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A HISTORY OF THE DEVELOPMENT OF THE JUDICIARY IN THE PUNJAB (1846-1884)

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A HISTORY OF THE DEVELOPMENT OF THE JUDICIARY IN THE PUNJAB.

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CONTENTS.

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PREFATORY NOTE.

In this monograph Lala Ram Lal Handa has traced the history of the Development of the Judiciary in the 38 years from 1846 to 1884. In an introductory chapter he gives a summary of the condition of the province from a judicial point of view in the years prior to the advent of the British.

Up to that time the Punjab can hardly be said to have had a judicial system at all. The old machinery of the Mughal days had passed away, and the Sikhs did nothing to replace it. Crime was suppressed by brute force and by sheer terrorism. Methods such as those employed by Avitable in Peshawar were found the best means of preserving order. When the British came they had to build up a judicial system *de novo*, and to a student of the history of institutions these years of construction form an interesting study. The early form of the administration of justice was simple, almost patriarchal. Under a special Act criminal justice was in the hands of the Commissioners whose decision was subject to confirmation by the Judicial Commissioner—all death sentences being confirmed by the Lieutenant-Governor.

The next step forward was the introduction of the Indian Penal Code in 1862, by no means welcome at first. This was followed in February 1866 by the establishment of the Chief Court—the last Judicial Commissioner, Mr. A. A. Roberts, becoming the first Chief Judge and a barrister, Mr. Boulnois, becoming the first puisne judge. The years that follow show the rapid development of a more complicated system of justice suited to the more highly organized life of the community. The various subordinate courts come into existence, both on the civil and criminal side. Further the Punjab begins to form a series of legal precedents of its own, and these are embodied in a regular series of "Law Cases" appearing for the first time in 1868.

Side by side with the development of the judiciary went the development of the Police and the steady diminishing of crime—which the author illustrates by a series of tables.

The Punjab was a lawless country in early days, and crimes of violence were only too common.

But before the end of the period under review efficient police and rapid and speedy justice had brought about a remarkable change.

H. L. O. GARRETT,
Keeper of the Records
of the Government of the Punjab.

LAHORE :
April 1927.

PREFACE.

THE object of this thesis is to relate from official and non-official sources, the history of the development of judiciary in the Punjab. The subject is so vast that this work cannot even pretend to be a summary, much less a complete account, of the development of the system.

The material is scattered here and there in the Punjab Administration Reports and in those submitted by various officers. Very little non-official information about this period is available, and whatever there is, has been studied with utmost care and caution.

I am afraid I have not been able to do full justice to the subject. Many important omissions have been made on account of lack of time and space. The sedition cases and appeals to the Privy Council may be taken as notable examples.

I cannot claim to have made a thorough study of all the acts passed, and circular orders issued, in this period, but their bearing on the working of the system has been studied and given. Details have been avoided as far as possible. A certain amount of repetition could not be avoided.

Great pains have been taken in the preparation of statistical tables, and for this part of my work I have relied upon the Punjab Administration Reports and those of the Inspectors-General of Prisons and Police.

In conclusion I wish to extend my thanks to my teachers, Professor H. L. O. Garrett, Lala Sita Ram Kohli and Lala Amolak Ram Khanna, whose help and guidance have been invaluable in the preparation of this work.

RAM LAL HANDA,

Dated 8th April 1927. *Government College, Lahore.*

CHAPTER I.

Introduction.

The subject of my monograph 'The History of the Development of Judiciary in the Punjab' is quite new in itself, because before the beginning of the British rule there was no such separate department under this designation existing in this country. The attempt was a new one, and was a striking success, as the following pages will reveal. There have been shortcomings, but after all it was a leap in the dark at that time. The modern conception of judiciary was quite foreign to the minds of our forefathers in this country. Western definition applies to Western countries, and does not hold good in India. Traditions centuries old could not be toppled over, and, like every conquering people, the English, while imposing their own laws respected the prejudices of the people. It was fortunate that they came from a country where people had great reverence for their good old laws. It is much easier to expect regard for the customs of a conquered people from those who have it for their own. The English came from a country where the Rule of Law was predominant, where every man was amenable to the ordinary law of the land, and where no man was above the law. They had already some experience of the judicial administration in other parts of India and knew the efficacy of their own system there. It was to be enforced in this province with certain reservations.

To have a clear and detailed knowledge of the evolution of the system, it is absolutely necessary to know something about the state of the country, the customs prevalent and how far they were respected, the nature of crime and the modes of its suppression, and the adjustment of civil suits, in short, a broad outline of the system itself in the days of the Sikhs who were the last ruling race.

Before Ranjit Singh.—Before the consolidation of the Punjab, under Ranjit Singh, it was divided into small principalities ruled

by independent Chiefs Crime was prevalent to a large extent in a country where the population was more or less illiterate and endowed with very little common sense. Theft, cattle-lifting, robbery and dacoity were of every day occurrence. Some people took pride in the commission of these offences, which they regarded as hereditary professions. "Sense of shame and feeling of honour have no place in the breast of a Jat and the same may be said of the men of other 'low tribes.'"[1] The words of Mr. Prinsep to a considerable extent represent the character of the masses in this province. There was very little security of private property, because thieves and wrongdoers could easily escape to some independent Chiefs' territory, whence their surrender was rarely demanded.

The measures employed for the suppression of crime were rude and mechanical. There were no regular courts of law and no separate department of judicial administration. Every Chief decided cases according to his own discretion and regarded justice as a source of income, as in England in the early days. There was no hierarchy of courts, and no written laws for the guidance of the judges. The same officer had to do the multifarious duties of collecting revenue, of police, and of dispensing justice in his chiefdom. There was no uniform system of law for the country as a whole, and no common authority to enforce it. Still in the Chieftain's own territory, the rights of private property, of contract and conjugal obligation, etc., were enforced with rigour. But money played the most important part in the transactions between the individuals and the chief and individuals themselves. The main concern of the Chieftain was to make money out of the whole transaction as long as it was consistent with the maintenance of peace. It was not his look out to see to the merits of the case. The stand point of the state is depicted in these words :—"He who gains his point pays his 'shookrana' or present of gratitude, and he who is cast pays his 'jureemana' or penalty." Crimes were atoned for by money payments as in the middle ages in Europe,

[1] Origin of the Sikh power in the Punjab and political life under Maharaja Ranjit Singh : H. T. Prinsep, page 209.

and the punishment mostly resorted to was a fine. It was not imposed in obedience to some general rule, but arbitrarily according to the means of the offender. The officers of the chiefs had too often recourse to very harsh and cruel measures in order to elicit confession, or extort money for real or supposed offences.

In all this chaos and confusion there were certain rules or customs (or whatever they may be called) for offences of common occurrence. Cattle-lifting, very repugnant to the Jat rulers, and a great hobby of the agricultural tribes, was punished with the utmost severity. If a "Soorakhoj" or trace of footsteps was carried to the gate or the door of the village, the Zamindars were to make good the loss or show a track beyond their own village. On the commission of a "Daka" or burglary or highway robbery, the chief within whose jurisdiction the act was perpetrated had recourse to the lex talionis or some other retaliatory measure. This summary method of indemnification was of absolute necessity as many of the chiefs and their Zamindars harboured criminals and shared in their malpractices. Debtors and revenue defaulters often absconded and found shelter in some other Chief's territory and thus very easily evaded the payment of claims against them. A promise was made to pay their debts on security, when they had the means to do so.

The procedure was very primitive. Arbitration was freely resorted to in villages and in towns. In the towns the commercial disputes and in the villages the disputes about the boundaries were decided by these means. These arbitrators or "Punches" were not free to act as pleased them best, but were influenced by parties and their Chiefs. According to Prinsep "the litigants made choice of equal number of Moonsiffs or arbitrators, in some cases one each, in other two to three each. The Committees would prolong their sittings for weeks and months being all the while fed and paid by the parties, caressed and threatened by their Chiefs, by their relatives and friends, influenced by party spirit, governed by fear, and little verifying the statement common amongst them 'Punch-

men Purmeshwar[1]''. In some cases bloodshed in boundary disputes was atoned for by a "nata" or a matrimonial alliance between the two parties, but generally revenge was sought for.

Liberty of the individual.—As might be expected in this state of the country, the individual did not enjoy any liberty and was subservient to the military despotism that prevailed. The right to demand justice from the State, promptness in the decisions and the avoidance of vexatious litigation were things quite unknown to them. Rather these very vices were applied in full force in some cases in order to satisfy the rapacity and greediness of the Chiefs. All officers under the Chiefs, and employed by them in the various divisions of the country, followed their examples, but were ultimately thrown into a bora or dungeon, not to protect the subjects from their rapacity, but to refund the extra gains and satisfy the cupidity of their superiors.

Such in broad outline was the state of the country, when Ranjit Singh began to conquer and consolidate the Punjab into one kingdom. Himself a military despot he had no notion of law, and like those whom he had replaced caused no code of laws to be written. There were no courts in the whole kingdom except one at Lahore — that of the Suddar Adaulatee. In the whole State there were only two kinds of functionaries, fiscal and military. There were no separate officers for dispensing civil or criminal justice. From the very nature of the Government it is evident that Ranjit Singh cared very little for this. His sole aim was to organise a strong military state, and most of his revenue was used for this purpose. Private arbitration was much resorted to under the guidance of local authorities. There were Panchayats in every village, and small civil and criminal cases were decided there. No more than this was required even in the important trading emporium of Amritsar. The "Kazees" and "Kanungos" exercised the functions which they had inherited from the Imperial times. The former continued to ordain marriages, to register last wills and testaments, the latter

[1] Origin of the Sikh power in the Punjab and political life under Maharaja Ranjit Singh H. T. Prinsep, page 202.

to declare recorded facts and expound local customs. However, like all Oriental Kings, the Maharaja would listen to complaints in person on his rides, and would threaten and rebuke local Governors from whose province he heard the complaints. This was not a very good method of controlling the Government officers. His visits must have been after long intervals, and in the meantime the Governors were free to prey upon the people as pleased them best. And moreover for these shrewd and cunning people it was not at all difficult to purchase impunity from the Maharaja, who was always rapacious and in need of money to strengthen his army, to conquer new territories and to subdue rebellion in the already conquered ones. At court he would also hear individual appeals.

In the unwritten penal code there were but only two penalties, fine and mutilation. There was scarcely any crime from larceny to murder for which impunity might not be purchased by money payment. But there was mutilation in store for offences like seduction and adultery which have been regarded with abhorrence in this country from times immemorial. Imprisonment was almost unknown and capital punishment very rare, it was never ordered by Ranjit Singh or executed by his orders. However, he would not interfere in a far off district where, for the preservation of peace and order, an officer might have recourse to harsh measures.[1]

With all these shortcomings there was a well established Government giving peace and security to the people. The offenders were kept in check by fear of the central authority, and there was this authority to enforce law (in whatever form it was) upon the people and keep the turbulent and restless spirits in check. "Private property in land, the relative rights of land-holders and cultivators, the corporate capacity of village communities were all recognised."[2]

To sum up, custom played a very important part in the dispensing of justice. Ranjit Singh's sole purpose seems to have

[1]As in the case of Avitabile in his governorships at Wazirabad and Peshawar—*Editor*.

