general tendency was to overrate the pretensions of influential people and to uphold the unequal claims of superior castes. As a result the weak and poor fell victims to inequality before law. In these circumstances the Company found it essential to rely upon its western traditions and practices wherever necessary, for the enforcement law and order. Through the needed reforms the British consolidated and extended its authority.

ORGANISATION OF LAW COURTS

On the establishment of its authority over the country the Company found that there existed a traditional system of judicial administration. The laws followed were based upon religious tenets and social customs. The village was managed by a headman, who combined in himself the powers of magistrate, judge and tax collector. Assisted by a jury called panchayat, he decided the cases. His judgement
was subject to appeal to the district amuldar and then to the provincial amildar and form him to the ruler, whether he was a poligar or rajah or nawab. In each town there were a kazi and a pundit to decide civil and criminal cases involving the Muslims and the Hindus respectively. Despite these, there were no organised law courts, no legal language, no counsels, and no legal code other than customs and conventions. In such a situation arbitrary methods and well and pleasure judgements were the order of the day.¹ Therefore, the machinery of justice required reorganisation and improvement.

As the acquisition of territories needed the establishment of courts, British Parliament enacted legislation either for improving the existing courts or for establishing new courts of law. The city of Madras had its court with Mayor and Aldermen under the royal charter of 1687.² In the beginning it was called Mayor’s Court. The Recorder’s Court took the place of the old Mayor’s Court in 1798. It had jurisdiction over civil, criminal, ecclesiastical and admiralty cases within the limits of the city of Madras.³ However the jurisdiction did not extend beyond the territorial limits of Fort St.George.⁴ British Parliament held that the judiciary in India should be separated from the executive. Accordingly, Lord Cornwallis, the


2.C.S.Srinivasachari, History of the city of Madras, Madras, 1939, p.204.

Governor - General of Bengal (1786-1795), separated the department of justice from revenue, by depriving the collector of all authority as judge and magistrate and vesting it in the hands of a distinct court.\textsuperscript{5} The needs of the times demanded more of reforms. Accordingly in 1801 by an act of Parliament, the Supreme Court was at Madras, superseding the Recorder’s Court. It consisted of a Chief Justice and two puisne judges.\textsuperscript{6} Sir Thomas Strange became the first Chief Justice of this court with Henry Guillim and Benjamin Sullivan as the puisne judges.\textsuperscript{7}

The jurisdiction of the supreme Court at Madras extended over all civil cases. Till then these cases were tried by the Mayor’s court and the Recorder’s Court at Madras. The court could exercise civil, criminal, admiralty and ecclesiastical jurisdiction, both as to the local inhabitants and British subjects. It was to be invested with such power and authorities, privileges and immunities for the better administration of the same and subject to the same limitations,

\begin{enumerate}
\item Sir Thomas Strange was appointed the first Recorder. He had been for seven years Chief Justice of Nova Scotia (Canada). He took an active in the public life of Madras. In 1817 he resigned office to return to England.
\item Madras Council, Judicial Consultations, 1 January 1803, Vol.3A, pp.1-2.
\item C.S.Srinivasachari, op.cit., p.204.
\end{enumerate}

restrictions and control within Fort St. George and town of Madras and the factories subordinate thereto and within the territories of Madras.\textsuperscript{8} Cases of the
local people were to be tried according to their laws and usages, i.e., cases of the Hindus were to be decided according to the laws and usages of the Hindus and cases of the Muslims according to the laws and usages of the Muslims. If a Hindu and a Muslim were the contending parties, it was to be decided according to the laws and usages of the community of the defendant. Every case was decided by the majority vote of the judges present. The appeals from the Supreme court lay to the King-in-Council. The Sheriff of Madras was "to execute all units, orders, rules, commands, warrants and process of the court and make return of the same together with the manner of the execution thereof to the court". The Supreme Court at Madras exercised its powers independent of the Governor-in-Council.

The modification of the court at the top level, needed changes in the administration of justice at the lower level. Most of the duties performed by some minor courts like the Master in Equity were taken over by the Supreme Court. So the powers and income of the Court of the Master in equity decreased and it


appointment of two professional men for discharging the duty of Master in Equity.

