

*A. C. Banerjee*

**INDIAN**

**CONSTITUTIONAL**

**DOCUMENTS**

6 1974

**VOLUME ONE**

**A. MUKHERJEE & CO. PRIVATE LTD.**



INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

VOLUME I : 1757—1858

*By the same Author*

HISTORY OF INDIA

MEDIEVAL STUDIES

PESHA MADHAV RAO I

THE EASTERN FRONTIER OF BRITISH INDIA

REVISION OF CHARTER OF UNITED NATIONS

LECTURES ON RAJPUT HISTORY

GURU NANAK AND HIS TIMES

FORT WILLIAM INDIA HOUSE CORRESPONDENCE

INDIAN  
CONSTITUTIONAL  
DOCUMENTS  
1757—1947

EDITED BY

ANIL CHANDRA BANERJEE, M.A., Ph.D.

*Premchand Roychand Scholar, Moutat Medallist,*

*Guru Nanak Professor of Indian History,*

*Jadavpur University*

IN FOUR VOLUMES

VOLUME I : 1757—1858



W  
Published by

N. Mukherjee

Managing Director

A. Mukherjee & Co. Private Ltd.

2, Bankim Chatterjee St.,

Calcutta-12

FIRST EDITION : *September, 1945*

SECOND EDITION : *July, 1948*

THIRD EDITION : *September, 1961*

FOURTH EDITION : *November, 1974*

Price : Rs. 30'00 (Rupees Thirty only).



PC  
342.54029  
BAN. 1, 3

Printed by

Monindra Mohan Basak

Sarada Press

10, Dr. Kartick Bose Street

Calcutta-9

To  
The Memory of  
THE FOUNDERS OF THE  
BRITISH INDIAN ASSOCIATION

## PREFACE TO THE FIRST EDITION

This volume is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types : statutes, speeches, despatches, minutes, treaties, even private letters. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. I have not confined my attention to the well-known landmarks, like the Acts of 1773, 1784 and 1833 ; within the limitations of the available space I have tried to call my readers' notice to problems less imposing but hardly less vital—administrative problems arising directly out of Parliamentary legislation. I have also included some documents relating to British relations with the Indian States. During the period covered by this volume the problem of the States was not directly concerned with the constitutional and administrative evolution of British India ; but the importance which that problem has assumed in recent times demands a thorough acquaintance with the past. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

Due to the confusion created by the war I have not been able to approach authors and publishers for permission to print extracts from their books. For this unintentional lapse I crave their indulgence.

A. C. BANERJEE

## PREFACE TO THE SECOND EDITION

*Indian Constitutional Documents* was originally published in two volumes. The first volume covered the period 1757-1858 ; the second volume dealt with the constitutional developments in India under the British Crown (1858—1945). I have now found it necessary to reprint the book in a larger form. So I have divided it into three volumes : Volume I, 1757-1858 ; Volume II, 1858-1917 ; Volume III, 1917-1939. Documents relating to the years 1939-1945 have been transferred to my book *The Making of the Indian Constitution*, which covers the period 1939-1947.

The present edition of this volume contains some new documents (Nos. 38, 39, 43, 44, 49, 54), but some documents relating to the end of the Company's rule (Nos. 53, 54, 55, 58 of the first edition) have been transferred to Volume II. Introductory notes have been added to most of the documents. Some changes have been made in *Introduction*, but its scope remains unchanged. I hope this edition will be more useful to its readers than its predecessor.

A. C. BANERJEE

## PREFACE TO THE THIRD EDITION

Apart from some changes necessitated by revised classification of documents, this edition is a reprint of the second edition.

A. C. BANERJEE

## TABLE OF CONTENTS

<i>Subject</i>	<i>Page</i>
<b>Introduction</b>	xiii—xxxvii
<b>Documents :</b>	1—384
1. Growth of East India Company's Territorial Power in Bengal, 1757-1766	1—4
I. Clive to Calcutta Council, June 30, 1757	2
II. Treaty with Mir Jafar, 1757 : Article 9	2
III. Treaty with Mir Qasim, 1760 : Article 5	2
IV. Treaty with Mir Jafar, 1763 : Article 2	2
V. Treaty with Najm-ud-daula, February, 1765 : Articles 2-4	3—4
VI. Treaty with Saif-ud-daula, 1766 : Article 2	4
2. Clive's Views on British Policy, 1765	4—6
3. Double Government, 1765—1772	6—13
I. Clive's views on the position of Nawab of Bengal, 1765	8
II. Grant of Dewani to East India Company by Emperor Shah Alam, 1765	8—10
III. Clive's 'System of Politics', 1767	10—11
IV. Richard Becher on the Bad Effects of Double Government, 1769	11—12
V. Bolts on Bad Effects of Double Government, 1772	12—13
4. The Company as Dewan, 1772	13—15
5. Warren Hastings on Defects in the Company's System of Government, 1773	15—19
6. The East India Company Act (Regulating Act), 1773	19—35
I. Extracts from the Act	21—30
II. Lord North's speech	30—31
III. Petition of the East India Company to the House of Commons	31—32
IV. Burke's speech	32—33
V. Protest of 13 Peers	33—35
7. Letters Patent establishing a Supreme Court at Fort William, 1774	36—43
8. The Supreme Court on the position of the Nawab of Bengal, 1776	44—46
9. Warren Hastings on his conflict with the Council, 1776	46—49
10. Warren Hastings on the conflict between the Governor-General-in-Council and the Supreme Court, 1776	49—51

<i>Subject</i>	<i>Page</i>
11. Plan of Warren Hastings to extend British influence in India, 1777 ... ..	52
12. The Court of Directors on the Supreme Court, 1777 ...	53- 59
13. The Governor-General-in-Council on the Supreme Court, 1780 ... ..	59-63
14. Warren Hastings on Sadar Dewani Adalat, 1780 ...	63-65
15. The East India Company Act, 1780 ... ..	66-67
16. Fox's India Bills, 1783 ... ..	67-71
17. The East India Company Act, 1784 ... ..	71-111
I. Extracts from the Act ... ..	71-92
II. Pitt's Speech on the India Bill, 1784 ... ..	92-110
III. Fox's Speech on Pitt's India Bill, 1784 ... ..	111
18. Burke's Speech on the Impeachment of Warren Hastings	111-119
19. Cornwallis on interference of Directors in appointments of Officers, 1789 ... ..	119
20. Cornwallis on insubordination of Madras Government, 1790 ... ..	119-121
21. Cornwallis on renewal of Company's Charter, 1790 ...	121-129
22. Cornwallis on relations between Governor-General and Council, 1790 ... ..	130-131
23. Independent powers of Governors, 1793 ... ..	131-132
24. Charter Act, 1793 ... ..	132-156
25. Wellesley on Indian Administration, 1800 ... ..	156-175
26. Wellesley on Civil Service, 1800 ... ..	175-200
27. Complaint of Court of Directors against Board of Control, 1816 ... ..	201-203
28. Sir Thomas Munro on ultimate aim of British rule in India, 1824 ... ..	203-205
29. Sir Thomas Munro on Employment of Indians in Public Service, 1824 ... ..	205-207
30. Sir Charles Metcalfe on training of Civil Servants in India, 1828 ... ..	207-208
31. Constitutional Position of the Court of Directors, 1829	208-209
32. Bentinck on relations between Supreme and Subordinate Governments, 1831 ... ..	209-215
33. Bentinck on the Civil Service, 1831 ... ..	215-217
34. James Mill on the Anomalies of the Supreme Court, 1832	217-219
35. Training of Civil Servants at Haileybury, 1832 ... ..	219-221
36. Charter Act, 1833 ... ..	221-284
I. Extracts from Act ... ..	222-246
II. Macaulay's Speech on the Charter Bill of 1833 ...	246-260
III. Despatch on Charter Act of 1833 from Court of Directors to Government of India, 1834 ... ..	260-284

<i>Subject</i>	<i>Page</i>
37. Act establishing Judicial Committee of Privy Council, 1833	... 285—289
38. Macaulay on Procedure of Law-making, 1835	... 289—293
39. Ellenborough on Governor-General's Council	... 293—295
I. Letter to Lord Auckland, September 19, 1841	293—294
II. Minute, February 18, 1844	... 294—295
40. Ellenborough on Court of Directors, 1844	... 296—297
41. Charter Act, 1853	... 297—312
I. Extracts from Act	... 298—305
II. Sir Charles Wood's Speech on Charter Act, 1853	306—312
42. Macaulay on competitive system for Company's Civil Service	... 312—318
I. Speech on Sir Charles Wood's Bill, 1853	... 312—317
II. Extracts from Report of Civil Service Committee	317—318
43. Dalhousie on heavy work of Governor-General	... 319—320
I. Private letter to Sir George Couper, October 2, 1852	... 319—320
II. Private Letter to Sir George Couper. May 28, 1854	320
44. Dalhousie on relations between 'Home' Government and Government of India	... 320—321
I. Private Letter to Sir George Couper, December 8, 1851	... 320—321
II. Private Letter to Sir George Couper, September 23, 1854	... 321
III. Private Letter to Sir George Couper, March 12, 1856	321
45. Dalhousie on Legislative Council	... 322—325
I. Diary, October 12, 1854	... 322—324
II. Letter to Sir Charles Wood, September 18, 1854	324
III. Letter to Sir Charles Wood, March 16, 1855	... 325
IV. Minute, February 28, 1856	... 325
46. Sir Charles Wood on Legislative Council, 1854	... 325—326
47. Dalhousie on Transfer of India to the Crown, 1858	326—332
48. Petition from the East India Company to Parliament, 1858	332—351