[2]Administration Report (1849-51), paragraph 28.

been the preservation of peace at all costs, and he left people to administer law amongst themselves as pleased them best. Like all Oriental despots he had no conception of judiciary as a separate branch of Government, and he used it as a means to an end, peace within and the fear of the Khalsa abroad. With all these defects there was a strong Government, but as soon as the Lion of the Punjab breathed his last, everything was reduced to chaos and disorder. Anarchy prevailed and justice between man and man was difficult of attainment.

It is beyond the scope of this small monograph to trace the steps whereby order was restored, but suffice it to say, that after the Sikh Wars, when the Army of the Khalsa was curbed, and the Chiefs humbled, there was set up a Regency under the control of the British, composed of the Chief Sardars of the late Government, to rule in the name of Dalip Singh, a child of 8 years. With the establishment of the Regency, western methods of administration were for the first time introduced into this country. Individuals of integrity and repute were appointed as separate administrators of civil and criminal justice. The penal code was reduced to writing and was made more severe, just and humane. A Central Regency Council was established and all heinous offences were reported to it. Appeals were regularly heard in this Council from all the local rulers. Official's misuse of authority was severely punished. European officers were deputed to visit the outlying districts in order to report about the state of crime, the character of the rulers and the customs prevalent, in order to frame a code for the province as a whole. "All the Chiefs who might be considered to represent the intelligence, the honesty and the influential interests of the country were summoned to Lahore for the purpose of framing rules and regulations for the future; and an assembly of 50 Sikh elders, heads of villages, under the guidance of S. Lehna Singh sat for some months at Lahore, in the autumn of 1847, to frame a code of simple laws for the guidance of the Sikh people."[1]

[1] Administration Report (1849-51), paragraph 33.

The Regency period marks a very important stage in the development of the judicial system of the country. The codification of the laws, and the spirit of humanity infused thereunto, exhibits the tendency towards reforms. The foundation of a great judicial system was laid upon which with certain modifications, the superstructure of the present one was to be built. There was coming a change from despotism and militarism to constitutionalism. The assembly of elders that met at Lahore set up a very good precedent. The headmen represented the interests of the diverse parts of the country, and through them it appears that the will of the people was brought to bear upon the codification of laws. They knew well the customs and traditions, and along with the people, were equally conservatives for their preservation.

Such was in short the state of the country at the advent of the British Rule. By the ingenuity of the new officers of the British Government, and under their guidance the laws, hitherto altogether unwritten in this country, were reduced to writing and codified. Courts were established in various parts of the country, and people were made to take more interest in the dispensation of justice.

CHAPTER II.

The Advent of the British Rule.

The advent of the British Rule marked a great change in the administration of justice in this country. In a country hitherto possessing no regular hierarchy of courts, a Board of Administration was appointed with a President and two members. "The Board was entrusted with 'plenary' authority to control and supervise all Departments."[1] They were to exercise the powers of a Sudder Court of Judicature and a Sudder Board of Revenue. The country was divided into five divisions and placed under separate Commissioners. They were Superintendents of Police and Revenue and exercised appellate powers in civil and those of a Sessions Judge in criminal cases. Under them were Deputy Commissioners in charge of districts, who were both Magistrates and Revenue Collectors, and their Assistant Commissioners were entrusted with powers according to their experience and fitness. To the Extra Assistant Commissioners were assigned the duties of Assistant Magistrates, Deputy Collectors and Subordinate Native Judges. The lower courts were those of the tahsildars in every Tahsil for the institution of petty civil and criminal cases. With the abolition of the Board in 1853 a change was made and a separate Judicial Commissioner was appointed. His was the final appellate court. He was also the head of the Police.

Even with this elaborate machinery in hand there were many difficulties in the way. A reference has already been made to the state of crime in the country. The special circumstances called for special attention. The wooded wilds in the centre of the country were to be intersected by roads. The people were to be disarmed, and the various strongholds demolished. Gang and highway robbery were prevalent to a great degree. "The greater the Chief

[1] Administration Report (1849-51), paragraph 91.

the greater the bandit."[1] The former had been adopted as a national profession by the Sikhs, and it was expected that with an Army of 50,000 men, disbanded and disgusted with the conquerors, with a population devoted to the cause of the old régime, it might not increase. Female infanticide was a crime most resorted to by the rich Khatri and Bedi castes. They used to kill their girls when they were of very tender age. The motives according to the authorities were two fold, " the pride of birth and pride of purse."[2] It would be more correct to say that the motives were the pride of the birth and the poverty of purse. Marriage among Hindus was a costly ceremony as it is even now.

Special measures.—A grand meeting was held at Amritsar, and was attended by ' the nobility, chivalry and hierarchy of the old régime ; wealth, rank and influence of the new one.' All the weight that official position and influence could, was also brought to bear. Maharaja Gulab Singh of Jammu and Kashmir lent his assistance. In addition to all this the new measures through the vigilance of the Police proved quite equal to the task. In course of two years not a single gang was left at large in the province. Highway robbery was exterminated by the network of roads and the patrolling of these by foot and mounted Police. Adultery, which was regarded by the people with a vindictiveness only to be appeased by murder or mutilation of the parties, was reduced to a considerable extent by the severe laws and the arbitrary powers given to the Magistrates for the summary trial of those prosecuted under them. It is important to note that many crimes already prevalent in the Punjab were altogether suppressed by the year 1852. " Thus child stealing, the importation of slaves and counterfeiting coins, crimes which were connived at and even legalised to a large extent by the regular payment of taxes began to disappear."[3] Murders by Thuggee were altogether extinct by the year 1853. "Mazbis" who formed the most important element were placed under a quasi-surveillance by the Police. The aboli-

[1] Administration Report (1849-51), paragraph 194.
[2] *Ibid* (1851-53), paragraph 171.
[3] *Ibid*, paragraph 197.

tion of the Branch Thuggee Office at Ludhiana in the same year stands as a conclusive proof to this. Limits of space and time do not permit a comprehensive account of the offences, and the remedies provided for them and, therefore, we turn to the Police force which has investigated crime, and brought to trial those who have ignored the law.

Everybody is familiar with the 'red turbaned' and 'Khaki uniformed' Police. To some it is a terror, and to others a force which keeps peace and order. The force was not always what it is. It has passed through many vicissitudes, and its present efficiency is the outcome of the experience of the past. After the annexation, the Police force was divided into two parts—(*i*) the preventive Police with a military organisation, (*ii*) detective Police with a civil organisation. The preventive police was again sub-divided into two parts—(*i*) infantry, (*ii*) cavalry. Both arms of the service were regularly armed and equipped. The infantry furnished guards for jails, treasuries, frontier posts and city gates, and escort for civil officers. The cavalry were posted in detachments in Civil Stations and at convenient places on the roads to serve as mounted patrols. Both the Cavalry and Infantry were ready at a moment's notice to help the city police. The detective police was subdivided under two heads—(*i*) regular establishment paid by the State and the rural Constabulary paid by the people. The country was mapped out into 228 police jurisdictions. In every department a Police Officer with one or two subordinates and about thirty policemen was stationed. For the control of this establishment Tahsildars were invested with Police powers within their own jurisdiction. However, the Board took the precaution of defining the Tahsildar's police, fiscal and revenue duties. The duties of the Police are summed up in the First Administration Report :—" Besides the reporting of crimes, the tracking and arresting of criminals, the serving of processes, they collect supplies for troops and boats for the passage of the rivers ; they guard ferries, they escort prisoners. A complete system of diaries and records is maintained."[1]

[1] Administration Report (1849-51), paragraph 167.

The extent of the Police department and the strength of the establishment varied with the scarcity or density of the population and the special circumstances of the locality. On the Frontier special arrangements were made for extra police, and the intersection of the whole tract by roads, bridged and fortified by Police Stations, and radiating from Peshawar. Sufficient care was taken of the armed travellers who came into the city by ordering them to deposit their arms at the Police Station before entering, to be given back to them on their return. Unregistered workmen were severely punished in the cantonment. Rules were issued to the effect that any hotel or 'hujra' harbouring enemies to the public peace would be demolished. The stringency of these rules was justified by the unsettled state of the country for a long time past.

As for the efficiency of the force, making due allowance for all the difficulties that the Government had to face in getting suitable recruits at such a meagre pay, and that the character of the Police had rarely been a matter of congratulation in India, and that the upper and middle classes of society abstain and have abstained from service in the Police, except in some higher grades, the force in this country was above the average. They succeeded in capturing a sufficient number of criminals and recovering a considerable amount of stolen property, and rarely evinced cowardice. The Punjab Administration Report runs thus :—" With a Police force of 14,000 men internal peace has been kept from the border of Sindh to the foot of the Himalayas, from the banks of the Sutlej to the banks of the Indus, and this when a disabanded army of 50,000 men had mingled with the ranks of the society, when countless adherents and servants of the old Government were wandering unemployed about the country—when the most influential sections of the population were still animated with a feeling of nationality, of revenge against the conquerors, of dislike to a change of institutions. So thoroughly has turbulence and sedition been laid asleep that no single riot has anywhere broken out. Nowhere has resistance been offered even to the meanest servant of the Government. All violent crime has been repressed, all

gangs of murderers and robbers have been broken up, and the ring-leaders brought to justice. In no part of India is now more perfect peace than in the territories lately annexed."[1]

The detection and investigation of crime leads to the criminal law being introduced, and the various courts set up. The Penal Code known as the Punjab Crimes Act, was the first instrument under which justice was administered in the province. The crimes were divided into four classes according to the gravity of their nature. "Crimes not denoting great depravity and not subversive of society which are regarded by the public as venial have been treated with unusual lenity. Crimes in themselves destructive of morality and socially dangerous, which are regarded by the public with peculiar abhorrence, and which lead to crimes of deeper complexion, have been treated with unusual severity, crimes perilous to order and to the common weal which are nevertheless regarded with a spurious sympathy, have been punished with as much rigour as if they had been generally viewed with their due degree of detestation."[2] As regards courts, there were established 104 small cause courts, one almost in every tahsil, for petty cases. For more intricate cases there were Magistrates and Sessions Court in the district. The highest appellate court was that of the Judicial Commissioner.

The Police could investigate the crime and bring the criminals to the Courts, the Courts could award the punishment, but for the detention of these convicts, and to exercise upon them a reformatory and deterrent influence, the construction of jails in all the districts was an absolute necessity. They were divided into three classes, (*i*) Central Jail at Lahore, (*ii*) three provincial jails at Rawalpindi, Multan and Ambala, (*iii*) 21 jails in each of the districts. By the year 1852-53 the construction of the jails was completed all over the province. A further improvement was made in the year 1853 by the abolition of out-door labour and the enforcement of the in-door form. Every jail was made an indus-

[1] Administration Report (1849-51), paragraph 190.

[2] *Ibid*, paragraph 193.

trial institution and the variety of the articles manufactured was interesting. Even a lithographic press was introduced into the Amritsar Jail. In addition to all these manufactures the prisoners grew vegetables for themselves, made their own clothes, performed menial duties, and repaired the prison walls. In many jails rudimentary education was given to the prisoners. It was expected that every prisoner whose term was not to be of the shortest would leave the jail, "having acquired a useful trade, learnt to read and write and received the elements of practical knowledge."[1] Men were no longer to be demoralised in a place where they were being kept for the good of society. A deterrent, reformatory and preventive effect was to be produced and such terms as 'sink of iniquity, hot-bed of treachery and nursery of crime,' were no longer to be applied to the new jails in this country.