Accordingly in 1802, the Court of Request was reorganised and called "The Court
of Commissioners for the Recovery of Small Debts”. It functioned under the superintendence of the Master in the Supreme Court. This court was expected to provide for speedy easy remedy for recovering the rights of the people. While the Supreme Court made no distinction between a suit which was intended for the recovery of fifty pagodas and that of five thousand pagodas in the fixation of fees, the Court of Commissioners fixed the table of fees at a comparatively low rate for the small cases. Court of Wards for the protection of the rights and property of the incapacitated persons was also created. The inherited properties of those incapacitated by minority, sex or natural infirmity were usually placed under the charge of other people, but the managers frequently abused and disregarded the rights of the incapacitated persons. Now legal provisions were made for the due preservation of the property of the incapacitated persons, the education of minors and the care of the lunatics and idiots.

13. Ibid., pp.5385-5387.
Till 1802 the Company’s administration made no organised effort to improve the judicial administration in the districts. What was provided was just haphazard. The collectors of the districts decided the civil cases and appeal lay to the Board of Revenue. Criminal cases were tried by the military tribunals. However, in 1802 a series of regulations were passed to create a hierarchy of civil and criminal courts and to define their powers. Thereby three types of courts came into existence—(i) The zillah courts having both civil and magisterial jurisdiction, (ii) Provincial and Circuit Courts each having jurisdiction over a group of districts and (iii) Sadar and criminal jurisdiction.

Accordingly, Lord Clive constituted zillah courts in the districts where assessment of revenue on a permanent basis was completed. The jurisdiction of the zillah court extended over all civil cases. A native Commissioner, attached to it, heard and decided petty cases. The zillah judge also served as the magistrate for the district. In that capacity he controlled the ‘thanadars’ and ‘darogas’ who were posted at important places for doing police duties and the


17. Lord Cornwallis’ system of courts for Bengal consisted of (1) Small courts presided over by native commissioners, (2) zillah courts presided over by British judges and (3) court of appeal or Sadar Diwani Adalat consisting of Governor-General and Members of the Council, Court of Circuit and Sadar Nizamat Adalat. A hierarchy of criminal courts was also set up.
‘kavalkars’ who were directed to watch the villages. With the establishment of
the zillah courts, the collectors ceased to exercise any judicial or police functions.
Governor Clive followed the example of Bengal in setting up the zillah courts, yet
he made the necessary adjustments so as to suit the system to the circumstances of
the country. The association of the native machinery for the performance of police
duties was an instance of such an adjustment. The creation of a separate police
force would have resulted in the unemployment of a large number of village
guards. Therefore the Madras Council instead of dispensing with their services,
associated them with the new set up. The appeals from the zillah courts lay to the
Provincial Court of Appeal, which was the highest civil court for the province.
Appeals from the provincial courts lay to the Madras Council, who acted as Court
of Appeal to the Sadar Adalat or chief court of civil judicature. Along with
Provincial Court of Appeal, there came into existence Courts of Circuit to try
criminal cases. Appeals from the circuit courts lay to the Foujdary Adalat or chief
criminal court at Fort St.George. Territories of Fort St.George were divided into

18. The thanadars, the darogas and kavalkars were native institutions for preserving
law and order in the country. Lord Clive associated them with new set up.


four divisions the Northern, Southern, Central and Western for the purpose of administration of justice.\textsuperscript{21} The zillah magistrate, who was the head of the district police, apprehended individuals alleged to have committed crimes and committed them to take their trial before the judges of the courts of circuit\textsuperscript{22} The criminal law was based on principles of Muhammadan Law. Law officers called qazis or Muftis were appointed to assist the judges in delivering judgements. In all cases of murder, where a sentence of death or imprisonment for life was passed, proceedings of the court should be transmitted to the Foujdar Adalat and the Circuit Court was to wait for the decision of the Foujdar Adalat. The judges of the circuit courts were vested with certain administrative duties also. Thus exercised control over the zillah magistrates and should report to the Foujdar Adalat, if they found the magistrates guilty of neglect or misconduct in the discharge of their duty. They should visit the jails in every circuit and issue such orders as they considered necessary for the security of the prisoners or for their better treatment and accommodation. They were to submit such rules as in their view would promote the better administration of justice and the improvement of police.

\textsuperscript{21}The southern division extended from the Cape to Palar, central division from Palar to Krishna, northern division from Krishna to Ganjam and western division from the Ghats to the sea in the west.