### Appendix : Documents on Indian States

49. Subsidiary Treaty with Mysore, 1799	... 352
50. Wellesley's Treaties with Hyderabad	... 355—358
I. Treaty, September 1, 1798	... 355—357
II. Treaty, October 12, 1800	... 357—358
51. Wellesley's Treaty with Sindhia, 1804	... 358—360
52. Wellesley's Treaty with Bharatpur, 1805	... 360—361
53. Arthur Wellesley on Lord Wellesley's relations with Indian States, 1806.	... 361—365

<i>Subject</i>	<i>Page</i>
I. Weakness of the system inherited by Lord Wellesley	361—363
II. Treaty with Mysore, 1799	... 363
III. Annexation of the Carnatic, 1801	... 364—365
54. Lord Hastings on British Intervention in Internal Affairs of Indian States	... 365—368
I. Private Journal, February 1, 1814	... 365
II. Letter to Metcalfe, Resident at Hyderabad	... 366—367
III. Private Journal, February 6, 1816	... 367—368
55. Lord Hastings's Treaty with Holkar, 1818	... 368
56. Lord Hastings's Treaty with Bhopal, 1818	... 369—370
57. Lord Hastings's Treaty with Mewar, 1818	... 370—371
58. Lord Amherst's Treaty with Sirohi, 1823	... 371—373
59. Lord Ellenborough on Indian States, 1842	... 373—376
60. Lord Ellenborough's Treaty with Sindhia, 1844	... 376—377
61. Lord Ellenborough's Letter to Holkar, 1844	... 377
62. Lord Dalhousie on British Intervention in internal affairs of Indian States, 1851	... 378—380
63. Lord Dalhousie on Annexation of Indian States	... 380—384
I. Doctrine of Lapse, 1848	... 380—381
II. Doctrine of Lapse, 1854	... 381
III. Doctrine of Lapse, 1854	... 381—382
IV. Annexation of Satara	... 382—383
V. Annexation of Jhansi	... 383
VI. Annexation of Nagpur	... 383—384
VII. Annexation of the Carnatic	... 384

## INTRODUCTION

*The 'Trading Period' : 1600—1765*<sup>1</sup>

According to Sir Courtenay Ilbert, during the period 1600—1765 'the East India Company are primarily traders'.<sup>2</sup> The constitution, legislative powers and privileges of the Company were defined by Elizabeth's famous Charter<sup>3</sup> of December 31, 1600. The control of the Company's business was invested in twenty-four committees and a Governor. These committees—not bodies, but individuals—were the predecessors of the later Directors. Of the privileges granted to the Company the most important was the exclusive right of trading 'into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the straights of Magellan.' The Company also received certain specified legislative and judicial powers, to which may be traced the origin of the later Anglo-Indian codes.

The extension of the privileges of the Company was the inevitable result of the difficulties which confronted the British merchants during their early voyages to the East. It was found necessary to enforce martial law for the maintenance of discipline on long voyages. In 1615 the necessary authority was given to the Company by a grant of James I, who had already renewed Elizabeth's Charter and made it perpetual (subject to determination after three years' notice) by the Charter of 1609. The Company's power of controlling and punishing its servants was further extended by James I's grant of 1623.

During the reign of Charles I the Company suffered from two difficulties. The competition of the Dutch merchants, who were strongly supported by their Government, expelled the

---

1 Document No. 18.

2 *The Government of India*, p. 1.

3 P. Mukherjee, *Indian Constitutional Documents*, pp. 1-20.

# INDIAN CONSTITUTIONAL DOCUMENTS

## 1. GROWTH OF THE EAST INDIA COMPANY'S TERRITORIAL POWER IN BENGAL<sup>1</sup>, 1757-1766.

[The battle of Plassey took place on June 23, 1757; on June 28 Clive conducted Mir Jafar to the *masnad* at Murshidabad. Describing Mir Jafar's position after Plassey Vansittart wrote, "We have now a Nabob of our own making, and absolutely dependent upon us for his establishment and future security". Thus arose 'a conflict between the person invested with the sole rights of administration in the province, and the corporation controlling the only efficient military force therein'. Mir Jafar granted to the Company *zamindari* rights in the district of 24 Parganas adjoining Calcutta, in addition to commercial privileges. Clive left Bengal early in 1760; he was temporarily succeeded by Holwell whom Vansittart replaced in July, 1760.

Mir Jafar

Meanwhile Mir Jafar had alienated the Calcutta Council by his intrigues with the Dutch and the *Shahzada*—later Emperor Shah Alam II—and also by his failure to satisfy the financial demands of the Company. So he was removed and his son-in-law, Mir Qasim, was placed on the *masnad* in October, 1760. Mir Qasim granted to the English the districts of Burdwan, Midnapore and Chittagong for the maintenance of their troops and also agreed to pay off the outstanding debts of his predecessor to the Company. But the question of internal trade led to a war between Mir Qasim and the Company, which finally resulted in the former's downfall. Mir Jafar was restored. On July 10, 1763, he signed a new treaty by which he agreed to limit the strength of his army to receive a permanent Resident at his *darbar*, and to levy no more than 2½ per cent. on the English trade in salt. The grant of the three districts was confirmed.

Mir Qasim

After Mir Jafar's death early 1765 his son Najm-ud-daula was recognised as his successor on condition of his appointing a Minister nominated by the English, and agreeing not to displace him without their approval. As a result of this arrangement "the Nawab survived as a figurehead, in

Najm-ud-daula

<sup>1</sup> See Firminger, *Historical Introduction to the Bengal Portion of the Fifth Report*, Chapters I, VI, VII.

and subjects are oppressed, and I will pay a proper regard to such representations.....

4. I do confirm to the Company, as a fixed resource, for defraying the ordinary expenses of their troops, the *chucklas* of Burdwan, Midnapore, and Chittagong, in as full a manner as heretofore ceded by my father.....

## VI. Treaty with Saif-ud-daula, 1766 : Article 2.

The King<sup>1</sup> has been graciously pleased to grant unto the English East India Company the Dewanyship of Bengal, Behar and Orissa, as a free gift forever<sup>2</sup>; and I...do...for the better conducting the affairs of the *Soubahdarry*<sup>3</sup>, and promoting my honour and interest, and that of the Company in the best manner, agree that the protecting the Provinces of Bengal, Behar and Orissa, and the force sufficient for that purpose, be entirely left to their discretion and good management...<sup>4</sup>

### 2. CLIVE'S VIEWS ON BRITISH POLICY, 1765.

Nothing but extreme necessity ought to induce us to extend our ideas of territorial acquisitions beyond the amount of those ceded by Kasim Ali Khan.....<sup>5</sup>

But by this system of moderation it is not intended that the Nawab should be left entirely independent of us. The moment he fancies himself in this situation he will look upon us as enemies who have taken too much from him, and whom it will be necessary, either to reduce to our ancient state of mere merchants, or to extirpate. This, there-

1 Shah Alam II, that nominal Mughal Emperor.

2 See Document No. 3 (II).

3 *Subahdari*, i.e., Governorship (of Bengal).

4 The second article of the Company's treaty with Mubarak-ud-daula is exactly similar.

5 The *Zamindaris* of Burdwan, Midnapore and Chittagong assigned to the Company by Mir Qasim.

Nawab reduced to the position of a puppet

Territorial expansion not wanted

Why Nawab should be kept under British control

Commercial  
privileges  
of Com-  
pany's  
servants

to keep us from giving umbrage. During Mr. Vansittart's government, all your servants thought themselves entitled to take large shares in the monopolies of salt, betel, and tobacco, the three articles, next to grain, of greatest consumption in the empire<sup>1</sup>. The odium of seeing such monopolies in the hands of foreigners need not be insisted on; but this is not the only inconvenience; it is productive of another, equally, if not more prejudicial to the Company's interest; it enables many of your servants to obtain, very suddenly, fortunes greater than those which in former times were thought a sufficient reward for a long continuance in your service. Hence these gentlemen, thus suddenly enriched, think of nothing but of returning to enjoy their fortunes in England, and leave your affairs in the hands of young men, whose sanguine expectations are inflamed by the examples of those who have just left them.

Bad effects

### 3. DOUBLE GOVERNMENT, 1765-1772.

[In a letter<sup>2</sup> to William Pitt the Elder, dated January 7, 1759, Clive suggested the desirability of acquiring the sovereignty of Bengal, Bihar and Orissa for the Company, and added, ".....there is little room to doubt our easily obtaining the Moghul's<sup>3</sup> *sunnud* (or grant) in confirmation thereof, provided we agreed to pay him the stipulated allot-

Mir Jafar  
obliged  
Company's  
servants

1 Mir Jafar's *parwanas* contained the following instructions to his officers: "Whatever good the Company's *gumastahs* may bring or carry to or from their factories, the *aurungs* or other places, by land or by water, with a *dustuck* from any of the chiefs to their factories, you shall neither ask nor receive any sum, however trifling, for the same. Know they have full power to buy and sell; you are by no means to oppose it.....Whoever acts contrary to these orders, the English have full power to punish them". (*Parwana*—order. *Gumastah*—servant. *Aurung*—depot. *Dustuck*—pass.)

2 See Keith, *Speeches and Documents on Indian Policy*. Vol. I, pp. 13-18.

3 Shah Alam II, the nominal Mughal Emperor.

said Company, and the *Diwani*, under which title they pretend to hold those territorial possessions, being a mere fiction, invented for the private purposes of the Company and their servants.....

Prosperity  
of Bengal

The revenues of the provinces of Bengal, Behar, and part of Orissa, which the Company collect, were in the year 1765 estimated to amount to upwards of three million six hundred thousand pounds sterling per annum ; and by proper management they might with ease have been improved by this time to six millions : but at present, under the ridiculous plan of a double government, they are every day exhausted by plunder and oppression ; and while this nation is gazing after the fruit, the Company and their substitutes are suffered to be rooting up the tree.