Last but not the least came Civil Justice. All the measures of the police and criminal law are means to an end, the preservation of peace, from which follows the security of private property. Even in the days of Sikhs and under Ranjit Singh private property was secured and looked after. Much attention was directed towards making justice cheap and easy of access. The litigants in this country are, and have been, of average intelligence and means, and have often fallen a prey to the wicked and designing. It was thought imperative to provide justice cheaply for those who could not purchase it at a higher price.

Soon after the annexation, to relieve the judicial department of its most onerous duty of hearing cases pertaining to landed property, they were transferred to the Revenue officers. In the beginning of the year 1853 the courts were divided into four grades (*i*) Deputy Commissioner, (*ii*) Assistant Commissioner, (*iii*) Extra Assistant Commissioner, (*iv*) Tahsildars. The first and second of these classes were covenanted European officers and the third class was partly Indian and partly European. The fourth class was mainly Indian. The Deputy Commissioners had original juris-

[1] Administration Report (1851-53), paragraph 234.

diction in cases of high value and appellate jurisdiction over the lower courts in addition to their magisterial duties. The other courts had powers to try cases in varying degrees. The lowest and the most accessible were the Tahsildars' Courts. There were 104 such Small Cause Courts and justice was brought near to every peasant's house where he could avail himself of it. Sufficient care however was taken not to overburden the Tahsildars with civil work lest it might impede their fiscal and magisterial duties.

Laws.—During 1853 a brief Code[1] was prepared embodying the principles of law for the guidance of the Courts. Due regard was paid to the local customs and peculiar circumstances of the localities. The Muhammadan law was to apply to the Muhammadan cases and the Sikhs and Hindus were to be guided in secular and civil matters by Hindu Law.

Nature of litigation and procedure.—The litigation appears to have been of a trivial nature and most of the cases did not exceed the value of Rs. 300. Special attention was devoted in the beginning to the simplification of procedure. The aim of the Board was "to avoid technicality, circumlocation and obscurity, to simplify and abridge every rule, procedure and process"[2]. People had much liking for private arbitration, and this was allowed under the supervision of the Courts. The parties were themselves allowed to choose arbitrators in the court room, subject to the approval of the Court. A good deal of power was given into the hands of the presiding officer who was to look after hasty and partial awards. The code was made simple and free from intricacies to suit the needs of a primitive country where the litigant could possibly have no knowledge of the legal technicalities. Arrangements were made for bringing face to face the parties when any specific issue had arisen in the case and "that in all cases whether original and accessory, or in appeal, the Courts should be guided by facts and principles and not by technicality."[3] During the first three years

[1] Punjab Civil Code.

[2] Administration Report (1849-51), paragraph 221.

[3] Administration Report (1851-53), paragraph 254,

the duration of cases was reduced from 47 to 36 days, thus making litigation less vexatious to the people. In the execution of decrees much attention was paid to the enforcement of claims, and rapid payment from monied defendants, and payment by instalments by those who were in abject circumstances. The intention of the Government was from the very beginning to save the landed property from the hammer of execution.

Safeguards against official inexperience.—On account of the necessity of systematic control in a new country, the Deputy Commissioners were ordered to send for the files of the cases disposed of by the Tahsildars even without appeals being preferred by the parties, and to scrutinise the decisions. With the same end in view the young European officers were ordered to submit monthly statements of the cases decided by them with the grounds of the judgment to their Commissioners.

Inspite of all these reforms it was found very difficult to popularise Civil Justice in the country because "there is no part of the British system more difficult to popularise."[1] The people had never known for centuries back anything like graduated scale of civil courts, and all the technicalities howsoever simplified were perplexing to them.

Punishment of officials.—It is absurd to think that the Government under the guidance of those who belonged to a country where the Rule of Law prevailed would not have provided safeguards against official misconduct. The Judicial Commissioner in the year 1853 furnished a long list of those Government servants who had been punished for neglect of duty and official misfeasance. It included men from the lowest to the highest grade. It is beyond doubt that more cases were from the lower classes on account of the meagre pay they got. "The punishments were rarer in higher ranks of all branches of the department and the majority fell in the lower classes of the Police."[2] The statement of the Judicial Commissioner lays bare the fact before those who look at it

[1] Administration Report (1849-51), paragraph 228.

[2] Administration Report (1851-53), paragraph 222.

three quarters of a century later, and at a time when the slightest abuse of official authority is severely dealt with, that the vigilant eye of the British officials was always closely watching the conduct of their subordinates. But there is one thing which may have induced the lower grades of the services to the misuse of their authority. And this was lack of adequate remuneration. The fault also lies to some extent with the Indian character which from very early times had been corrupting the lower ranks of the services by small amounts of bribery in order to save something substantial from the Government. This thing has been gradually remedied in the later years, as we will see hereafter, and though our Services are not quite free from it at present, it has diminished to a considerable extent.[1]

To sum up, by the year 1853 a regular organised department of judiciary was set up, civil and criminal justice was brought to the doors of the village peasants, a police force for the detection of crime was working vigilantly, and jails—reformatory and deterrent —were established in every district. Crime was thoroughly investigated and wrongdoers brought to justice to suffer for what they had done, and to improve for the future. The system as a whole was made popular with the people and they availed of the facilities provided by the Government. The procedure in the courts was much simplified and official misconduct was severely punished and in place of anarchy and absolutism that prevailed before the beginning of the British Rule a regular Government based on modern principles was set up. The development of the various branches will be dealt with in the following pages.

[1] Administration Report (1851-53), paragraph 27.

CHAPTER III.

Police—The investigation and suppression of crime.

The police plays a very conspicous part in the administration of justice in a country. The investigation and prevention of crime and apprehending of criminals falls to its share, and in the exercise of these duties it may coerce the people or protect them ; help the judges in the discovery of truth or delude them in the administration of justice. The Police have been called the custodians of public peace and the most trusty servants of the State, and it is in the light of these facts that the development of this service will be traced and true estimate of their efficiency made. And it is for this and other cognate reasons that the first place in the history of judiciary in this country is given to this department. It is beyond the scope of this monograph to deal with every act of the Police and to give a detailed and comprehensive account of its doings. Effort will be made to give in a broad outline a connected account of the development of the organisation, and the investigation and suppression of crime.

To achieve this end the period has been divided into three well marked divisions, corresponding to the development of the system and the important changes introduced. The first covers the years 1849-59 when the Military and Civil Police were working side by side both in Cis and Trans-Indus districts. The twelve years from 1860-1871 mark another important division when the new system was introduced under Act V of 1861 in the Cis-Indus districts, while the old one continued to be worked in those in the Trans-Indus. The third period begins with the year 1872 when the whole country was brought under the new system with slight reservation in the Trans-Indus districts.

I Period, 1849—59.—The organisation of the Police between 1849—59 was partly civil and partly military. The military Police was composed at the close of the year 1859 of ten battalions of

foot under native officers, Jawahir Singh's contingent, the Suttee Company, some foot levies and the mounted branch. The organisation was purely military and the duties such as can best be taken from a disciplined force. For emergency and immediate action a reserve was kept in the districts while the rest performed the duties of guarding ferries, jails and treasuries and acted as escorts for civil officers. The whole force was under the order of six Captains. The civil branch was under an entirely distinct organisation similar to that in the older provinces. They were purely a local constabulary for each district.

There are conclusive proofs of the efficiency of the force as the constant decrease in the total number of cases reported (from 1852 to 1857) shows. In the former year there were 415 cases of the 1st degree of atrocity reported, which fell to 195 in the year 1857. There began a slight increase in 1858 and 1859 showing thereby that the detective system had reached great efficiency, and that there was not a considerable number of cases that remained unreported. The same is the case with the crimes of the second class which fell to 541 in 1858 from 791 in 1852. 75·86 per cent. of the cases reported in 1859 were brought to trial and only 25·91 per cent. of the total number of persons put on trial were acquitted. The high percentage of convictions to acquittals bears testimony to the fact that the cases reported were real and not false. There is only one branch of the system where success was not so marked as in others. Taking into account the general aversion of the people to report cases of theft to the Police, 27·50 per cent. of the amount of stolen property recovered was far from satisfactory. But then there is one thing that can go in favour of the Police. The people themselves do not and might not have helped the Police in the recovery of the stolen property which cannot be done, but with their assistance.

In addition to these routine duties the force passed through the most critical years in its history. During the mutiny there were grave apprehensions in official circles as to whether the police would show the same apathy and cowardice for which

Indian Police had been notorious or would the mass of them behave with ' a fair degree of courage, fidelity and zeal.' Their behaviour was remarkable with a very few exceptions, which were made good by the help rendered by them elsewhere. It is important to note in this connection that all the additional Police engaged in the crisis was dispensed with by the 1st May 1858 with the exception of 496 men.

Special measures.—Special measures were taken to improve those members of the society who were not convicted formally of any crime but were bad characters and imprisoned in default of giving security. The ' Sansees ' in the Pargana Daska of Sialkot District were given some uncultivated land and advances in money to adapt themselves to agriculture. They were made to break the soil in the very presence of district officers.

II Period.—The period intervening between 1860 and 1869 witnessed very important changes in the organisation of the force. A great administrative reform was initiated in this department, in accordance with the general principles laid down by the Calcutta Police Committee, and subsequently embodied in Act V of 1861. The main objections to the old system were the union of Police control and criminal jurisdiction in the person of a magistrate, and the great expense. The first step towards organisation was the fusion of military with civil Police. To reduce the expenditure the minimum number for each district was fixed and the number of posts was reduced. The entire constabulary was placed under the orders of an Inspector-General who was to be in direct communication with the local Government.

Subordinate to him were four Deputy Inspectors-General whose control extended over all the Police stationed in territorial circuits, comprising two or more revenue divisions; under these again were Superintendents, one for each district, assisted by an uncovenanted officer. The subordinate grades were designated as Inspectors, Deputy Inspectors, Sergeants and Constables. In the Trans-Indus districts the Police control was still left in the hands of the magisterial authorities. " The political skein is so

intricate, that the several threads must be held by one hand."[1] The Thana Police and the city-watch men were fused into one, and organised like the regular constabulary. Every man had his appointed beat and was periodically relieved. In the rural areas the Chaukidars were dispensed with and Lambardars were ordered to report every case once a week. Regarding the new agency of Lambardars the Punjab Administration Report for 1860-61 runs thus :—" We need men with the leisure, the knowledge and the zeal to observe and report the transition of the natural thought and habits, and to familiarise us with their tendencies."[2] Such information being indispensible for the successful working of the Police system the Lieutenant-Governor sanctioned ' inams ' of lands to respectable zamindars who would take upon themselves the duties of keeping the Government in touch with the happenings in the villages. There were no other remarkable changes in this period except the investment of the village jageerdars with Police functions in 1861 and their withdrawal in 1864, the relief of the Derajat Police from guarding the border, the incorporation of the Trans-Indus Police in the Punjab Police and the organisation of a special Railway Police in 1869. In the end of 1869 the force was sufficiently strengthened, and measures were taken for improving and re-organising it in the remaining frontier districts.