\textsuperscript{22}Madras Regulations, Section IV of Regulation VII, 1802.
Four Provincial Courts of Appeal were established at Dindigul, Krishnagiri, Ellore and Chicable. They heard appeals from decisions passed by the zillah courts. Each court was superintended by three judges. The courts were held in large and convenient halls, three days in a week. The provincial courts of Appeal tried and determined in the first instance suits of complaints or any matter of civil nature, which were transmitted to them for this purpose by the Sadar Adalat.

The Sadar Adalat was the highest civil court in the Presidency. The begin with the Governor and Member of his Council of Fort St.George were made judges of the Sader Adalat. They were made judges of the Court of Foujdary Adalat as well. Both the courts were practically one. When it sat for the adjudication of civil cases, it was called Sadar Adalat and when it heard criminal cases, it became Foujdary Adalat. There were three judges, the chief, second judge and third judge of the Sader Adalat. The Governor of Fort St.George acted as the chief justice of the court till the Regulation III of 1807 was enacted. By Regulation III of 1807, the court was placed under a chief judge, who was to be a

24. Madras Regulations, Section IV of Regulation IV, 1802.

member of the Council. Sadar Adalat had both original and appellate powers. Only
the English men were appointed as the judges of this court. It was empowered to receive the suits from the provincial courts of appeal. The Sadar Adalat had powers to decide finally all suits upto Rs. 45,000/- and above that sum, an appeal lay to the Governor-General-in-Council. The Foujdary Adalat was the final appellate court for all criminal cases. The court consisted of the Governor and Members of his Council. It was assisted by the qazi. The Governor functioned as the chief judge, assisted by three judges, who were appointed by the Governor-in-Council from among the covenanted civil servants of the Company, not being members of the Governor's Council.²⁷ By the Regulation III of 1807, this court underwent significant changes. Accordingly it was given a separate a chief judge and three puisne judges. Also it dealt with all matters relating to the administration of justice in criminal cases. The court was empowered to propose new regulation, alteration and additions to the Muhammadan laws. In cases of murder the head Qazi and Mufti were to give their opinions. This court was empowered to pass sentence of death punishment, if the criminals were found guilty as per law.

Thus there came into existence two court systems- the Supreme Court set up by the Crown and the graded system of courts set up by the Company. For the

²⁷. Madras Regulations, Section V of Regulation VII, 1802.
first time in the history of the country an elaborate system of courts was instituted. In reorganising judicial administration, due consideration was given to the customs and practices of the people. Still the system had its own defects. The local people had not much of a say in the administration of justice. The courts were guided by the British rules of procedure, which were foreign to the country. To the inhabitants who were ignorant and illiterate courts remained out of their reach. Inability to proceed to the court, complexity of the processes and uncertainty of results were factors which would dissuade the aggrieved from seeking redressal of grievances from court. In effect the East India Company assumed little command over the local or village judicial system upto 1815. Traditionally, the village headmen who were called as potails used to deal with the cases under their jurisdiction. They were supposed to know the state of the matter better than anybody else and were, therefore, always summoned. Only after the introduction of Thomas Munro’s reforms in the Madras Presidency in 1816, the British began to involve the local authority in their judicial system. Yet it cannot be denied that the judicial system was made more systematic and organised than what it had been. It was extended to the provinces, where it had never been heard of till then.

28. Ibid., Section VII of Regulation VII, 1802 and Letter from Colonel Munro, First Commissioner to D.hill, Chief Secretary to Government, 24 December 1814, p.421.

Prison Reforms

The Company inherited from the past an irregular system of prison administration. The convicts were summarily tried whipped soundly or set free or confined in miserable choultries. However, with the introduction of law courts - the Sadar Adalat, provincial courts of circuit and zillah criminal courts, it became essential to erect proper prisons and to frame rules for their Management. In this important work, the European administrators were to a considerable extent influenced by humanitarian ideas of the west. They wanted to codify and simplify the criminal proceedings in order to reform the criminals and prevent crime. Accordingly they tried to give medical aid, segregate men from women, debtors from felons and novices from hardened criminals in the prisons.