'Ridiculous  
plan of a  
double  
govern-  
ment

The different interests of the Company, as sovereigns of Bengal and at the same time as monopolizers of all the trade and commerce of those countries, operate in direct opposition, and are mutually destructive of each other ; so that without a new system, the progress must be from bad to worse. The Company, if left to pursue its present system, will ruin itself ; the possessions in Bengal will be beggared.

Anomaly  
of combin-  
ing politi-  
cal and  
commere-  
cial func-  
tions

#### 4. THE COMPANY AS DEWAN<sup>1</sup>, 1772.

[During the period 1765-1772 the actual administration of the Nawab's provinces was in the hands of two *Naib Dewans*—the Company itself being the *Dewan*—Muhammad Reza Khan in Bengal and Shitab Rai in Bihar, who were to some extent controlled by British officers called Supervisors, these latter being first appointed in 1769. Warren Hastings was 'armed with full powers to make a complete reformation' and ordered 'to destroy the whole fabric of the double government'. He abolished the office of *Naib Dewan* and prosecuted Muhammad Reza Khan and Shitab Rai for peculation, although both of them were acquitted. The Company formally undertook to collect the revenues through

<sup>1</sup> Proceedings of the Secret Selected Committee, April 28, 1772.

See N. Majumder, *Justice and Police in Bengal*.

75673.

charge of that office and perform the duties of it until we shall have settled and digested a proper plan for the conduct and management of so important a trust, and you will immediately make this alteration public at the city as well as in all the districts appertaining to the province of Bengal.

Fort William, We are, etc.

The 28th April, 1772. (Sd.) Members of Council.

\* \* \* \*

As the charge of neglect or embezzlement of revenues is equally applied by the Court of Directors to Setabroy, the *Naib Dewan* of the Behar province, as to Mahomed Reza Cawn, as they have directed a minute enquiry to be made into both, and as the leaving Setabroy in possession of his office after the measures which have been taken respecting Mahomed Reza Cawn, and the conclusions which he must necessarily form with regard to himself, may put in his power to elude any enquiry into his conduct, either by private collusions with his agents or by flight :—

Position of Shitab Rai similar to that of Reza Khan

The Board are of opinion that it will be equally necessary to lay an immediate restraint upon his person and that of his *Dewan* also.

Arrest of Shitab Rai

Agreed therefore that the President be requested to write to the Chief of Patna for the above purpose in like manner as he has written to the Chief of the *Durbar*.

Instructions to Chief of Patna

### 5. WARREN HASTINGS ON DEFECTS IN THE COMPANY'S SYSTEM OF GOVERNMENT<sup>1</sup>, 1773.

May I be permitted, in all deference and submission to your commands, to offer it as my opinion that whatever may have been the conduct of individuals, or even of the collective members of your former administrations, the blame is not so much imputable to them as to the want of a principle of

Bad administration due more to the system than to individual

1 Letter to Court of Directors, November 11, 1773.

who, from the uncertainty of their condition, see no room for any acquisition but of wealth, since reputation and the consequence which follows the successful conduct of great affairs are only to be attained in a course of years.....

.....Every man whom your choice has honoured with so distinguished a trust seeks to merit approbation and acquire an eclat by innovations, for which the wild scene before him affords ample and justifiable occasion. But innovations of real use require a length of time, and the unremitting application of their original principles to perfect them. Their immediate effects are often hurtful, and their intended benefits remote.....But who that looks only for present applause or present credit would hazard both for remote advantages, of which another might arrogate the merit and assume the reward? Or who will labour with equal perseverance for the accomplishment of measures projected by others, as of those of which he was himself the contriver?

**Longer term  
of Governor  
necessary  
for reform**

## 6. THE EAST INDIA COMPANY ACT (REGULATING ACT), 1773.<sup>1</sup>

[The establishment of the Company's territorial sovereignty in Bengal, Bihar and Orissa was a direct prelude to Parliamentary intervention in its affairs, and the immediate cause of intervention was financial. "The eyes of the proprietors of the Company were dazzled by golden visions." After the grant of *Dewani* they raised the dividend from 6 per cent. at which it had been for many years, to 10 per cent. in 1766 and in 1767 to 12½ per cent. Speculation in India stock naturally began. The shadow of the South Sea Bubble was still dimly hanging over England, the Government could not avoid the responsibility of preventing disaster by the prompt adoption of precautionary measures. In 1766 Parliament instituted an inquiry into the Company's affairs at Elder Pitt's suggestion. At once it became clear that the inquiry would not be limited to the question of the dividend.

**Beginning  
of Parli-  
amentary  
interven-  
tion**

1 13 Geo. 3, c. 63.

## 7. LETTERS PATENT ESTABLISHING SUPREME COURT AT FORT WILLIAM<sup>1</sup>, 1774

Preamble

.....Whereas by an Act of Parliament passed in the Thirteenth Year of Our Reign<sup>2</sup>, reciting a charter<sup>3</sup>.....of.....King George the Second,..... by him granted to "The United Company of Merchants of England, trading to the East Indies"; thereby amongst other Things, constituting and establishing Courts of Civil, Criminal, and Ecclesiastical Jurisdiction, at the said United Company's Settlements, at Madraspatnam, Bombay, and Fort William in Bengal; and that the said charter does not sufficiently provide for the due Administration of Justice, in such manner as the State and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall remain in the possession of the Territorial Acquisitions, therein-before mentioned, do and must require.....

Now know ye, that we.....have thought fit to grant, direct, ordain, and appoint.....that there

1 March 26, 1774.

2 Regulating Act.

3 For details about George II's Charter, January 8, 1753, see D. N. Banerjee, *Early Administrative System of the East India Company in Bengal*, Vol. I, pp. 557 ff. Its provisions were exactly similar in all respects in the cases of Bengal, Madras and Bombay. The Mayor's Court became a Court of Record. It was authorised "to try, hear and determine, all Civil Suits, Actions, and Pleas, between Party and Party, that shall or may arise, or happen, or that have already arisen, or happened, within the said town or factory of Calcutta, at Fort William, in Bengal, or within any of the factories, subject or subordinate thereunto." But it was not to have any jurisdiction over "such suits or actions" "between the Indian Natives" of Calcutta "only". These were to be "determined among" the parties, unless they "by consent" submitted "the same to the determination of the said Mayor's Court." The President and Council of Fort William were constituted a Court of Record to hear appeals against decisions of the Mayor's Court.

Jurisdiction  
of the  
Mayor's  
Court

## 8. THE SUPREME COURT ON THE POSITION OF THE NAWAB OF BENGAL<sup>1</sup>, 1776.

.....Since the Death of Meer Jaffier, the Company have guaranteed the *Subadarry* of Bengal, by Three successive Treaties, to his Descendants.....When you wrote your Letter of the 3rd March last, you had it then immediately under your consideration, with the Act of Parliament<sup>2</sup> before you, to give us such Instructions as you thought necessary for our guidance in supporting the Rights of the *Nazim*<sup>3</sup> against the Encroachments of the French, who refused submission to the Laws and Authority of the established Government. You tell us you are determined to assist the Government in preventing the Abuse of the *Firman*<sup>4</sup> Privilege ; that you are engaged by solemn stipulation to support the *Nizamut* ; you direct us to afford the Country Government all necessary Assistance in the Execution of such equitable Laws as may be framed for the protection of the Natives ; that as to the erecting of new Factories, however the French may affect to despise the Nabob, it is with him alone they are to treat on that subject, and should they at any time attempt to establish other Factories than those possessed by France in 1749, you do not hesitate to direct, that we forthwith apply to the Nabob, and use our utmost endeavours to engage him to prevent all such establishments.

Company recognised the *de jure* authority of the Nawab.

\* \* \* \*

It is not possible to mistake your Meaning and intention in giving us the preceding instructions ; you acknowledge the Existence and Authority of the

---

1 Letter from Governor-General in Council to Court of Directors, January 15, 1776. See Firminger, *Introduction to the Fifth Report*, Chapter I.

2 Regulating Act.

3 Nawab of Bengal.

4 *Farman* of Shah Alam II.

making the Nabob the instrument, do indirectly what they would not assume to do directly."

We have then the unanimous opinion of the Court, "That neither the East India Company nor their servants, both being subject to the laws of the King of Great Britan, can, by interposing the Name of the Nabob, screen any Criminal from the Justice of the Court; and this they call an illegal Execution of the Powers of a double Government to defeat the King's Laws.

## 9. WARREN HASTINGS ON HIS CONFLICT WITH THE COUNCIL,<sup>1</sup> 1776.

'Persistent, unremitting and bitter hostility' between Hastings and the Majority

[Warren Hasting was named in the Regulating Act Governor-General, with Barwell, an experienced Indian officer, as one of his Councillors. There were three other Councillors who were new to India—General Clavering, Monson, Philip Francis. These three Councillors embarked, from the very outset, in Barwell's words, upon 'a predetermined, pre-concerted system of opposition' to the Governor-General. A six years' struggle now ensued between Hastings, who was supported by Barwell, and the Majority of the Council. The latter violently condemned the existing system of administration and pursued the Governor-General with personal vindictiveness; moderation was certainly not one of their virtues. As the Regulating Act gave the Governor-General no authority to override his colleagues, he was quite helpless. "For two years, 1774-6, he was steadily outvoted and overruled, and for all practical purposes he had ceased to be Governor-General." In September, 1776, Monson died, and with his own casting vote and Barwell's steady support Hastings now held the mastery against Clavering and Francis. Wheler, who succeeded Monson, usually supported Francis. Hastings became strong after Clavering's death in August, 1777. Sir Eyre Coote, who succeeded Clavering in 1779, acted inde-

1 Letter to Laurence Sullivan, March 21, 1776. Sullivan was a leading Director, known as "the uncrowned King of Leadenhall", a consistent supporter of Hastings. (See C. H. Phillips, *The East India Company*, p. 26).

except the later acquisition of Benares,<sup>1</sup> obtained at the expense of twice the amount of its yearly revenue, which the Nawab of Oudh owes to the Company, and which he can never pay them.....