Special measures.—During these years many important steps were taken towards the relieving of society, from the too common oppressions of the habitual offenders, who had made it their profession to prey upon their peaceful neighbours. To suit the times surveillance was begun in 1862 and declared illegal by the Chief Court in 1868. Some account of it is necessary in an account of the development of the Police system. These habitual offenders were divided into three classes—

(*i*) those who having been convicted had passed sometime in the jail,

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[1] Administration Report (1860-61), page 36.

[2] *Ibid*, page 39.

(*ii*) individuals who had not been convicted but were suspected as dangerous members of the society,

(*iii*) tribes whose unsettled life was a source of trouble to the public generally.

Before 1862 the habitual offenders had been discharged from the jail without the Police department being informed about them. Arrangements were made for the despatch of a descriptive roll of such prisoners on their release, by the Superintendent of the jail to the Deputy Superintendent of Police of the district to which they belonged. The Police authorities were enjoined to give every possible aid in completing the good work supposed to have begun in the jail, by keeping a close watch over them and helping them in procuring good work and means of honest livelihood. To obtain correct information about those who were suspected of criminal habits, recourse was made to the headmen and other respectable members of the village communities, and the Magistrate, having satisfied himself that there were sufficient grounds for placing the suspected men under surveillance, would demand securities for the periods and under conditions prescribed by Act XXV of 1861. Quite an ingenuous plan was suggested by Mr. Prinsep regarding the predatory tribes. The chief causes that led to open crime by these people were the want of fixed abodes and of necessary means of livelihood, and their predatory habits.

The Police usually had recourse to watching and hunting down these tribes. Finding this unavailing they were known to summon and keep them "locked up during the dark nights within the Police stations liberating them in the morning."[1] The one effect was to break up their encampments, but they usually lived in easy reach of another. "Headmen harboured them and the village watchmen shared their spoils."[2] Very often they were passed on from village to village without the Police being able to trace them, and the people

[1] Administration Report (1862-63), page 46.

[2] *Ibid*, page 47.

were harassed on every side. "As for punishment no good result from it. No sooner out of jail they were again arrested, convicted and incarcerated. Their ways were evil. They knew no better."[1] In accordance with the recommendations of Mr. Prinsep they were forced to reside on Government lands and cultivate them. Temporarily they were allowed to reap the entire fruits of their labour. In the daytime they were free but anybody who absconded was given an examplary punishment on his return. At night they lived in houses in an enclosure guarded by Police, and were thrice mustered and counted.

The introduction of these measures was more or less necessitated by the special circumstances of the time. "It is justly stated that the ordinary penal procedure had totally failed in repressing this element. Individuals were, no doubt, occasionally arrested and imprisoned, but their families were maintained by their associates, and the confederacy strongly bound together by ties of blood, habits and traditions, continued to ply their hereditary trade of theft without serious interruptions, so that, although it was universally known that they subsisted by robbery, and were execrated as a public nuisance their immunity from legal conviction left them as a body permanently efficient for crime."[2]

As regards the efficiency of the force the gradual increase in the offences cognizable by the Police between 1860-69 appears alarming at the first sight, but when the special circumstances that contributed to it to a large extent are taken into consideration it falls to a very moderate figure. The country had been occasionally visited by famines, and the rise in the offences was parallel to the rise in the price of wheat. The following table will make it more clear.

It shows the number of offences which occurred annually in the Punjab during the five years from 1866-70 with the average

[1] Administration Report (1862-63), page 47.
[2] *Ibid*, page 47.

price of wheat in each year :—

Year.	Offences.		Average price of wheat.	
	Cis-Indus.	Trans-Indus.	Cis.	Trans.
			Srs. Ch.	Srs. Ch.
1866	27,428	5,610	20 13	20 7
1867	28,712	5,399	20 8	21 9
1868	33,146	6,421	16 7	15 9
1869	37,739	6,895	11 4	13 14
1870	34,027	7,224	14 2	13 13

Increase in population.—The increase was also attributable to the better registry of crime, increase in population, the inclusion in the returns of the offences under local and special laws and the general tendency of the people to co-operate with the Police. A comparison with the working of the department in other provinces also bears testimony to the superior efficiency of the force. The following table illustrates the comparative working of Police in Bengal, North-Western Province, Punjab, Oudh and Central Provinces :—

Province.	Population.	Ratio of Police to Population.	Proportion of cognizable cases brought to trial.	Percentage of acquittals and discharges to persons arrested.	Percentage of stolen property recovered.
Bengal, 1864 ..	37,000,000	1 constable to 1,633 persons.	..	47·4	25
North-Western Province, 1864.	28,000,000	1 constable to 1,189 persons.	43·5 43	52·6	31
Punjab, 1865 ..	15,000,000	1 constable to 757 persons.	62·3	27·8	32
Oudh, 1864 ..	90,000,000	1 constable to 1,087 persons.	17·6	28·22	10·8
Central Provinces, 1865.	90,000,000	1 constable to 1,153 persons.	54·6	25·1	31·6

In addition to all these the force made a steady progress in recovering stolen property in these years. While it was only 27 per cent. in 1860 it amounted to 38 per cent. in 1870.

One other remarkable feature of the period is the working of the old and the new system side by side in Trans and Cis-Indus Districts. In the eight years between 1862-69 non-bailable offences increased by 64 per cent. in Cis-Indus and 74 per cent. in Trans-Indus districts. Under the new system organised crime was kept far better in check, offences were accurately recorded, the people less oppressed, illegal and unauthorised arrests were rarer, while reliable information of what was going on was promptly furnished to the Government. The comparative working of the two in the year 1866 or 1867 will elucidate it much better :—

Division.	Year.	Cases brought to trial.	Persons discharged.	Acquitted.	Total.	Property recovered.
		Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Cis-Indus ..	1866 ..	51·6	21·3	12·7	34	40
	1867 ..	47·7	23·9	10·1	34	39
Trans-Indus ..	1866 ..	50·5	25·6	24·3	50	22
	1867 ..	51·2	26·9	21·4	49	28

There is no doubt that the old Police was slightly better than the new as a detective body, but the superior efficiency of the new system in other directions outweighed this trifling superiority.

Period III.—This leads us to the third or the final phase of our period. With the extension of the Police Act No. V of 1861 to the Trans-Indus Districts the whole province came under one uniform system, with certain limitations on the power of the Inspector-General. He performed all duties with regard to pay, clothing and supervision while the rest were entrusted to the Commissioners of the Divisions. The Deputy Commissioners were made *ex-officio* Deputy Inspector-Generals within the respective limits of their districts without any prejudice to the exercise of their magisterial duties. It was moreover in this period in the year 1882, that the idea of the competitive examinations was mooted and may

be regarded as the fore runner of our modern competitive examination system for the higher grade of the service.

Special measures.—Two special measures were introduced during this period. Taking into consideration the special difficulties of the frontier districts, "the proneness of the population to violent crimes, the facilities for its commission owing to the absence of prohibition against the possession of arms; the prevalence of the hereditary blood feuds; the low value set upon human life; the deadly implacable resentment of female infidelity; the chances for escape across the border for the criminals and the inviolable asylum there to be found; and the difficulty of obtaining evidence against them when apprehended,"[1] independent hostile tribes were made liable to blockade and reprisal, village communities harbouring criminals to fine and the establishment of punitive police, persons having blood feud across the border to change of domicile and women guilty of adultery to imprisonment. Deputy Commissioners were ordered to convene meetings of the elders according to the Baluch or Afghan usages and refer the guilt of the accused to these. The second important measure was the extension of the Criminal Tribes Act No. XVII of 1871. Its object was to deal collectively with tribes that were criminal by heredity and profession, and was extended to North-West Provinces and Oudh as well. The rules being very stringent it was applied gradually and with caution. Under it so long as the name of even a single member of the tribe remained on the police register, they were forced to live within certain limits which they were not allowed to quit without a pass. It continued to work successfully for some time, and was a great help in curbing the hereditary instinct of the tribes. But the stringency of the provisions led to its evasion and at the close of 1882, 25 per cent. of the Minas in Gurgaon, were absent from their homes without passes. It was towards the close of 1882 that the Government began to think seriously of dealing with these men under ordinary criminal laws.

The increased efficiency of the force during these years was the inevitable result of the introduction of the Police Act V of 1861.

[1] Administration Report (1875-76), page 81.

The following table will show the success achieved by the Police in these years (1872-82) in cognizable cases :—

Year.	Cases.			Persons.		Property.		
	Number reported.	Number in which convictions were obtained.	Percentage of convicted to reported.	Number apprehended less disposed of, died and pending.	*Convicted.* Number	*Convicted.* Per cent.	Stolen.	Recovered.	Percentage.
1872	36,526	14,213	38	26,587	23,583	64	1,012,002	423,039	41·7
1873	34,475	13,854	40	35,660	23,177	65	941,941	390,098	44·4
1874	34,209	14,608	43	35,856	24,370	66	786,404	349,289	41·4
1875	33,810	14,425	42	34,504	23,878	69	794,290	317,998	40·0
1876	33,104	14,238	43	33,376	23,308	69	877,882	390,410	44·4
1877	35,394	15,373	43	34,758	24,507	70	101,925	449,642	44·1
1878	40,993	19,406	47	40,557	28,839	72	1,076,571	436,061	40·4
1879	39,330	17,880	45	37,676	26,955	72	1,064,548	506,055	47·5
1880	34,160	15,789	46	34,126	24,383	72	1,006,647	478,006	47·1
1881	32,817	14,127	43	32,782	22,942	70	1,117,600	488,100	43·6
1882	31,010	12,956	42	32,426	20,974	67	1,020,872	450,037	44·8

The returns exhibit a steady increase in the number of convictions obtained and the amount of stolen property recovered.

CHAPTER IV.

Criminal Justice.

The investigation of crime brings us to the criminal courts, where the offenders against the law are tried and punished, in order to suffer for what they have done and improve for the future to become useful members of the society. All the energies of Police which are directed towards the investigation and prevention of crime can bear fruit only, if there are efficient and impartial courts to dispense justice to those brought before them. The independence, impartiality, incorruptibility and integrity of the judges are the virtues which make the judiciary the most important organ of the State, and these qualities are specially needed in this department where slight negligence on the part of the judges leads to the escape of the criminals, who remain free as a constant source of trouble to the society. On the other hand, their dependence upon Government leads to coercion, and their corruption to gross misuse of authority. There has been a great improvement over what existed before the beginning of the British rule, and it is this improvement in criminal justice that it is the purpose of this chapter to narrate and discuss.