The company's administrators found that the were prisons not been constructed on any regular plan. Some old tents, a couple of hired houses or a dilapidated wing of the court-house constituted the zillah prison. As a result, discipline could not be maintained in these places. There were often brawls, riots

and escapes.\textsuperscript{33} The places used as prison afforded neither security to the public nor health to the prisoners.\textsuperscript{34} Therefore attempts were made from time to time to provide for separate accommodation for the different descriptions of prisoners. It was laid down that separate cells in each prison should be allotted to those who were under sentence of death, those who were sentenced for long terms, those committed for trial before the circuit judges and those sentenced for petty crimes by the magistrates. Yet these rules could not be enforced until proper prisons were erected.\textsuperscript{35}

By 1815-16 substantial prisons were built according to plans. Each prison as enclosed by a wall ten to twelve feet high and it was provided with several wards.\textsuperscript{36} Each ward consisted of a number of cells. A whole ward or one or more sectors contained hardened criminals, females and juvenile culprits. Every prison was equipped with a hospital, a dispensary, a manufactory, guard rooms, lunatic cells, store rooms, kitchens, wells and latrines.\textsuperscript{37} Medical care and morale of the prisoners received due attention.\textsuperscript{38} Each zillah prison was placed

\begin{itemize}
\item \textsuperscript{33}Madras Council, Judicial Consultations, 24 September 1805, Vol.12, p.1925 and 10 April, Vol.50, p.1329.
\item \textsuperscript{34}Madras Council, Public Consultations, 2 January 1806, Vol.306, p.18.
\item \textsuperscript{35}Madras Council, Judicial Consultations, 12 June 1807, Vol.28, p.3575.
\item \textsuperscript{36}Ibid., 17 April 1816, Vol.113, p.1206.
\item \textsuperscript{37}Ibid., 26 October 1816, Vol.115, p.4031.
\item \textsuperscript{38}B.S.Baliga, Studies in Madras Administration, Vol.1, pp.261-266.
\end{itemize}
under the charge of a jailor, who was generally an Indian but sometime a European. Prison guards were posted to assist the jailor in his work. The zillah surgeon was asked to visit the prison periodically, while a resident Indian doctor worked in the prison hospital and the dispensary. The zillah criminal judge supervised the duties of the jailor, the surgeon and the doctor. At first he was required to visit the prison at least once a month, but later once a week, to investigate and redress complaints of ill-treatment, preferred to him by the prisoners against the jailor or any other officer.\(^{39}\) He was especially asked to be “attentive to the health and cleanliness of the prisoners and to see that the surgeon of the station attends and administers to the sick”. Also he was made answerable to the judges of circuit, who were asked to visit the prisons in their divisions on every circuit and to issue to the criminal judges such orders as might be necessary “for the better treatment and accommodation or security of the prisoners”.\(^{40}\) The circuit judges after such half-yearly or quarterly circuit were to report on the state of the prisons to the Sadar Foujdary Adalat,\(^{41}\) Which in turn was made responsible to the Government.

\(^{39}\) Regulation VI of 1802, Section 10.

\(^{40}\) Regulation VII of 1802, Section 32.

\(^{41}\) Ibid., Section 37.
Measures were also adopted for the internal management of the prisons with proper attention to food, clothing, sanitation, labour and discipline.\textsuperscript{42} In regard to food, the prisoners were taken care of properly. In addition to common food, they were provided with betel and tobacco and when sick wine and liquor.\textsuperscript{43} The prisoners were given extra rations, when they performed hard labour. This liberality shown to the prisoners made imprisonment lose its terror and the result was overcrowding of the prisons. The Government was therefore compelled to prohibit what appeared as luxuries except on medical care.

Labour in the prison was not made very rigorous. Even those who were sentenced to hard labour were generally engaged in the work of common artisans and craftsmen.\textsuperscript{44} The object was to reform the prisoners and to train them in arts and crafts in order to make them useful earning members of the society after their release. The credit for introducing plans based on these noble sentiments belonged to an able civilian, Newnham, the Judge and Magistrate of Cuddapah. It was he who for the first time systematically employed the prisoners for manufacturing different items like tools, carpenters and masons bricks, mats, cumblies and coarse cloth. The last three items were for the use of the prisoners themselves.

\textsuperscript{42} C.D. Maclean, \textit{op.cit.}, p.509.

\textsuperscript{43} B.S. Baliga, \textit{op.cit.}, Vol.1, p.271.