## 10. WARREN HASTINGS ON THE CONFLICT BETWEEN THE GOVERNOR-GENERAL-IN-COUNCIL AND THE SUPREME COURT,<sup>2</sup> 1776

[The Supreme Court was established to give effect to the plan of controlling the Company's government by the King's Court. Hastings was alarmed. In 1774 he wrote to a friend. "The court of justice is a dreadful clog on the government": Hastings and Impey but as the Chief Justice, Sir Elijah Impey, was 'a man of sense and moderation', Hastings did not anticipate much trouble. In 1775 Impey punished Maharaja Nanda Kumar, a great enemy of Hastings, who was indirectly supported by the Majority in the Council. It is difficult to say whether Nanda Kumar suffered really for having dared to accuse the Governor-General of bribery<sup>3</sup>; but there is no doubt that Hastings acted unconstitutionally, and that the incident revealed a very strong intimacy between the Governor-General and the Chief Justice. In the extract quoted below, written within eight months of Nanda Kumar's death, Hastings speaks of the 'moderation' of the Supreme Court and accuses the Majority in the Council of 'forcing the Court into extremities for the purpose of finding fault with them'. But a shrewd man like him could not shut his eyes to clear difficulties. In 1776 he sent to the Directors a plan for amalgamating the Supreme Court and the Company's Courts<sup>4</sup>, but this plan was not accepted. Hastings and Impey gradually drifted apart, specially after the establishment of the Governor-General's ascendancy in the Council.]

1 After the death of Shuja-ud-daula his son and successor, Asaf-ud-daula, had to conclude the treaty of Fyzabad, by which the sovereignty of Benares was ceded to the Company. Hastings opposed the treaty, but was outvoted in the Council.

2 Letter to Laurence Sullivan, March 21, 1776. See Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*; and I. Banerjee, *The Supreme Court in Conflict*.

3 See Stephen, *The Story of Nuncomar*; and Beveridge, *The Trial of Nanda Kumar*.

4 See *The Cambridge History of India*, Vol. V, pp. 242-243.

## 11. PLAN OF WARREN HASTINGS TO EXTEND BRITISH INFLUENCE IN INDIA<sup>1</sup>, 1777.

Details of  
the plan

You are already acquainted.....with the general system which I wish to be empowered to establish in India, namely, to extend the influence of the British nation to every part of India not too remote from their possessions, without enlarging the circle of their defence or involving them in hazardous or indefinite engagements, and to accept of the allegiance of such of our neighbours as shall sue to be enlisted among the friends and allies of the King of Great Britain. The late Nabob Sujah Dowla, who wanted neither pride nor understanding, would have thought it an honour to be called the *Vizier* of the King of England, and offered at one time to coin siccās in His Majesty's name. Nor was this a mere visionary project ; the credit of such a connexion with the sovereign of a power which has for a long time past made so considerable a figure in Hindostan would of itself be a great advantage. But I am afraid that his chief inducement arose from a great defect in our political constitution, of which he had severely felt the bad effects ; I mean the rapid succession of persons entrusted.....with the rule and administration of the British affairs in this part of our Indian possessions, the consequent want of consistency in their measures, and even in their attachments and engagements ; and the caprices to which he was often exposed on the same account.....My intention in this digression is to show the advantages which would be derived both by Government and its allies from a direct engagement with them, made with the sanction of the King's name, which would secure it from wanton and licentious violation and render the objects of it more certain and durable.....

Case of  
Oudh

<sup>1</sup> Letter to Alexander Elliot, January 12, 1777.

## 12. THE COURT OF DIRECTORS ON THE SUPREME COURT,<sup>1</sup> 1777

[In Documents Nos. 12 and 13 are described the grievances of the Company against the Supreme Court. Although Macaulay's famous description of the terror created in Bengal by the Supreme Court is not quite accurate, yet "it cannot be denied that the court caused much disturbance and discontent by exercising its powers too rigidly and too pedantically." In 1777 the Supreme Court entertained an action for trespass and false imprisonment against the *Dewan* of the Criminal Court at Dacca and ordered him to be arrested. "All criminal justice," observed the Governor-General in Council, "is at a stand....." In the famous Patna case, 1777-1779, the Supreme Court claimed the right to try actions brought against the Indian judicial officers of the Company for acts done in their official capacity. In the Kasijora case the question at issue was whether the Supreme Court had the right to exercise jurisdiction over every one in Bengal, Bihar and Orissa, and especially over the Zamindars<sup>2</sup>. Impey wrote to Lord Weymouth on March 12, 1780. "The Court does not, nor ever did, claim any jurisdiction over Zamindars, but that their character of Zamindars will not exempt them from the jurisdiction of the Court if they be employed or be directly or indirectly in the service of the East India Company or any other British subject".]

In the Papers to which we refer your Lordship, it is stated, that the Jurisdiction exercised by the Supreme Court,.....has involved the Servants of the Company, and Officers of the Revenue acting under their Authority, in Circumstances of Difficulty and Distress.

That the Exercise of this Jurisdiction must inevitably tend to render the collection of the Company's Revenues impracticable; to abridge the Power of the Supreme Council and subordinate Factories, and thereby to prevent the carrying of any useful Plan into Execution for settling the country and for

Bad consequences of the exercise of extended jurisdiction by the Supreme Court

1 Letter to Lord Weymouth, Secretary of State, November 19, 1777.

2 For details about these cases see Stephen, *The Story of Nuncomar*, and I. Banerjee, *The Supreme Court in Conflict*.

These, my Lord, are some only of the consequences which we conceive must follow, if the Criminal Law of England be suffered to remain in force, and binding upon the Natives of Bengal.—If it were legal to try, to convict, and execute Nund-comar for Forgery, on the Statute of George the Second, it must, as we conceive, be equally legal to try, convict, and to punish the Subahdar of Bengal, and all his Court, for Bigamy, upon the Statute of James the First.

13. THE GOVERNOR-GENERAL-IN-COUNCIL ON THE SUPREME COURT,<sup>1</sup> 1780.

We know not indeed in what Way to reconcile a temporary Jurisdiction by Law over Persons, whom the Law declared to be wholly exempt from it ; but were told, that the allowed Jurisdiction could not be effectual without it ; since, if the Act of Parliament<sup>2</sup> was to be taken in its literal construction, and the Court were not allowed to exercise Jurisdiction, but over those whose Subjection to it had been previously ascertained, it could exercise Jurisdiction over none ; because, unless it could compel Persons, who were affirmed to be Objects of its Jurisdiction, to appear

Supreme Court's claim to exercise temporary jurisdiction over Zamindars

on which the law is to operate being so different from what they are in England, if I submit to your Lordship's consideration, the propriety of allowing the Supreme Court a discretionary power of condemning an offender convicted of a crime not capital, to such punishment as he shall think his crime shall deserve. Transportation, from the nature of it, is a sentence which in this country cannot be put in execution. Imprisonment, to the inferior indolent Indian, is no punishment ; give him a space to lay upon, rice and water, it is a reward ; fines are very unequal punishments, the poor cannot pay them, and if the person condemned is not of a caste or rank to which imprisonment would bring disgrace, the richest here would not pay the smallest fine to avoid it.....”

Views of Impey

1 Letter to Court of Directors, January 25, 1780.  
 2 Regulating Act.

times of fiercest hostility, the most barbarous Nations revere in Women.

Happily in this case these Things have not all occurred ; but as the indelible Dishonour of public Exposure, and that inexpiable Pollution from the insufferable Sense of which, according to their Mode of thinking, there is no Refuge but in Death, would have followed, if the Plaintiff had not been persuaded to withdraw his Action. We state this as another of those cases, to which we are confident, that a feeling and enlightened Nation could never have intended to stretch the Authority of its Laws.

#### 14. WARREN HASTINGS ON SADAR DEWANI ADALAT<sup>1</sup>, 1780

[ The plan of offering Impey the presidency of the *Sadar Dewani Adalat* was not without certain practical merits. This *Adalat* was presided over by the Governor-General and Members of the Council, assisted by Indian officers. It exercised appellate civil jurisdiction over the *mofussil* courts in all cases where the disputed amount exceeded Rs. 500. The Governor-General was not a trained and expert judge, nor could his Councillors claim judicial experience. Moreover, the Governor-General had no time to undertake judicial duties ; so the *Adalat* hardly sat at all. In 1776 Hastings himself described it as 'having been long since formally abolished'. Under the guidance of an expert judge like Impey the *Adalat* might have regained its vigour and effectively controlled the weak *mofussil* courts.

But this plan to end the 'contest' between the Supreme Court and the Council created suspicions about the motives of Hastings and Impey. As the salary attached to the new post was revocable at the will of the Governor-General and Council, people thought that the Chief Justice was compromising his quarrel with the Council for a money consideration. In Macaulay's words, Impey accepted a bribe, surrendered the independence of the Supreme Court, and became 'rich, quiet and infamous'. The legal adviser of the Company observed, "Impey is found one day summoning the Governor-General and the Council before his tribunal for acts done as Council, and the next accepting emoluments

Criticism  
of Impey

<sup>1</sup> Minute, September 29, 1780.

15. THE EAST INDIA COMPANY ACT<sup>1</sup>, 1780.

[ The object of this Act was to explain and amend the Act of 1773, to give relief to 'certain persons imprisoned at Calcutta in Bengal under a judgment of the Supreme Court of Judicature', and to indemnify 'the Governor-General and Council of Bengal and all officers who have acted under their orders or authority in the undue resistance made to the process of the Supreme Court'. The Patna Case<sup>2</sup> is said to have been directly responsible for several of the provisions of this Act. ]

Governor-General and Council not subject to Supreme Court

That the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal for or by reason of any act or order, or any other matter, or thing whatsoever counselled, ordered or done by them in their public capacity only, and acting as Governor-General and Council.