Agency.—A reference has already been made to the various courts instituted in 1849-50. The trying years of 1856—57 bear testimony to the efficiency of the machinery and it proved quite equal to the task, and the despatch of business was as regular as ever.[1] But every year the work began to increase and by 1860 the Tahsildars, the lowest court for the institution of cases, were overburdened with work. To relieve them the foundation of the modern honorary agency was laid by the investment of Jagirdars and subject Chiefs with criminal power in their respective

[1]*Note.*—It is clear from much contemporary evidence that the Mutiny had little effect upon the ordinary life of the province. The Judicial Department in common with others performed its functions as usual.—*Editor.*

estates. They were invested with the powers of Assistant Commissioners, with power to fine up to Rs. 200, and of imprisonment not exceeding six months. An appeal was allowed in every case to the Deputy Commissioner, but he could not reverse their sentence, nor censure them without the concurrence of the Commissioner. This system was extended to Lahore and Simla, where honorary European Magistrates were appointed from the independent communities living there. To try petty cases a Bench of Indian Magistrates, selected for their rank and good repute in which they were held by their fellow townsmen, was set up in Lahore in 1863, and the system extended to Amritsar and Gujranwala in the succeeding years. This is no place for a searching criticism of this honorary agency which relieved the stipendiary one of a considerable portion of its work and has worked successfully for sixty years. Their local knowledge and influence helped a good deal in the prevention of crime and dispensation of justice. At the same time, it cannot be denied that the Government failed in many cases to select proper men, and too much stress was laid upon local knowledge and influence. The European agency though above these defects, lacked the other requisites (local knowledge and experience) and hence the disproportionment of the fines in the later years to the means of the offenders.

There was no other important change in the personnel of the courts and the agency employed up till 1866, the year of the establishment of the Chief Court, the progenitor of the Lahore High Court, except such minor changes as the reduction in the number of sessions courts in 1863 to ten, in consequence of the Deputy Commissioners being invested with the powers to try cases in which seven years' imprisonment was a sufficient punishment; and the establishment of Small Cause Courts in the Cantonments of Delhi, Ambala, Sialkot, Jullundur, Mianmir, Ferozepore, Multan and Peshawar. The Chief Court was opened on 19th February 1866[1]

[1]*Note.*—The Court was started on the authority of a telegram from the Government of India which is preserved in the Record Office. The last Judicial Commissioner, Mr. A. A. Roberts, was sworn in as the first Chief Judge and the first puisne judge sworn in at the same time was Mr. C. Boulnois, Bar.-at-Law.—*Editor*,

to provide the Punjab with a tribunal competent to try European British subjects, theretofore triable by the High Court of Bengal and to secure on the bench of the highest appellate court the services of an officer acquainted with English law and greater uniformity in the interpretation of law. In order to secure these objects it was provided that it would consist of two or more Judges of which one at least was to be a Barrister of not less than five years' standing. It was given power to try European British subjects committed to it for trial in lieu of the High Court of Bengal, and was empowered to remove and try as a court of original civil jurisdiction, any suit falling within the jurisdiction of any court subject to its superintendence, when it thought proper to do so, either on the agreement of the parties to this effect or for the purpose of justice. The other changes made in 1865 were the transfer of more heinous cases to the Sessions Court, the investment of the forest officers with limited magisterial powers, and the empowering of the Deputy Commissioner to distribute business in subordinate courts in order to relieve the Tahsildars. The next important change came when a fresh code of criminal procedure was issued in 1872 repealing the earlier acts on the subject. There were to be four grades of criminal courts—(*i*) The Courts of Sessions (*ii*), (*iii*), (*iv*) the Courts of the Magistrate of the 1st 2nd and 3rd class. The province was divided into Sessions Divisions, and there was appointed a Sessions Judge with a Sessions Court in each such division. The distinction between the three classes of Magistrates rested on the amount of sentence they could award.[1] Magistrates of all the three classes were appointed by the Local Government and acted in subordination to the Magistrate of the District. The Local Government was also authorised to appoint special Magistrates or a bench of Magistrates with powers of the 1st, 2nd or 3rd class.

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[1]A Magistrate of the 1st class might sentence up to the term of 2 years and impose a fine of Rs. 1,000, a Magistrate of the 2nd class might imprison up to six months and impose a fine up to Rs. 200, a Magistrate of 3rd class might imprison for one month and impose a fine up to Rs. 60. The first two might order whipping or include in the imprisonment solitary confinement, but such an order could not be made by a Magistrate of the 3rd class. An introduction to the history of Government of India, part 11, C. L. Anand, page 144.

Laws.—The duty of a judge is to apply the law as it exists, and he is not concerned with its goodness or badness. The enactment of laws is the work of the legislature, and we have seen that there were no written laws in this country before the coming of the British. The period under review is very rich in legislative enactments pertaining to criminal justice, because the new rulers tried to commit everything to writing for the guidance of the courts. Some of the laws continue unamended to-day, while others have been amended in subsequent years to remove the shortcomings not conceived at the time of their introduction, and to meet the arising exigencies. These laws have been a basis for the legislators in the years following 1884, and will continue as a foundation for the future ones. Beginning with 1858, the year of Mr. Thornton's reforms, hardly a year passed without the introduction of some new law or the amendment of a previous one. The Indian Penal Code[1] and the Code of Criminal Procedure were introduced in the year 1862, the latter to be amended in 1868, 1872 and 1882. The Whipping Act of 1864, the Punjab Murderous Outrages Act of 1867, the Punjab Laws Act of 1872 amended in 1873 and 1874, the Courts Act 1877 are only a selection. A detailed criticism of these acts is not possible and would take volumes to write, but their effect in general on the administration of criminal justice is given. The Punjab Murderous Outrages Act still continues to be in force, and just lately there was a motion for its amendment in the Legislative Assembly, which was withdrawn on account of the strenuous opposition of the Government members. The effect of these measures is given under the sub-head Efficiency.

Procedure.—Great stress was laid from the very beginning upon the simplification of the procedure. To begin with, the courts were to be guided by the code of the Bengal Presidency, supplemented by experience of the local conditions. The Judicial Commissioner issued circulars from time to time for the guidance

[1]Not entirely with the approval of the local authorities. "I suppose we shall have to have it" wrote Sir R. Montgomery, the Lieutenant-Governor.—*Editor.*

of the courts. The first step towards the regulation of procedure was taken with the introduction of the Code of Criminal Procedure in 1862. It was amended later in 1868, 1872 and 1882. The attention of the lower Courts was drawn by the Judicial Commissioner and Sessions Judges to the necessity of adherence to the prescribed rules : " This has made a great change and tended considerably to improvement in the administration of criminal justice."[1] During the year 1863 the judicial practice was brought into close conformity with the Criminal Procedure and Penal Codes by the revision and reprinting of circulars and standing orders. In addition to this, rulings on important points of law and practice raised in connection with the Codes, were published occasionally and issued for the guidance of the Courts. Another important change was made in the procedure to check vexatious litigation. In 1868 Magistrates were enjoined not to grant remand of accused on the application of police, except in case of real necessity. This acted as a great check on police manufactured cases. They were moreover prohibited from issuing summons or warrants on mere complaint and before examination of the complainant. In this way the defendant, the case against whom was not very strong was saved the trouble of appearing before the court, and suitors who simply sued in order to trouble the defendant were discouraged. Further, to avoid the hampering of the administration of justice, a circular order of the Chief Court issued in 1869 ruled that applications for transfer or withdrawal of cases should be accompanied by a short statement of the case, and reasons for the application. Before this the rich party often deprived the poor one of justice by the removal of the case to the district or some other higher court, where the latter could not bear the expense.

For the continuity of the thread of narration two important factors in the procedure had been neglected (*i*) assessors and juries, (*ii*) Special procedure in case of European British Subjects. As a rule assessors were used from the very beginning for

[1] Administration Report (1862-63), page 28.

the trial of heinous cases. Every year they improved in efficiency as is evident from the total number of cases in which the judges differed from them.[1] Juries were not employed in this province, and it was only late in 1882 that the Chief Court employed these for the first time for the trial of original cases before it.

To revert to the second factor it may be noted that after the establishment of the Chief Court in 1866, European British subjects were tried by it.* It was for the first time in 1868 that they were tried by the Justice of Peace. Special law of procedure was provided for them in the new Criminal Procedure Code, issued in 1872. A judicial officer who was holding the double office of Magistrate of the 1st Class and Justice of Peace, and was a European British subject himself, could try such cases. The highest punishment that he could award was three months' imprisonment and fine up to Rs. 1,000. If he thought the sentence to be inadequate he could commit the accused to the Sessions, unless the offence complained of was punishable with death or transportation for life, or the Sessions Judge was not a European British subject, in which case the commitment was to the Chief Court.

A Sessions Judge to have jurisdiction was also required to be of the same nationality and he could sentence up to one year's imprisonment and fine. When he thought the sentence to be inadequate he was to transfer the case to the Chief Court. Being convicted by the Magistrate, the offender could appeal to the Court of the Sessions Judge or to the Chief Court at his own option. This was amended in 1884 by Act III of the same year. The Government of India wanted to remove at once and completely every judicial disqualification based on racial distinctions, but could not do it on account of the opposition of the European population. A

	Total number.	Difference.
[1] 1864	292	29
1865	220	19

*Before the establishment of the Chief Court European prisoners had to be sent to Calcutta for trial, a source of very considerable expense to Government, as may be seen by reference to the Records of the Judicial Department—*Editor.*

moderate change, however, was made and a District Magistrate or a Sessions Judge was not to be disqualified from holding a trial merely by reason of his non-European nationality. But to satisfy the European community still further they could claim to be tried by a jury, of which not less than half the number were to be Europeans or Americans.

Punishment.—As regards punishment the tendency of Punjab laws had generally been to substitute fine for imprisonment as far as it could judiciously be done. Early in 1859 it was rendered a universal punishment and the courts were given the right to recover by distraint or sale. Mr. Thornton's reforms in this direction, "intelligibly conceived thoroughly matured and lucidly promulgated contributed much to the amelioration of Punjab laws."[1] They divided the offences into three classes, (*i*) in which imprisonment was a necessary part of punishment; (*ii*) imprisonment might or might not be imposed at the discretion of the courts; (*iii*) it was entirely prohibited. Flogging was legalised in certain offences and on this account a commutation of imprisonment not exceeding three months was allowed. Sentence of imprisonment was made obligatory for the most heinous class of offences, but in minor felonies and serious misdemeanours it might or might not be passed according to the nature of the case, while simple misdemeanours were primarily to be punished with fines alone. The effect of these reforms was the diminution in the number of persons sentenced to imprisonment, the adjustment of the terms of imprisonment and the more frequent resort to flogging and fine. In 1862 a further change in the nature of punishment inflicted came with the introduction of the Indian Penal Code. The year 1864 witnessed the passing of Act VI of 1864 under which the punishment of whipping, well adapted to juvenile offenders, and a check against the overcrowding of the jails was regulated. There was no other important change in the laws regarding the nature of punishment to be inflicted.

[1] Administration Report (1859-60), page 46.

The tendency of the courts in Punjab, as has already been stated, had been to substitute fines in minor crimes for imprisonment. Most of the offences being the breaches of conservancy and special laws, there was no need of making those, who did not deserve deterrent punishment, suffer the contamination of the jails. More deterrent sentences, however, were passed by the sessions courts which tried crimes of more heinous nature. The statistics for the years 1862—67 will elucidate the point still further. This period has been taken because it was then that great improvement was effected. The punishment of fines which was mostly inflicted, did not rise to more than 74 per cent. even in 1884, and the figures in other kinds were also approximately the same, except that there was an increase in the number of persons from whom security for good behaviour was demanded.