\textsuperscript{44} Ibid., pp.269-270.
The Madras Council recommended his plans to all criminal judges of the Presidency for implementation.\textsuperscript{45}

In course of time, these items of labour were considered too light to be allotted to convicts sentenced to hard labour. From the beginning minor public works such as erecting small bridge heads or repairing minor roads were occasionally entrusted to the prisoners.\textsuperscript{46} In 1816 Wright, the Criminal Judge of Chittoor discovered the immense possibilities of convict labour for constructing large irrigation tanks and repairing trunk roads. Accordingly, the Government ordered the systematic employment of convicts on such public works in all districts. Since then the convicts of a whole division or a group of districts were regularly employed on public works under proper supervision.\textsuperscript{47}

Generally strict vigilance was kept in order to maintain discipline. The prison authorities were empowered to hold summary esquires into all matters relating to discipline and to punish refusal to work or willful defiance of rules by stripes up to sixty and by reduction of diet allowance. Resistance to the jailor, abusive language, riot, insurrection, attempt to escape or tempering with irons

\textsuperscript{45}Madras Council, Judicial Despatches to England, 5 January 1816, Vol.4, paras 31-33.

\textsuperscript{46}Do, Judicial Consultations 12 April 1808, Vol.34, p.1097.

were punished by awarding stripes up to 150 and, as far as practicable, even by solitary confinement. Whippers were not to strike on any part of the body except the upper part of the back. The prison doctor could step them whipping it he deemed it necessary.

**Reorganisation of Police**

It was essential to have an efficient police system not only for the working of the judicial system but also for maintaining law and order in the country. The police duties performed by the kavalkars in the villages and kotwals in the towns were not of the mark. Therefore the East India Company tried to dispense with this system in 1801. In the districts the collector was given *sibbandy* peons. He employed his *sibbandy* peons under the control of revenue servants for the apprehension of criminals and for the maintenance of law and order. In 1802 the policing of the village was restored to the village *taliarics* under the supervision of the collector. The poligar was relieved from all the police and military duties. Thereupon the Government carried into effect reforms for the administration of police in the districts.

Accordingly series of regulations were passed in 1802 for reforming the


police administration. They transferred the control of the police and the functions of the district magistrate to the collector. After investing the collector with the authority of a magistrate, the Sadar Adalat issued regulations to give effect to the directions of the Court of Directors. The first regulation in this regard restored the management of the village police to the heads of the villages and of the district police to the tahsildars or amuldars under the collector.\(^{51}\) The hereditary village officials were allowed to perform police duties. The headmen of the villages were empowered to hear and decide petty cases. The competence of Indian judicial officers was promoted through a simplification of various rules that were framed for practising in law courts. Panchayats or courts of arbitration were created for villages and larger areas. As a result the police came to perform many of the duties for which kavalkars, sibbendies and sepoys were formerly employed.\(^{52}\)

It was found necessary to arrange for a regular police in order to preserve order and promote and safety of the inhabitants.\(^{53}\) Therefore in 1815 the Madras Council appointed a commission to suggest reforms. On the basis of the report of the commission, the Madras council enacted the Regulation of 1816. It entrusted

\(^{51}\)Extract from the Letter of Colonel Munro, First Commissioner to D.Hill, Chief Secretary to Government, Madras, 24 December 1814, p.422.

\(^{52}\)C.S.Srinivasachari, History of the City of Madras, p.216.

the responsibility of police duties with the village headmen, the tahsildars, the kotwals and the zillah magistrates in their respective areas of jurisdiction. They were assisted by clerks and peons.\(^{54}\) This reform represented a compromise with the traditional system, for by this reform the headmen of villages and kotwals of towns regained a status in the administration of law and order.\(^{55}\)

In spite of these reforms there was not much of improvement in the crime situation. The police administration continued to be inefficient, corrupt and oppressive much due to the combination of revenue and police authority in the same agency. The village headmen and the tahsildars concentrated their effort on the collection of taxes and neglected the police duties. Nevertheless the police forces served the needs of imperial authority for law and order were its main concern.

\[^{54}\text{K.Rajayyan, History of Tamil Nadu (1565-1982), p.258.}\]

\[^{55}\text{Police Department, The History of the Madras Police, Madras, 1959, p.250.}\]