Immunity for acts done under order of Governor-General and Council

2. And it is hereby enacted and declared, that, if any person or persons shall be impleaded in any action or process, civil or criminal, in the said Supreme Court for any act or acts done by the order of the said Governor-General and Council in writing, he or they may plead the general issue, and give the said order in evidence; which said order, with proof that the act or acts done has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted and discharged from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Exception

3. Provided always, that with respect to such order or orders of the said Governor-General and Council as do or shall extend to any British subject

1 21 Geo 3, c. 70. See A. K. Ghose, *Laws Affecting the Rights and Liberties of the Indian People*, pp. 2-7.

2 See Stephen, *Nuncomar and Impey*, Vol II, Chapter XII.

or subjects, the said Court shall have and retain as full and competent jurisdiction as if this Act had never been made.

4. Provided, also, that nothing herein contained shall extend or be construed to extend to discharge or acquit the said Governor-General and Council, jointly or severally, or any other person or persons acting by or under their order, from any complaint, suit or process before any competent court in this kingdom, or give any other authority whatsoever to their acts than acts of the same nature and description had, by the laws and statutes of this kingdom before this Act was made.

## 16. FOX'S INDIA BILLS, 1783.

[As the Governor-General and Council had been appointed for five years, their period of office would lapse in 1779. Moreover, by the Act of 1744 the Company's privileges were to determine in 1780 unless definitely extended. Thus "there was a possibility of the Government in India and the existence of the Company at home coming to an end almost simultaneously". By Acts of 1779 and 1780 the Company's privileges were extended for a year and it was enacted that no changes were to take place in the offices of Governor-General and Council. In 1781 another Act was passed, which extended the Company's privileges to three years' notice after March 1, 1791, and obliged it to submit to a Secretary of State all dispatches proposed to be sent to India on political, military and revenue matters. In the same year two committees of enquiry were appointed—a Select Committee on the administration of justice in India, presided over by Burke, and a Secret Committee on the causes of the war in the Carnatic, presided over by Dundas. The reports issued by these Committees were unfavourable to the Company. An attempt on the part of the House of Commons to secure the recall of Hastings—who was only removable by the Crown on representation from the Court of Directors—failed owing to the opposition of the Court of Proprietors. It became clear that the Regulating Act had failed to serve its purpose. "It had neither given the State a definite control over the Company, nor the Directors a definite control over their

Parliamentary  
intervention  
in Indian  
affairs

by any law or usage whatsoever, for the Governor-General and Council of Bengal, or either or any of them, collectively or individually, or any other person whatsoever in the service of the said United Company, which doth or shall in any manner exempt him or them, in the exercise of any powers or authorities whatsoever, from a strict and faithful obedience to the orders and directions which have been issued to or for them from the late or any other Court of Directors, or which shall or may be issued to or for them by the commissioners named and appointed in an Act of this session of Parliament, to manage and govern the affairs of the said United Company.

## 17. THE EAST INDIA COMPANY ACT,<sup>1</sup> 1784.

[ After the rejection of Fox's India Bill by the House of Lords the Fox-North Ministry was dismissed by George III (December 18, 1783), who summoned the Younger Pitt to form a Cabinet. Pitt brought in his India Bill in January, 1784. Fox still had a large majority in the House of Commons ; but after dissolution Pitt came back with a triumphant majority. The India Bill was re-introduced with slight modifications and passed in August, 1784.]

### I. Extracts from the Act.

An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India ; and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies.

For the better government and security of the territorial possessions of this Kingdom in the East Indies, be it enacted.....That it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Commission to be issued under the Great Seal of Great Britain, to nominate and appoint such persons, not ex-

Preamble

Commissioners to be appointed by the King

<sup>1</sup> This Act is generally known as Pitt's India Act (24 Geo. 3, Sess 2, c. 25).

**III. Fox's Speech on Pitt's India Bill<sup>1</sup>, 1784**

To sum up my objections to the first part of the Bill, they are these; it provides for a weak government at home by the division of the power; and it perpetuates the abuses in India, by giving additional authority to the officers abroad. It is unstatesman-like in its principles; for it absurdly gives the power of originating measures to one board, and the nomination of officers for the execution of those measures to another. It increases influence without vesting responsibility; and it operates by dark intrigue, rather than by avowed authority.....

Summary  
of objec-  
tions

**18. BURKE'S SPEECH ON THE IMPEACHMENT OF WARREN HASTINGS<sup>2</sup>, 1788.**

[Hastings arrived in England in June, 1785. In April, 1786, Burke brought forward his charges, at first 11 in number, afterwards increased to 22. The House of Commons acquitted Hastings on the question of the wars against the Marathas and the Rohillas, but condemned his dealings with Chait Singh and the Begams of Oudh. The trial began in Westminster Hall on February 13, 1788, and lasted till April, 1795. The managers for the Commons were Burke, Fox, Sheridan, Pelham, Windham, Sir Gilbert Elliot<sup>3</sup>, Charles Grey, Sir James Erskine and twelve others. Hastings was defended by Law<sup>4</sup>, Plumer<sup>5</sup> and Dallas<sup>6</sup>. The articles of impeachment as finally presented were 20 in number, most of which dealt with Hastings's relations with Oudh. In 1791 it was decided to drop all the articles of charge except those relating to Chait Singh and the Begams of Oudh, fraudulent contracts, presents and bribes. The final verdict—acquittal on all the articles—was given on April 23, 1795.]

1 House of Commons, July 16, 1784.

2 February 15-19, 1788.

3 Afterwards Lord Minto, Governor-General of India.

4 Afterwards Lord Ellenborough.

5 Afterwards Master of the Rolls.

6 Afterwards Chief Justice of the Common Pleas.

My lords, by means of this bad system of things it has so happened, and does happen, that the very laws we have made, the covenants the Company has got its servants to enter into, and the orders that have been given, have proved.....most noxious and mischievous to the country, instead of beneficial.....

All laws practically nullified by above defects

### 19. CORNWALLIS ON INTERFERENCE OF DIRECTORS IN APPOINTMENTS OF OFFICERS, 1789.<sup>1</sup>

.....I must freely acknowledge that before I accepted the arduous task of governing this country, I did understand that the practice of naming persons from England, to succeed to offices of great trust and importance to the public welfare in this country, without either knowing or regarding whether such persons were in any degree qualified for such offices, was entirely done away. If unfortunately so pernicious a system should be again revived, I should feel myself obliged to request that some other person might immediately take from me the responsibility of governing these extensive dominions, that I might preserve my own character, and not be a witness to the ruin of the interests of my country.<sup>2</sup>

### 20. CORNWALLIS ON INSUBORDINATION OF MADRAS GOVERNMENT,<sup>3</sup> 1790.

The Members of the Board were apprised on the day after the accounts arrived from Madras, that Tippoo Sultan had committed actual hostilities against our ally the Rajah of Travancore ; that in the critical

1 Letter to John Woodhouse, Director of the Company, August 10, 1789. For the full text of the letter, see Ross, *Cornwallis Correspondence*, Vol. I, pp. 420-421.

2 Dundas supported Cornwallis. See C. H. Philips. *The East India Company*, p. 63.

3 Minute, February 5, 1790.

I have been highly gratified with the warm approbation which the members of the Board bestowed upon that determination.....<sup>1</sup>

Plan approved by Supreme Court

## 21. CORNWALLIS ON RENEWAL OF COMPANY'S CHARTER,<sup>2</sup> 1790.

.....I was happy to hear that the principles of that plan (i.e., 'a plan for the government of our Indian possessions after the expiration of the Company's present charter') were still under deliberation, and that it was only upon the supposition that the commercial branch might be left to the Company, and the other departments taken into the hands of Government, that you had stated those queries. Many weighty objections occur to the separation that you propose, for it is almost beyond a doubt with me, that no solid advantages would be derived from placing the civil and revenue departments under the immediate direction of the King's Government; and I am perfectly convinced that if the fostering aid and protection, and, what is full as important, the check and control of the Governments abroad, are withdrawn from the commercial department, the Company would not long enjoy their new charter, but must very soon be reduced to a state of actual bankruptcy.

Cornwallis opposed to the plan of leaving only trade to the Company and taking administration into hands of Government

I am not surprised that after the interested and vexatious contradictions which you have experienced from the Court of Directors, you should be desirous of taking as much of the business as possible entirely

<sup>1</sup> The Governor-General's plan was not put into effect owing to the arrival of General Medows as Governor and Commander-in-Chief of Madras. Lord Cornwallis regarded him as "a man of acknowledged ability and character" and felt that his own intervention in the affairs of Madras was no longer necessary. See Ross, *Cornwallis Correspondence*, Vol. I, p. 474; Vol. II, p. 48.

<sup>2</sup> Letter to Henry Dundas, President of Board of Control, April 4, 1790.

## 22. CORNWALLIS ON RELATIONS BETWEEN GOVERNOR-GENERAL AND COUNCIL<sup>1</sup>, 1790.

Governor-General's absence from Calcutta rendered necessary by war with Tipu

Governor-General should be invested with adequate powers for conduct of war.

Relations between Governor-General and Council during his absence from Calcutta

I am aware that some inconvenience may arise by my absence from the seat of Government, and that the existing laws do not describe the powers which ought in such a case to be delegated by the Supreme Board to the Governor-General. But notwithstanding these objections, I am so fully impressed with the belief that the public interest will be on this occasion best promoted by my undertaking the direction of the war (against Tipu Sultan) in person, that I have resolved, with the approbation of the Board, to proceed to Madras....., and should the Board concur in opinion with me on the propriety and utility of this measure, I need hardly suggest, that it will become necessary to invest me with such powers as may be thought suitable to my station of Governor-General, and which may appear to be calculated to enable me to apply the whole force of the Company with energy for the prosecution of the war, or to avail myself with promptitude and effect of any favourable opportunity that may offer, for negotiating and obtaining an honourable and advantageous peace.