Year.	Total number of persons punished.	Percentage of fined only.	Percentage of imprisoned only.	Percentage of whipped only.	Sentenced to combined punishment.	Ordered to give security.	Transportation.
							Per cent.
1862 ..	43,606	59·1	7	3·5	16·9	12·3	..
1863 ..	50,024	66·2	6·5	1·4	16·9	7·3	56
1864 ..	49,705	67·2	6·0	2·6	15·4	8·5	97
1865 ..	58,267	68·8	6·3	3·7	13·1	7·7	102
1866 ..	66,862	74·3	5·0	3·5	11·5	6·0	78
1867 ..	..	74	5·2	2·2	..	..	0·2

It is evident from this that deterrent punishment was inflicted in exceptional cases and that of transportation in rare circumstances. Another point that demands notice is, that there were complaints in the beginning against the low percentage of fines realised. The amendment of the Code of Criminal Procedure in 1868 removed this obstacle to a considerable extent by permitting the levy of them by distress and sale of moveable property of the offender, wherever it could be found. The result was that

while in 1863 only 53 per cent. of the fines imposed could be realised the percentage rose to 79 per cent. in 1883.

Efficiency.—All these measures tended to increase efficiency in the administration of criminal justice in the province. The appellate courts upheld a substantial percentage of the sentences passed by the lower courts, but at the same time did not show the least hesitation in making a searching inquiry into the merits of the cases referred to them, and relieving those who had suffered through the errors of the lower courts. The following table illustrates the comparative working of the Magistrates' and Sessions' Courts [1]:—

Year.	District Magistrate or Magistrates with appellate powers.		Sessions.	
	Rejected or confirmed.	Modified, reversed on further enquiry called for.	Rejected or confirmed.	Modified, reversed enhanced or further enquiry called for.
1862	65·1	34·4	79	20·5

there were only 1 per cent. of cases pending at the close of the year. As regards witnesses more than 90 per cent. were dismissed on the first day of attendance.

Result.—To sum up, there was established by the end of 1884 a well organised department of criminal justice in place of the chaos and confusion which the new rulers inherited from their predecessors. Crime was more faithfully reported and more judiciously and humanely punished. Though there was a considerable increase of criminal business, the number of cases pending was small, the average duration satisfactorily low ; the investigation of courts steadily improving, fines imposed with consideration to the means of the offender and more fully realised, and increased care and judgment evinced in the conviction of criminals. The shape in which the system has come down to us was finally given to it in these years and the changes afterwards were insignificant. With all this efficiency the increase in the number of cases brought to trial often leads people to believe that crime more than doubled in this period, while the facts are that the non-bailable cases, which are the criterion of judgment, did not rise proportionately to the rise in population. The following table gives the total number of non-bailable and bailable cases instituted in the various courts in the years 1868-69, 1870 and 1878, 1879, 1880 :—

Years.	Population.	Non-bailable cases.	Bailable cases.
1868	17,593,946 (According to Census 1868.)	16,792	37,666
1869		19,359	34,822
1870		17,540	37,999
1878	18,842,264 (According to Census 1881.)	20,555	61,217
1879		19,086	63,445
1880		16,351	70,450

Taking into account the Afghan War in 1878-79, and considering 1880 as the normal year, while there was an increase of

about 8 per cent. in the population, the figures in non-bailable offences were slightly lower. There was a marked increase in bailable offences but it was more apparent than real. The offences under local and special laws[1] formed a considerable portion: "The true conclusion to be drawn from the number of the bailable offences is not that crime has become more common but that minor crime has been more energetically repressed and sanitary regulations more rigorously enforced."[2]

CHAPTER V.

Jails—their Deterrent and Reformatory influence.

The Police having brought to trial, and the judges having awarded the sentence of punishment, it remains with the jails to reform the criminal. The aim of the Jail authorities has been to give a deterrent and reformatory punishment at the same time to those entrusted to their charge. The punishment of imprisonment was unknown in this country before the beginning of British rule, and mutilation, which by its very nature could not reform, often failed to exercise a deterrent influence either. Burning with animosity against those, who had subjected him to such an humiliation, he would in many cases, encourage and guide those who would care to follow in his footsteps. The construction of all the jails, as has already been stated, was complete by the end of 1852, and so the new Government was on the way to reform the prisoner, and inculcate in him a fear of the law.

In addition to the jails, constructed from time to time to meet the increasing number of prisoners, a female penitentiary was built at Lahore in 1862 and women were brought to it from all parts of the country, and subjected to a wholesome system of education, classification and discipline. The year 1865 saw the entire management of the Thuggee School of Industry transferred to the Superintendent of the Lahore Central Jail, and 1875 the transfer of the juvenile prisoners from Gurdaspur, where they were kept before, to a special ward in the above at Lahore, whereto the railway lines were converging from all parts of the country. They were brought under the direct control of the authorities to learn some useful trade or occupation. There was no other important change in the number of jails or classification of prisoners, except the assignment of a special ward to lunatic prisoners in the Lahore Central Jail.

To realise the aforesaid objects many important measures were introduced in this period. The monitorial, marks, and tickets of leave systems ; the measures for regulating labour on reformatory lines ; the rules on the subject of granting remissions of portions of their sentence to prisoners for good conduct, and special

attention devoted to their education and health speak for themselves. The special arrangements for juvenile prisoners, and the training afforded to the sons of the approvers in the Thuggee School of Industry are also worthy of mention.

The monitorial system introduced in the Lahore Central Jail on the 1st March 1860, and extended to other jails later on, worked with a remarkable success. The privileges conceded to the monitors were a good incentive to other prisoners to hard and industrious work. For their superintendence of the prisoners and their work, in addition to the change of dress, and freedom from irons except an 'ankle,' they were to be granted a remission in their sentence of three months in a year. But, to prevent their ill-treating and oppressing the prisoners, warders were appointed to supervise them. The marks and ticket of leave systems furnished further steps in the reformation of the prisoners. By 1868 the former was extended to all the jails of which a medical officer was in charge, and, in connection with it, the latter was worked out experimentally in the Lahore Central Jail and Female Penitentiary, and continued to work successfully for the rest of the period. Prisoners who had worked out three-fourths of their sentence had obtained 700 marks, and had not less than a year of their sentence to expire, were declared eligible for the indulgence of ticket of leave, provided their conduct had been examplary. On first obtaining the ticket of leave, the prisoner was, under the rules, removed from the general wards, allowed to work in his own clothes, and credited with 25 per cent. of his earnings, and was permitted to correspond and see his relatives once a week. If he conducted himself satisfactorily in this stage for one-third of his unexpired portion, he was promoted to the second stage in which he was allowed to absent himself from jail for certain hours in the day, credited with the whole of his earnings, and allowed to see and correspond with his friends without restriction. Having passed through this stage satisfactorily, he was released from prison for the remaining term of his sentence on condition that he reported himself once a week to the Deputy Superintendent of Police of his District, and behaved well. When he left the jail sufficient amount out of his savings was given to him to reach his home, and the rest transmitted to the Deputy Superintendent of Police to help him in

finding a useful occupation. If he deliberately abstained from work he was once more thrown into the prison. It is evident that these two systems along with the monitorial one were a powerful incentive to the prisoner to work hard, to abide by all the rules and regulations, and to learn some useful trade or occupation. They helped a good deal in fostering in him the habit of self-reliance and deprecation of his former ones. He was made to stand on his own legs. And further having saved enough from his jail earnings he could start a useful occupation in place of drifting back to his old profession of crime. The other factors that helped towards the amelioration of prisoners, were education and the starting of the new industries in the jails. The prisc

Leaving the adult prisoners, special attention was paid to the reformation of juveniles, and from the very beginning they were placed in a separate ward in the Gurdaspur Jail, wherefrom they were transferred to the Lahore Central Jail in 1878. There was no Borstal institution in existence at that time, but in the closing years reports were being submitted for the construction of one. This scheme could not, however, be carried into practice on account of lack of funds. They were made to attend school regularly for three hours in a day, and the elder ones were taught history, geography and arithmetic. The other useful work in this direction was the help rendered to the children of the approvers in the Thuggee School of Industry, for whom service was secured in the Pioneer regiments and the Police force.

A survey of the reformatory influence exercised by the prisons leads to the other phase of the question, *i.e.*, the deterrent influence. The fact that most of the prisoners were sentenced to hardest form of labour, and that special instructions were issued to the Superintendents of the Jail to see to the proper enforcement of rules and regulations, and the division of labour into three grades, the hard, medium and light, the placing of prisoners for a minimum period of eighteen months on the hardest form of labour and the reduction in the dietary of refractory prisoners brought the reconvictions to less than half of those obtaining in English jails. The Inspector-General of Prisons in his report for 1864 writes :—" The circumstances tend to establish the important fact that our jail discipline though admittedly less severe than that in force in England, is nevertheless more deterrent."

To sum up, the system helped a good deal towards inculcating a fear of law and of punishment for its breach, in the minds of those who had once the chance of coming under its operation, and at the same time it produced a useful reformatory influence in turning wicked and demoralised men into peaceful citizens of the country. Men who entered jail illiterate left it having acquired the ability to read and write. The Inspector-General, in 1863, quoted the

instance of a prisoner, who, when he entered the jail, could not read or write, yet who obtained a livelihood after his release by teaching boys in his own village. There are many instances of men who were transferred from wicked to good, dishonest to honest, and rascals to respectable men by their stay in jail.

CHAPTER VI.

Civil Justice.

The administration of justice remains incomplete, as long as in addition to the remedies provided for the investigation, prevention and suppression of crime, the punishments of the criminals, and their reformation, there is no adequate provision for the adjustment of civil suits arising between the people. With the advance of civilisation new and complicated relations arise between men and special remedies are required from time to time to meet these new demands. The Punjab, where no separate department of judiciary existed came in contact with other parts of the country, and with the growing relations of trade and commerce, and the laws which had theretofore been primitive had to be assimilated with those in the older provinces. This was not a work of hours or days, but it took years to accomplish. This province had its own special difficulties, and making provisons for those, a uniformity in laws was effected. The machinery with which the Government began has already been described in the second chapter. That system underwent a complete overhauling in the years following.

Special difficulties.—The special conditions of the province merit our attention before everything else. The suits between the illiterate peasants on the one side, and usurious village bankers on the other, supplied the staple of litigation. This is evident from the percentage that this class of suits bore to the total number of cases instituted. Thus it was that out of a total number of 51,751 cases instituted in 1856, and 81,118 in 1857, the cases pertaining to debts amounted to 31,687 in the former and 62,409 in the latter years. Making the allowance for cases arising out of commercial relations, which on account of the backward state of trade and commerce could not be many, the figures are alarming. It was often found that the simple agriculturist was outwitted by the intelligent village banker. The question usually was the authenti-

city or otherwise of an account book, which the shrewd money-lender might easily manipulate a day before the trial. The other important feature was, that more than 90 per cent. of suits were for trifling sums and did not exceed in value Rs. 100. The difficulty was all the more accentuated by the absence of pleaders. The practice in this Province was to bring the parties face to face, and after a 'forensic' controversy to decide the case there and then. In addition to all these the system itself was a new thing to the people. They had known nothing like for centuries past.

All the laws and courts were made to suit these conditions. There was a gradual development in the subsequent years in the personnel of the agency employed, the courts established, the laws enacted and the procedure enjoined. The period under review falls under two well marked divisions– (*i*) 1849—1865 and (*ii*) 1866—1884. The year 1866, the dividing line between the two periods, is important in the judicial history of the Punjab by reason of the establishment of Chief Court, the extension of the Code of Civil Procedure of 1859 and the Pleaders' Act. The difficulties enumerated in the previous paragraph were largely overcome in the first period and in the second we stood on the same footing with other provinces of India.

Period I—Agency.—There were many important changes in the personnel of the agency employed in those years. An important addition was made to the judicial agency by the investment of Chiefs and Jagirdars with powers to try suits upto the value of Rs. 300. It was expected that their local knowledge and influence, with their nearness to the suitors' homes, would amply compensate for the deficiency of technical knowledge in them. In order to make assurance doubly sure they were given very simple cases, and were instructed to consult the Deputy Commissioner in cases of difficulty, that officer being enjoined to help them. This was followed by the establishment of Small Cause Courts in 1861 and their extension in three subsequent years to eight important cities of the province.[1] These courts were freely resorted to and

[1] Delhi, Simla, Ludhiana, Jullundur, Hoshiarpur, Peshawar, Gurdaspur and Lahore.

the procedure in them was prompt and final. They worked under the provisions of the Code of Civil Procedure, and were the only courts for a long time which had purely judicial business to transact. They were acclaimed with universal voice as the best courts in the Province.[1] The years 1862 and 1865 witnessed the creation of the office of the Clerk of the Court and the investment of Naib-Tahsildars with judicial powers. The former relieved the judges of a good deal of their formal work, and enabled them to devote more attention to the cases in their courts, and to supervise the work of the Subordinate Courts.

Procedure.—There were more changes in the nature of the business transacted by the Courts. With the introduction of the Punjab Courts Act, 1865, suits pertaining to land revenue, rent or produce from land, were transferred from the revenue to the civil side of the Courts. The concurrent jurisdiction of the district and tahsil courts was abolished. In future the suits were to be instituted in the lowest court capable of hearing those. But in order to avoid congestion there, the Deputy Commissioners were empowered to withdraw cases to their own courts or distribute them amongst other subordinate magistrates. The same Act further enhanced the jurisdiction of the Assistant Commissioners with full powers, and gave Commissioners of Divisions jurisdiction in original as well as appellate cases. On the appellate side, the difficulty had been in the excessive number of appeals allowed in every case which clogged the action of the courts. To avoid this it was ruled out in 1861 that second appeals were not to be admissible, unless some distinct error of law was shown, from the decision of an Assistant Commissioner, and in any suit in the Small Cause Courts where the value of claim was less than Rs. 500. Further steps were taken under the above Act when it was enacted that if the first decision of a lower Court was affirmed by the Commissioner, no further appeal was to be allowed to the Judicial Commissioner, though he was allowed to retain the power of receiving any particular case on his own motion.

[1] The Deputy Commissioner of Ludhiana wrote: "I have no hesitation in pronouncing the small cause courts popular. . . . . I consider the establishment a great boon to the etc." Punjab Administration Report, (1864-65, page 12).

Laws.—As for laws the Punjab Civil Code was in full force during these years being supplemented by the rules and regulations issued by the Judicial Commissioner from time to time. Towards the end of 1858 certain reforms and modifications of the existing Civil laws were proposed by the Judicial Commissioner, and sanctioned by the Supreme Government. The tendency of the law proposed was to abridge the period within which actions for unbonded debts could be brought to the courts. The object was "to diminish the opportunity for false or fabricated claims, to prevent the postponement of the trial until the cause of action was involved in obscurity from the lapse of time, and to provide for enquiry when the facts were comparatively recent."[1] To regulate documentary evidence, no unregistered bond for sum of more than Rs. 50 could be admitted into evidence. The maintenance of a day book and a ledger were made obligatory, and ledger alone, as theretofore, could not be admitted into evidence. Models of these books were issued. The object in view was to place the debtor on a more equal footing with the lender and to prevent much fraud, perjury and suffering.

Costs.—The aim of the Government was to provide justice cheap to those who could not purchase it at a higher price. Though the system introduced was cheap on the whole aggregate of suits, the costs fell heavily on cases involving small sums, while on larger ones they were hardly felt at all. The litigants were men of average means, and so the misery entailed upon them was all the more accentuated by this fact. A revised scale for the institution of stamps was adopted in 1858, calculated at $2\frac{1}{2}$ per cent. of the value of the cases preferred, and the fees payable for the summons were fixed at the same rate. By these means it was expected that the costs which fell heavily on small sums would be more equitably assessed without serious loss to the State. A further step was taken in this direction by the graduation of the cost of serving processes in 1859. An *ad-valorem* fee was levied at the rate of $2\frac{1}{2}$ per cent., the same as the institution fee, and was reduced to 1 per cent.

[1] Administration Report (1858-59), page 1.

subsequently. The net result of these reforms was that the incidence of costs fell more heavily on suits of higher and lightly on those of smaller value. The effect was that inspite of the rise in the costs from 3 per cent. to 8 per cent. between 1858 and 1862, people still persisted in litigation and resorted more frequently to the courts.[1]

Execution of decrees.—Provisions were made from the very beginning for the enforcement of claims upon monied defendants in order to make the decree a really useful thing to its holder. But at the same time care was taken to save land from the hammer of execution. This was particularly needed in this province, where the parties were so antagonistic in their interests to one another. The money-lender had no sympathy with the poor cultivators, and if he had any it went so far as his own interest of charging exorbitant rate of interest and the impoverishment of the latter warranted. Steps were taken in this direction by the total prohibition of the sale of land in the execution of decrees except with the express permission of the Judicial Commissioner, which was granted in very rare circumstances. Such sales fostered hatred between the two classes.

Improvements in the efficiency of the agency employed.—Steps were taken in 1865 which led to the general improvement of the agency employed. A system of departmental examinations, the forerunner of the modern one by which promotions and recruitment are mostly made, was started. With a view of their securing a fair acquaintance with Civil, Criminal and Revenue law, rules were issued requiring every newly appointed Tahsildar to pass an examination in these subjects, until which time their appointments were held on probation. The higher grades of the Indian judges were required to pass the same examination as Assistant Commissioners.

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[1] Percentage of costs to value—

	Per cent.
1858	3
1859	5
1860	6
1861	8
1862	8

Results.—All these reforms had a wholesome effect upon the administration of Civil justice. Despite a thousand distractions people still persisted in litigation. There was a continuous increase in the number of suits instituted except a slight falling off of 5 per cent. in 1861.[1] This remarkable increase, with the promptness in the despatch of business, speaks for the efficiency of the agency employed. About 96 per cent. of the cases instituted were disposed of during the year, and in 1865 there was not a single case undecided older than six months in date. The average duration fell from 47 days in 1852 to about 20 days in the quinquennium of 1861-65. The courts were popular. The litigants were being educated. The efforts of the Government in placing the defendant on an equal footing with the plaintiff were bearing fruit. It was high time for a further step, and the beginning had already been made by the working of the Small Cause Courts in the cities under the provisions of the Civil Procedure Code. The time for assimilation had come, and the Government lost no time in availing itself of it. In the following pages we will trace the further development of the organised department which came into being by the extension of the Civil Procedure Code, the establishment of the Chief Court and the introduction of the pleaders.

Period II.—This leads us to second period which opens with the introduction of three important measures enumerated in the preceding paragraph. It is also remarkbale for the partial separation of the judicial and executive branches of administration. The

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[1]

Year.	Total number.
1852	57,000
1853	59,848
1854	61,829
1860	96,090
1861	93,392
1862	96,456
1863	97,735
1864	103,713
1865	140,315

appointment of Munsifs and Judicial Assistants in 1875 and the Punjab Courts Act, 1884, facilitated this to a great extent. The system had been brought into close conformity with that in the older provinces, as is evident from the large number of laws passed in these years common to the whole country. The extension of the Civil Procedure Code in 1866, the law of limitation in 1867, the Registration and the Punjab Law Acts in 1866 and 1872, respectively, the Indian Stamp and Hindus Wills Acts in 1870; the Contract and Evidence Acts in 1872, and the amended Code of Civil Procedure in 1877 and 1882 give a clear idea of a more or less complete uniformity in the legal system of the country.[1] The growing richness of the people and the elaboration of the laws necessitated the introduction of the pleaders who were previously excluded from the Punjab Courts. Act XX of 1865 was extended to the Punjab in 1866, and Circular orders were issued from time to time for the admission of proper persons to act as pleaders and mukhtars. Rules were also issued for the control of the petition-writers.

To consider the improvements in the various sections, we may take up the agency employed and the courts set up first of all. The year 1866 began with the most conspicuous change, the establishment of the Chief Court in place of the Court of the Judicial Commissioner. It was to provide the Punjab with a tribunal with original jurisdiction of hearing and finally determining Civil suits of great importance and difficulty, in lieu of the existing law, under which all such suits were heard in the first instance in the District Courts, and went through the ordeal of a double appeal, first to the Court of the Commissioner of the Division, and then to the Judicial Commissioner, before the decision of the highest court could be obtained. The advantages expected of technical knowledge and experience have already been traced in Chapter IV. But this did not increase the agency to any considerable extent. There was a large increase in number of cases that came before the courts. In Civil cases only the number in the decade

[1] A comprehensive list of Acts is not given. For further detail see H. B. Rattigan's Acts (1834—72) (1875—86).

1863-72 more than doubled. [1] The elaboration of the procedure and the increase in the executive duties of the officers made it all the more difficult. It became apparent that the judicial agency of the Punjab required a considerable strengthening. In 1875 the Government of India sanctioned what had been long urged by the Punjab Government and badly needed, a large increase in the judicial staff, and a partial separation between the judicial and executive services. Judicial Assistants empowered to receive appeals from subordinate courts were appointed in almost all the heavily burdened districts thus relieving Deputy Commissioners of a very onerous portion of their work. Munsiffs, purely judicial officers, were appointed in 75 sub-divisions of districts to set Tahsildars free for their executive duties.

This important change came in November 1884. It could not affect the course of justice in the period under review, but still it made a great advance over the system already prevalent. A brief account of the changes introduced may be given. Under the Act

and was relieved of the appellate work by an officer (Subordinate Judge) invested with the appellate powers of a District Judge.

Procedure.—The procedure was greatly influenced by the extension of the Code of Civil Procedure. The returns were considerably affected especially with regard to the proportion of cases decided by arbitration, '*ex-parte*' or in default. Under the Code the arbitrators could only be appointed with the consent of the parties, and their award was final. It was expected, therefore, that the proportion of the cases referred to arbitrators would considerably decrease, and inversely the proportion of cases decided on merit would increase. The rules of the Act as regards the appearance

to the Commissioners ot the Divisions, and also in cases where the Deputy Commissioner had reversed the orders of a Subordinate Court in a matter of fact. Appeals lay to the Chief Court from the decisions of the Commissioners exercising original jurisdiction, or passed in appeal when the order of the lower Court had been reversed in a matter of fact, and in all cases on question of law or usage having the force of law. In 1875 the Judicial Assistants greatly relieved the Deputy Commissioners of their appellate work. The Commissioners were further relieved by the issue of the Government Regulation of April 1878, which diverted a large portion of fresh appeals in petty cases under Rs. 500 in value to the courts of Judicial Assistants. The procedure in appeals was much more simplified by the Courts Act, 1884. Appeals in the cases of the nature cognizable by a Small Cause Court upto Rs. 500, decided by a Munsift or a Special Judge invested with the powers of a Munsiff, lay to the District Judge and his decision in such cases was final. All appeals in suits of which the value exceeded Rs. 5,000 lay direct to the Chief Court ; and all other appeals from the District Courts lay to the Divisional Courts. When the value of a suit did not exceed Rs. 500 and a single judge of a Divisonal Court confirmed the orders of the Court of the first instance, or a Divisional Bench reversed or modified such orders, there was no further appeal, unless a certificate was given by a Divisional Judge to the effect that such an appeal should be allowed. Above this limit a further appeal lay in every case from the decision of a Divisional Court to the Chief Court.