Enjoying as I do the high satisfaction of living on terms of cordiality and friendship, both public and private, with my colleagues in office<sup>2</sup>; and well acquainted as I am with their earnest desire to support my endeavours for promoting the public prosperity, I could not entertain a doubt, even if I had not formerly on a similar occasion been flattered with

<sup>1</sup> Minute, November 6, 1790.

<sup>2</sup> "The flattering marks of personal confidence and friendship which I have constantly experienced, both in my public and private capacity, from the members of the Board, have made the most lasting impression on my mind, and claim my warmest acknowledgement,"—*Minute of Lord Cornwallis*, December 3, 1790.

the most liberal declarations of their confidence, that the measures for the internal Government of Bengal which I have hitherto pursued, and in the success of which my share of responsibility is great, will, during my absence, be uniformly supported and punctually executed...I have the most implicit reliance on their communicating with me upon all points of internal business, in the manner that will best tend to promote the public good, and to preserve my authority in this Government.

The Members of the Council may on the other hand be assured, that I shall correspond and communicate my sentiments to them, with as much punctuality and expedition as the nature of the Service in which I am going will allow, and that I shall not only give an accurate detail of any material transactions or occurrences that may happen, but also endeavour to render a satisfactory account of every part of my public conduct ; I shall likewise on all occasions receive their advice and suggestions with all the attention and deference which is due to private friends, and to the acting Members of the Supreme Government.

### 23. INDEPENDENT POWERS OF GOVERNORS<sup>1</sup>, 1793.

10. And whereas it will tend greatly to the strength the security of the British possessions in India, and give energy, vigour and despatch to the measures and proceedings of the executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with discretionary power of acting without the concurrence of their respective

Why  
Governors  
should be  
allowed to  
overrule  
their  
Councils

<sup>1</sup> 33 Geo. 3, c. 32

When  
Governors  
may over-  
rule their  
Councils

System of  
Minute-  
writing

Councils, or forbearing to act according to their opinions in cases of high importance, thereby subjecting themselves personally to answer to their country for so acting; be it enacted, that when any measure shall be proposed whereby the interests of the Company, or the safety or tranquillity of the British possessions in India, may in the judgement of the Governor-General, or the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measure ought to be adopted or that the same ought to be suspended or wholly rejected, and the other members of such Council shall dissent from such opinion, the Governor-General or such Governor, and the other members of the Council, shall forthwith mutually communicate in Council to each other, in writing, the reasons of their respective opinions and if, after considering the same, the Governor-General or Governor and the other members of the Council shall retain their opinions, it shall be lawful for the Governor-General in the Supreme Council of Fort William, or either of the said Governors in their respective Councils, to make any order for suspending or rejecting the measure in part or in the whole, or for adopting the measure; which order shall be signed as well by the Governor-General, or Governor, as by all the other members of the Council then present, and shall by virtue of this Act be as effectual as if all the other members had concurred.....

#### 24. CHARTER ACT,<sup>1</sup> 1793.

[ Towards the close of the Governor-Generalship of Lord Cornwallis it became necessary to take steps for renewal of the Company's charter. Henry Dundas, Pitt's most trusted friend and President of the Board of Control, decided that

No Judge  
to be con-  
cerned in  
any trade

No person  
whatever  
to be con-  
cerned in  
inland trade  
in salt, etc.  
except with  
the Com-  
pany's per-  
mission

traffic or trade, at any place within any of the Provinces in India, or other parts, or to buy any goods, and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company; nor shall it be lawful for any of the judges of the Supreme Court of Judicature to be concerned in any trade or traffic whatever; nor shall it be lawful for any of His Majesty's subjects in the said provinces to engage, intermeddle, or be in anywise concerned, directly or indirectly, in the inland trade in salt, betelnut, tobacco, or rice, except on the account of the said Company, or with their permission, on pain of forfeiting all such goods or commodities which they, or any of them, shall so buy and sell again, by way of traffic, or in which any of them shall so trade, and also treble the value thereof, one moiety to the said United Company, and the other moiety to him or them who will sue for the same.

## 25. WELLESLEY ON INDIAN ADMINISTRATION<sup>1</sup>, 1800.

The great pressure of the numerous and important duties now performed immediately by the Governor-General in Council, has induced us to take a review of the constitution of the Governor-General, considered as the supreme authority in India.

Governor-  
General  
in Council  
to be  
relieved  
of some  
duties

It has been his Lordship's object in this review to determine what duties now executed immediately by the Governor-General in Council ought still to be performed by him; what duties ought to be delegated to other establishments, and lastly to make a perma-

1. Governor-General in Council to Court of Directors, July 9, 1800.

be found indispensably necessary for dispensing to them the invaluable blessings of civil order and good government.

## 26. WELLESLEY ON CIVIL SERVICE<sup>1</sup>, 1800.

[ Even as early as 1757 the Court of Directors felt the necessity of giving to their servants a training in Persian, which was then the official language. In that year the Court ordered that ' five young gentlemen, covenanted for our establishment, should be sent.....to reside at Bussora, and to send annually two others on the same footing, to study the Persian tongue and nothing else.....' ]

On September 10, 1790, the Governor-General in Council resolved : "...with a view to encourage the acquisition of the native languages, such of the Honourable Company's writers as are so disposed, be allowed, during the period of their writership, the sum of sicca rupees 20 per month for a master to teach them....."

Civil servants' training in languages

On December 21, 1798, a notification was issued to the Bengal civil servants informing them that, "from after the 1st January, 1801, no servant shall be deemed eligible to any of the offices hereinafter mentioned, unless he shall have passed an examination.....in the laws and regulations and in the languages a knowledge of which is hereby declared to be an indispensable qualification."

On October 24, 1799, Lord Wellesley wrote to Henry Dundas : "The state of the administration of justice, and even of the collection of revenue throughout provinces affords a painful example of the inefficacy of the best code of laws to secure the happiness of the people, unless due provision has been made to ensure a proper supply of men qualified to administer those laws in their different branches and departments..... It arises principally from a defect at the source and fountain-head of the service—I mean the education and early habits of the young gentlemen sent hither in the capacity of writers. My opinion, after full deliberation on the subject, is decided, that the writers, on their first arrival in India should be subjected for a period of two or three years to the rules and discipline of some collegiate institution at the seat of government."

Wellesley's views on "collegiate" training for civil servants

<sup>1</sup> Note, July 10, 1800.

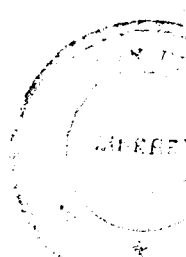
## 27. COMPLAINT OF COURT OF DIRECTORS<sup>1</sup> AGAINST BOARD OF CONTROL, 1816.

[ This protest related to the conduct of the Earl of Buckinghamshire, President of the Board of Control, 1812-1816. Lord Hobart, afterwards fourth Earl of Buckinghamshire, was probably<sup>2</sup> nominated as Governor-General by the Court of Directors on December 24, 1793. But Sir John Shore had already reached Calcutta (March, 1793) and taken charge from Lord Cornwallis (October, 1793), Lord Hobart was then sent as Governor of Madras (September, 1794) 'with a clear promise of the succession in Bengal'. He was recalled by the Court of Directors in 1798 as a result of his violent quarrel with Sir John Shore over the affairs of the Nawab of the Carnatic.<sup>3</sup> He became in succession Secretary of State for War and the Colonies (1801-1804), Chancellor of the Duchy of Lancaster (1805, 1812), Postmaster General (1806-1807) and President of the Board of Control (1812-1816). Lord Ripon's biographer says, "It was from his maternal grand-father (Earl of Buckinghamshire) that Goderich (Lord Ripon) derived the foundations of all his views on Indian politics. The fourth Earl of Buckinghamshire was an Indian statesman to whom sufficient justice has not been done.....he was a man of strong character, of great courage, and, though a staunch Tory, capable of very definite liberal opinions. He first distinguished himself as a singularly upright and public-spirited Governor of Madras, where he won for himself the confidence and affection of the whole Presidency. But it was during his short tenure of the Board of Control in Lord Liverpool's Administration that he gave evidence of the larger statesmanship which entitles him to rank among the pioneers of Liberal reform in India. It was he who, on the occasion of the renewal of the Charter in 1813, abolished the trade monopoly of the Company and threw open the commerce

1 See C. H. Philips, *The East India Company*, Chapter VII.

2 Lord Curzon, *British Government in India*, Vol. II, p. 81.

3 *Life of Lord Teignmouth*, Vol. I, pp. 247, 297, 353, 393.



mittee of Correspondence<sup>1</sup> have frequently, without either personal or written communication with the "Chairs", been so much altered in "previous communication"<sup>2</sup> as completely to change their structure and character. In the paragraphs which were not wholly expunged there are generally to be found a number of verbal alterations.....that, in not a few instances, cannot stand the test of sound criticism... ..even where the Board seems to agree with the general view of subjects taken in the drafts sent up, the paragraphs are often cancelled and others substituted in their stead, the same as to substance and effect, but differing in their style and construction .....Were the Board to state their reasons at large for these alterations as required by the statute<sup>3</sup> this course of proceeding would give rise to a correspondence between the Board and the Court probably not less voluminous than the correspondence between the Court and the Governments in India.

Interference  
with letters  
sent to  
India

## 28. SIR THOMAS MUNRO<sup>4</sup> ON ULTIMATE AIM OF BRITISH RULE IN INDIA<sup>5</sup>, 1824.

There is one great question to which we should look in all our arrangements: What is to be their final result on the character of the people? Is it to be raised, or is it to be lowered? Are we to be satis-

1 This Committee 'took cognisance of such of the Company's political affairs which were not of a nature to require secrecy, and also of the arrangement of the home and Eastern establishment.' It was one of the twelve major Committees (excluding the Secret Committee) into which the Court of Directors was divided.

2 Pitt's India Act, Clause 12. See C. H. Philips, *The East India Company*, pp. 21-22.

3 Pitt's India Act, Clause 12.

4 Governor of Madras, 1820-1827. See *Life* by Gleig.

5 Minute, December 31, 1824. See K. N. V. Sastri, *The Munro System of British Statesmanship in India*.

arrive, it will probably be best for both countries that the British control over India should be gradually withdrawn.....if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves.

29. SIR THOMAS MUNRO ON EMPLOYMENT OF INDIANS IN PUBLIC SERVICE<sup>1</sup>, 1824.

It is strange to observe how many men of very respectable talents have seriously recommended the abolition of native, and the substitution of European, agency to the greatest possible extent. I am persuaded that every advance made in such a plan would not only render the character of the people worse and worse<sup>2</sup>, but our Government more and more inefficient. The preservation of our dominion in this country requires that all the higher offices, civil and military, should be filled with Europeans; but all offices that can be filled with natives without danger to our power might with advantage be left to them. We are arrogant enough to think that we can, with our limited numbers, do the work of a nation. Had we ten times more, we could only do it so much worse. We already occupy every office of importance. Were we to descend to those that are more humble, and are now filled by natives, we should lower our

Abolition of 'native' agency would render people worse and government inefficient.

1 Minute, December 31, 1824.

2 Munro wrote to Canning on June 30, 1821, "Our present system of government, by excluding all natives from power, and trust, and emolument, is much more efficacious in depressing, than all our laws and school-books can do in elevating, their character.....The improvement of the character of people, and the keeping of them, at the same time, in the lowest state of dependence on foreign rulers to which they can be reduced by conquest, are matters quite incompatible with each other."

the pursuit of knowledge but the prospect of fame, or wealth, or power? Or what is even the use of great attainments if they are not to be devoted to their noblest purpose, the service of the community, by employing those who possess them, according to their respective qualifications, in the various duties of the public administration of the country? How can we expect that the Hindus will be eager in the pursuit of science unless they have the same inducement as in other countries?.....Our books alone will do little or nothing: dry, simple literature will never improve the character of a nation. To produce this effect it must open the road to wealth, and honour, and public employment. Without the prospect of such reward, no attainments in science will ever raise the character of the people.

Diffusion of knowledge, accompanied by exclusion from public offices, cannot improve 'native' character.

### 30. SIR CHARLES METCALFE ON TRAINING OF CIVIL SERVANTS IN INDIA<sup>1</sup>, 1828.

In expressing my opinion that the (Fort William) College (at Calcutta) ought to be abolished, as being mischievous with respect to the extravagance which it encourages, and the consequent state of debt and embarrassment which it causes throughout the civil service; and as being unnecessary, and therefore useless for that purpose of instruction which it is professedly designed to accomplish, and consequently entailing a waste of the public resources, it is incumbent on me to state what arrangements I would propose to substitute with a view to the beneficial reception and disposal of young men of the civil service on their arrival in India.

Fort William College 'mischievous' and 'unnecessary'

The young men immediately after their arrival should be subject to an examination, and those who might be found qualified, by knowledge acquired in

<sup>1</sup> Minute, December 28, 1828.

Training of  
civil  
servants  
who are  
'not  
qualified to  
enter on  
the public  
service'

Europe, or on their voyage to India, to enter on the public service, should at once be appointed to some employment, with the full allowance attached to it, and sent off by *dawk*, or by some other conveyance, according to the season, to join their respective stations and commence their career of public duty. Those not qualified should nevertheless be sent away from Calcutta to quiet situations in the interior, to be strictly under the orders of public officers of approved character, who would take pleasure in instructing and advising young men under their charge, and would assign to them such employment as would most speedily justify them for the public service, and render them, in the meanwhile, not entirely useless. During this period of tutelage they should receive allowances merely sufficient for their subsistence, and inferior to those attached to any public office; when reported qualified for the public service by competent examiners, they should be appointed to offices, with the full allowances of servants in employment: The period of service as giving title to subsequent advancement in rank, station, or emolument, should invariably date from the period of qualification.

### 31. CONSTITUTIONAL POSITION OF THE COURT OF DIRECTORS,<sup>1</sup> 1829.

'Govern-  
ment of  
checks'

When the Indian Government as constituted (comprehending under that term the established authority in this country as well as in India) is to be characterised by a single word, it might with no impropriety be denominated a Government of checks. Now whatever may be the advantage of checks, delay

<sup>1</sup> Court of Directors to Board of Control, August 27, 1829. See C. H. Philips, *The East India Company*, pp. 265-266.

will generally be in proportion to the number and efficiency of the checks.....In the ordinary course of Indian administration much must always be left to the discretion of the local Governments and unless upon questions of general policy and personal cases it rarely occurs that instructions from hence can reach India before the time for acting upon them is gone by. This is a necessary consequence of the great distance between the two countries, the rapid succession of events in India which are seldom long foreseen even by those who are on the spot, and the importance of the ruling authorities there acting with promptitude and decision and adapting their measures on their own responsibility to the varying emergencies of the hour. These circumstances unavoidably regulate but do not exclude the controlling authority of the Court of Directors. Without defeating the intention of Parliament they point out the best and indeed the only mode in which these intentions can be practically fulfilled. Although, with the exception above adverted to, a specific line of conduct cannot often be prescribed to the Indian Governments, yet it seems to indicate any other rather than a state of irresponsibility that the proceedings of those Governments are reported with fidelity, examined with care, and commented upon with freedom by the Home authorities. Nor can the judgements passed by the Court be deemed useless whilst, though they have immediate reference to past transactions, they serve ultimately as rules for the future guidance of their servants abroad.

Consequential delay

Nature and utility of authority exercised by Court of Directors

### 32. BENTINCK ON RELATIONS BETWEEN SUPREME AND SUBORDINATE GOVERNMENTS<sup>1</sup>, 1831.

The members of the Committee, as well as my

<sup>1</sup> Minute, September 14, 1831.

Governor-General and one councillor from each of the three presidencies. The knowledge and experience of the whole would thus be combined for the general improvement. How much would the revenue settlements of Bengal have been promoted, if by such means the spirit of Sir. Thomas Munro's superior management could have been infused, and practically brought to bear upon this branch of our administration ?

### 33. BENTINCK ON THE CIVIL SERVICE,<sup>1</sup> 1831.

[ The Select Committee of 1832 condemned the system of training the Company's servants in India and described the college at Fort William as "a source of more debt than knowledge in the Civil Service." In a Minute dated December 27, 1825, Lord William Bentinck observed that "the average expense of the education of each writer during the last three years was 6,621 rupees or £660 per annum; to which must be added a further charge (since most properly discontinued) of 4,000 rupees or £400, to each writer for outfit." He added that even then "there are many who have been in the college for one and two years without passing in any language." ]

Expenses  
of Fort  
William  
College

While I am of opinion that it would be difficult to form any agency more efficient than that of the Civil Service ; and while I deem it necessary that its integrity as a body, and the secure prospect of honour and reward, should be preserved to it ; it is impossible, at the same time, to avoid referring to some of the disadvantages belonging to this, in common with all "exclusive orders." In all will be found the same disposition to view with satisfaction things as they are ; the same indulgence towards the errors of members of the same community, and the want of that exertion which rivalry and competition alone can excite. But besides these, there is in the mode of

Defects of  
the Civil  
Service

<sup>1</sup> Minute, November 10, 1831.

Munro, of uniting the appointments of collector and magistrate, of destroying the independence of each other of every officer employed in the same district, of making the collector's a great office, consisting of deputy collectors and joint magistrates and assistants, subordinate to one head, and acting upon the same system. The public will then be saved from the evils of a continually recurring interregnum, from the succession of perfect strangers to all the concerns of the district, and from the undue advantages which all such occasions of the virtual suspension of authority give to a corrupt *omlah*<sup>1</sup>. This arrangement gives also to the Government an opportunity of providing a counterbalance to the inefficiency of a chief, by aiding him with subordinates of superior qualification, and by placing under the correction of a strong superior the idle and the weak. It is in a school of this kind that young men will best be trained. A profound knowledge of jurisprudence, or the high attainments which distinguish English lawyers and judges, are not to be looked for; nor, however desirable, are they indispensable; but what is necessary is that those both young and old, who have the decision of suits, whether for 10 or 1000 rupees, and who are vested with the power of fine, imprisonment, and corporal punishment, should have served their apprenticeship; should be conversant with the manners and business of the country: and that their opinions should be formed upon the practice and greater experience of their superiors in office.

Proposal for uniting the offices of Collector and Magistrate

Merits of the proposal

Proper training for judicial officers

### 34. JAMES MILL ON THE ANOMALIES OF THE SUPREME COURT,<sup>2</sup> 1832.

[The Supreme Court exercised criminal jurisdiction over all inhabitants of the Presidency town, whether European or Indian, and over all Europeans wherever they might live. For

1 Clerk.

2 Evidence before Select Committee of 1832.

from their peculiar circumstances, carry with them such power that the subjects of the King of England are in perpetual dread of them, afraid of applying for redress against anything they do ; and if to the above supposition we were to add that this same court of their sovereign, not ours, placed in our metropolis, should exclusively have power of administering justice to the whole of the inhabitants of our metropolis ; that the inhabitants of our metropolis have no access to justice but through this single court ; while the Government itself, King and Parliament, should have no power of making any laws to bind the inhabitants of the metropolis, but according to the pleasure of those same foreign judges ; this would be a parallel to the case as it now stands in India, and seems to me to require no words to prove its incompatibility with good government. I can hardly anticipate contradiction to the opinion of both the Supreme Government and the judges of the Supreme Court, that there cannot be good government in India till one uniform system of law is made to include all the subjects of that Government, this portion as well as every other.