Costs.—To afford further relief to the suitors for small sums, Act XII of 1863 was extended in 1867. Under it a system of charging a small *ad-valorem* fee on each process issued, instead of a lump sum at the commencement of a suit, was introduced. There was an increase in the stamp duties in 1864 to be reduced in 1870, but it did not discourage litigants. The number of cases in which small sums were involved continued to increase. A further reduction in the Court fees was made in 1870, by the Court Fees Act,

under which a graduated *ad-valorem* fee[1] was charged, and the burden did not in any way fall heavily on cases of small value.

Execution of decrees.—A great difficulty was felt in the execution of decrees beyond the jurisdiction of the courts by which they were passed. To do away with this, it was enjoined upon the court in whose jurisdiction the defendant lived to execute the decree as if it were its own. Further to facilitate the execution of decrees, the new Code of Civil Procedure in 1878, under section 648, gave power to some courts to issue warrants of attachment of property beyond the limits of their local jurisdiction. It will not be out of place to say that judgment-debtors were very rarely imprisoned, and when they were, very humanely treated. In 1868 rules were issued for the provisions of clothes to those who were committed to prison in execution of decrees. All these measures tended towards the more humane treatment of those imprisoned for debt on one side, and the better execution of decrees, and the rapid payment of claims from the monied defendants on the other.

Miscellaneous Registration.—It will be remembered that registration was made compulsory in certain cases for the better regulation of documentary evidence in 1859. This increased the number of documents registered and became a fruitful source of revenue to the Government. The Registration Act of 1866 was extended to Punjab on 1st January 1868. A new registration department was set up under a Registrar-General of Assurances. For the purpose of registration the districts of Punjab were kept the same as far other administrative, revenue and police purposes. Re-

[1]Table of rates of *ad-valorem* fees leviable on the institution of suits [Acts (1854—72). H. B. Rattigan] :—

When the amount of the value of the subject matter exceeds.	*But does not exceed.*	*Proper fee.*
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
20	25	1 14 0
40	45	3 6 6
80	85	6 6 0
95	100	7 8 0
190	200	15 0 0
390	400	30 0 0

gistry sub-offices were opened in every tehsil and cantonment, under the local officers who acted as Sub-Registrars. An improvement was made in the mode of registration in 1879. The *ad-valorem* fees were abolished and a fixed scale of fees was adopted. The new system was attended with many advantages of convenience and simplicity both to the public and the registry officers. The efficiency of the department may be well ascertained by the fact that in the closing years of the period it yielded a profit of more than 40 per cent. The Punjab Administration Report for 1878 runs thus—"Taking the province as a whole the expenses of the department during the year under report have come only to 56½ per cent. of the incomes."[1]

Result.—Thus it was, that the administration of civil justice was brought in close harmony with that of the older provinces. The system was given the definite shape in which it has come down to us with slight modification. Insecurity was replaced by security and evasion by rapid enforcement of claims. The popularity and efficiency of the courts are points beyond doubt. The very large increase in the number of suits instituted continued, and in 1884, the closing year of our period, there were 262,860 suits instituted.[2] The agency employed was considerably increased in this period. Taking into consideration the elaboration and complication of the procedure, justice became easy of access, expedi-

[1] Administration Report (1878-79), page 254.

[2]

1865	..	..	..	140,315
1866	..	..	..	165,970
1867	..	..	..	144,628
1868	..	..	..	159,550
1869	..	..	..	164,595
1870	..	..	..	205,606
1871	..	..	..	218,925
1872	..	..	..	217,956
1873	..	..	..	221,855
1874	..	..	..	230,649
1875	..	..	..	230,607
1876	..	..	..	239,796
1877	..	..	..	235,336
1878	..	..	..	246,245
1879	..	..	..	244,187
1880	..	..	..	256,015
1881	..	..	..	254,090
1882	..	..	..	256,052
1883	..	..	..	260,968
1884	..	..	..	262,860

tious and comparatively cheap. The great improvement was in the increased number of the Indian agency employed, and the cases decided by them. While in the beginning there were only tahsildars and some Extra Assistants from the Indian population a great change was made by the appointment of Munsiffs in 1875 who were solely recruited from the ranks of the Indian population. As regards the number of cases decided by them, they increased from 75 per cent. in 1875 to 87 per cent. in 1880.

CHAPTER VII.

Conclusion.

It was asserted in the very beginning that the system was a leap in the dark and hopes were entertained for its success. A study of the preceding chapters corroborates this statement. That there was a distinct advance over what we had before 1856 no one can deny ; that there have been shortcomings, and very serious ones, in the development of the system is a disputable question. Some hold that the Government has marched with the times, others that it has lagged behind. The adaptation of the people to the environments, and their co-operation enabled the Government to bring the system in close harmony with that in the other provinces. It did not take more than 17 years. The extension of the Code of Civil Procedure was the last measure that worked towards this harmonisation. The honorary agency employed in 1861, and increased from time to time, improved in efficiency and, by 1884, a considerable portion of Civil and about 20 per cent. of the criminal cases instituted in the courts were decided by them. Justice was brought near to the peasants' house and they could avail themselves of it at any time. In all the separate departments there was a marked improvement. This helped a good deal in the pacification of the people and the consolidation of the British rule. The people realised the comparative value of the two rules and their leaning naturally was towards the new one where there was more security of property and happiness of life.

To revert to the separate departments singly, the police force considerably improved. Under Act V of 1861 it was given the final shape in which it has come down to us. Being relieved of the onerous military duties discharged by it in the early years, it concentrated its attention more and more upon its proper ones —the investigation and suppression of crime. Crime was more

faithfully reported and the high percentage of convictions to acquittals is a clear proof of the efficiency of the force. Cattle thefts and female infanticide were the two offences most prevalent and greatly detested by the advanced sections of society in this province, the former from economic and the latter from moral points of view. The police succeeded in reducing cattle thefts in the first 20 years to a large extent.[1] Female infanticide being investigated with the greatest care and punished with utmost severity almost disappeared, and in 1883 there were only 6 cases in the whole province. The offenders were sentenced to 10 years' rigorous imprisonment. The alarming increase in the number of criminal cases, as has been stated, was apparent and not real.[2] There was a decrease in the number of murders on the frontier,[3] and the people there were made to realise that they were not to take law into their own hands when there were courts to dispense justice.

The improvements in the administration of criminal justice have been traced in Chapter IV. The number of courts was considerably increased. Vexatious litigation was discouraged. Equality before the law though not established in theory was practised as far as it was consistent with the maintenance of peace. Indian agency was employed to an increased extent. The administration being assimilated to that in the older provinces, the wrong-doers could not evade the law, as they used to, in the days of the Sikhs.

With all these improvements the chief features of the administration of criminal justice in 1884 were—the combination of judicial and executive functions; absence of the system of trial by jury; arbitrary and discretionary powers of the executive and its complete control over the appointments and promotions of the judicial officers.

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[1] *Year.* | *Population.* | *Cattle thefts.*
1853 .. .. .. | 12,717,821 (P. A. R.) | 8,932
1874 .. .. .. | 17,593,946 (according to census, 1868). | 2,841

[2] *See supra* 47.

[3] While there was one murder a day in Peshawar alone in the beginning the figures for the whole province fell to 326, 351 and 346 in 1881, 1882, 1883.

The independence impartiality and incorruptibility of the judges will appear to have been non-existent in view of their position depicted above. In practice, however, these virtues were preserved in the agency employed. The high salaries given to them and their recruitment from better sections of society exercised a great influence in the preservation of these.

Liberty of the individual.—Nothing has been said so far about liberty of the individual under the British. His subservience to the military despotism under the Sikhs has already been stated. His position was considerably improved, and he achieved the right of demanding redress against official aggression. The Government officials were taken to task for their oppression of the people. But the English rule of law was not, and could not be applied to this country in view of the ignorance of the masses and the backward state of the society. Since 1884 further privileges have been obtained, and that with the uplift of the masses and the enlightenment of the people others will follow can safely be conjectured. It is not only in Police and criminal justice that the system has achieved such success, but in the other two sections it has been equally great. Jails were altogether unknown in this country before the British, and if there were any " boras " or dungeons, they failed to exercise any reformatory influence. Mutilation and extortion were replaced by reformatory and deterrent punishment on one side and more judiciously imposed fines on the other. The jails constructed in all parts of the country were a great boon to the degraded members of the society in whose uplift they helped a good deal. The criminals were taught to work and not simply compelled to labour as a punishment ; and in order to create in them an interest and ensure their coming by and by to love work instead of abhorring it, they were taught useful trades, so that their work might be profitable and they themselves be sharers in the profits. They were encouraged in the way of industry and in acquiring of habits that stood them in good stead against the day when they were discharged from the prison and had to face the world again. In their leisure hours they were given elementary

education. The special treatment of the juvenile offenders has resulted in the construction of the present Borstal Institution where these young people are made what they ought to be.

As for civil justice the facilities provided were taken as a boon by the people. The special customs of the people required special treatment, and that was done under the supervision of the authorities. Here, if not in criminal justice, the claims of the individual against the State were looked after. Even the State could not molest the property of the people, and every unjust act was inquired into, and the wronged party compensated. In addition to these justice was made comparatively cheap, expeditious and easy of access. In the execution of decree landed interests were protected against encroachments of the traders and bankers. Effective supervission was exercised by the Chief Court over the subordinate courts, and rules and regulations were issued from time to time for their guidance. A partial separation between the judicial and executive services was made by the appointment of Munsiffs and Judicial Assistants, though their tenure of office and appointments were under the control of the executive. The combined competitive and nomination system for the recruitment of Munsiffs[1] introduced in 1875, helped a good deal in bringing better men to the service of the country, and due share was given to ability and social position.

Pleaders, Mukhtars and appeal-writers.—It would not be out of place to refer to other factors that contributed to the increased efficiency in this and other branches of judiciary. Pleaders were unknown in this country and were discouraged by the Government in the beginning. With the elaboration of laws and complication of procedure their introduction was necessitated. Without their help in the interpretation of laws the courts could

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[1] There were two modes of recruiting Munsiffs—

"(*i*) Officers who appear to be fitter for the office.

(*ii*) Members of the families who have rendered good service to the Government and persons of good social position in the country."

(Reference Circular orders of the Chief Court (1874—1886)).

not administer justice efficiently. Their assistance to the courts was great, but that to the people was still greater. The illiterate peasants could no longer be beguiled and deceived by the intelligent village banker. The appeal-writers and other clerical establishment outside the courts made justice a little cheaper and less vexatious.

Thus in 1884 we were in possession of an organised department of judiciary enforcing law upon everybody. All the laws had been extended to this province, and we stood on a better footing, in possession of a better system than we had ever had before, and with expectant eyes on the future for its improvement.

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