Present  
system  
incompati-  
ble with  
good  
government

### 35. TRAINING OF CIVIL SERVANTS AT HAILEYBURY,<sup>1</sup> 1832.

[The Haileybury College was established in 1806 'for the purpose of affording to civil servants instruction in those branches of education which were most likely to be useful in their official career in India'. Every student had to keep four terms at the college, and the age limit was fixed at 22 years. The exclusiveness of the college and the narrowness of its training provoked criticism.<sup>2</sup>]

The collection of a number of young men of the same age, and destined for the same scene, in the

<sup>1</sup> Evidence of John Sullivan of the Madras Civil Service before Select Committee of 1832.

<sup>2</sup> See A. K. Ghosal, *Civil Service in India*, Chapter VII.

it seems to be pretty generally admitted that at no public seminary in England is discipline so completely relaxed as at the East India College.

There seems to be almost a natural association in the minds of the Englishmen between India and wealth. This notion is naturally fostered at Haileybury ; habits of extravagance are in consequence contracted there which cling to the young men throughout their Indian career, to their own detriment and that of the Government whose servants they are.

Habits of  
extravagance  
fostered at  
Haileybury

### 36. CHARTER ACT<sup>1</sup>, 1833.

[As early as 1829, the question of the renewal of the Company's Charter had been broached in Parliament, and in 1830 Select Committees of both Houses were appointed to investigate "the affairs of the Company and the trade between Great Britain and China." This investigation was interrupted by the dissolution of Parliament and the change of Ministry. After further interruptions the Committee was constituted for the fourth time in January, 1832. "Two great questions had to be determined, namely, the continuance or cessation of the Company's exclusive privilege of trade with China, and of the Company's administration of British India". As early as 1825, the Directors had recognized the certainty of the loss of the Company's exclusive trade with China<sup>2</sup>. In 1830 Charles Grant, President of the Board of Control in Lord Grey's Ministry, informed the Directors that the "China monopoly was to cease." The Cabinet decided to leave the administration of India to the Company—"a decision so much the more quickly and easily reached because thereby the East India patronage was left with the Directors and a potential cause of troublesome debate in Parliament perhaps avoided." The Company did not resist the proposal of the Government ; it was a "species of slow suicide." Grant introduced the Bill into Parliament in June, 1833 ; soon afterwards he fell ill, and Macaulay, then Secretary to the Board of Control, took over

China  
trade

1 3 and 4 Will. IV, c. 85.

2 See N. C. Sinha, *Studies in Indo-British Economy Hundred Years Ago*, Chapter I.

### 37. ACT ESTABLISHING JUDICIAL COMMITTEE OF PRIVY COUNCIL,<sup>1</sup> 1833.

[ Originally the Privy Council was a panel or organ of the *Magnum Concilium* or the Great Council of medieval England. In course of time it became the Supreme Court of Appeal for all the King's lands beyond the seas. In 1726 the Charter of George I establishing the Mayor's Courts in the three Presidencies in India gave a right of appeal from those courts, first to the Governors in Council and thence to the Privy Council, in cases where the amount in dispute exceeded 1,000 pagodas, i.e., 4,000 rupees. By later enactments the Privy Council was empowered to hear appeals from the Supreme Courts and *Sadar* Courts of the three Presidencies. It appears that during the period 1774-1833 only 50 appeals were instituted. Until 1833 the jurisdiction of the Privy Council was, in fact, exercised by such members of the Council as had held high judicial offices. The Act of 1833 created a committee, consisting of the members who should be holding, or have held, certain high judicial offices, and this committee was empowered to do the judicial work of the Council. Practically this committee was a court of law, but it maintained some administrative forms. Technically it delivered no 'judgment' but merely tendered advice to the King. An Order in Council was issued on the basis of this advice. Only one opinion was expressed, and secrecy was insisted on. "These features form a curious reminder of the time when judicial and governmental functions were intimately blended, and the same council advised the King on acts of state and judicial business."<sup>2</sup> ]

Privy Council's jurisdiction over British India

.....And whereas, from the decisions of various courts of judicature in the East Indies, and in the plantations, colonies and other Dominions of His Majesty abroad, an appeal lies to His Majesty in Council; and whereas matters of Appeal or Petition to His Majesty in Council have usually been heard before a Committee of the whole of His Majesty's Privy Council who have made a Report to His Majesty in Council, whereupon it is expedient to make certain Provisions for the more effectual hearing and reporting on Appeals to His Majesty in Council and on other matters, and to give such powers and jurisdiction to His Majesty in Council as hereinafter mentioned :—

Preamble

1 3 and 4 Will. IV, c. 41; August 14, 1833. See Cowell, *Courts and Legislative Authorities in India*, pp. 209-218.

2 Maitland, *Constitutional History of England*, p. 463.

24. And be it further enacted, that it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for regulating the mode, form, and time of Appeal to be made from the Decisions of the said Courts of Sudder Dewanny Adawlut, or any other Courts of Judicature in India or elsewhere to the Eastward of the Cape of Good Hope (from the decisions of which an Appeal lies to His Majesty in Council) and in like manner from time to time to make such other Regulations for Preventing Delays in the making or hearing of such Appeals and as to the Amount or Value of Property in respect of which any Appeal may be made.

King empowered to make rules and orders regarding appeals to Privy Council

### 38. MACAULAY ON PROCEDURE OF LAW-MAKING<sup>1</sup>, 1835.

Mr. Prinsep<sup>2</sup> proposes that all the drafts of laws which are sent up by subordinate Governments shall, before they are laid before the Legislative Council, be considered by the Executive Council in the department to which they belong, that the Executive Council may amend them, that the Executive Council may frame and discuss within itself drafts of laws and then submit them to the Legislative Council, that all correspondence with all subordinate authorities, with the Law Commission and with the local Governments, shall be carried on through the Executive Council only.....I understand him to propose that the Executive Council of India shall be competent to perform all acts incidental to legislation except the final passing of a law. I have not the slightest hesitation in saying that this proposition is in the highest degree pernicious and directly opposed to the spirit and letter both of the Act of Parliament and of the instructions of the Court of Directors.

Prinsep's view about power of Executive Council regarding legislation

Macaulay opposed to Prinsep's view

If Mr. Prinsep's resolution be adopted, a draft of a law of the highest importance may be sent to

<sup>1</sup> Minute, June 13, 1835. See Dharker, *Lord Macaulay's Legislative Minutes*, pp. 22-32, 155-158.

<sup>2</sup> A Member of the Governor-General's Council.

advantage in interposing the Executive Council as a mere organ of communication between the legislature and other bodies, though I must own that I do not conceive that the dignity of the Executive Council would be raised by such a course and though I fear that much delay and inconvenience would result from it, I will not press my objections. But in that case it will be fit that the Executive Council should be merely an organ of transmission, that its letters should be mere echoes of the communications made to it by the legislature, and that it should instantly transmit to the legislature every paper relating to legislation which might be sent to any executive department. Thus far I am ready to go. But that the Executive Council should, as Mr. Prinsep proposes, take on itself the greater part of the business of legislation would be, I again repeat, a most reprehensible course. It would be in the highest degree inexpedient. It would be a direct violation of the Act of Parliament. It would be a direct violation of the latest order received from the Court of Directors. Nor would there be, as far as I can perceive, a single compensatory advantage to set off against these objections.

Should Executive Council be 'merely an organ of transmission regarding law-making?

### 39. ELLENBOROUGH ON GOVERNOR-GENERAL'S COUNCIL.

[ Lord Ellenborough's interpretation of Section 40 of the Charter Act of 1833, relating to the position of the Fourth Ordinary Member of Council, should be read along with the views of the Court of Directors explained in paras 21-23 of the Despatch of 1834. ]

#### I. Letter to Lord Auckland, September 19, 1841.

It appeared to me when I was at this office before<sup>1</sup>, that you were in want of some officer in

<sup>1</sup> Lord Ellenborough held the Presidency of the Board of Control on four occasions: September, 1828—November, 1830 (Wellington's Cabinet); December, 1834—April, 1835 (Peel's Cabinet); September-October, 1841 (Peel's Cabinet); February-May, 1858 (Derby's Cabinet).

#### 40. ELLENBOROUGH<sup>1</sup> ON COURT OF DIRECTORS, 1844.

[ Lord Curzon observed, "With better judgment and less vanity Ellenborough might have been a considerable ruler, for he had conspicuous talents, and I remember Mr. Gladstone telling me that he thought him the best speaker of his day in the House of Lords. As it is, he was the shortest-lived and the least successful of all the Governors-General". It is said that the main reason of the hostility of the Court of Directors to Lord Ellenborough was his attempt to exalt the army at the expense of the Civil Service: "...the civil administration of the country (i.e., India) was the patrimony of the Directors, and afforded a rich provision for their relatives and all having interest with them. Of course the Civil Service was accordingly a favoured service.....Deserving soldiers were given appointments (by Lord Ellenborough) hitherto reserved for the proteges of the Court, and the whole interest of the Court and Civil Service turned against him. He may have gone too far, as Kaye contends, and exalted the army unduly at the expense of the civilians; but the most moderate reforms in that direction would have been sufficient to arouse the undying hostility of the privileged class. 'The selection of military men', wrote the Court, 'for important offices previously held by civilians can hardly fail to impair the efficiency of the Civil Service of India'. This was the head and front of Lord Ellenborough's offending, and this led to his recall. His successors, Lord Hardinge and Lord Dalhousie, were always most careful to avoid any such mistake; and they were consequently enabled to carry, without opposition, measures which in Lord Ellenborough's time would certainly have been denounced by the authorities in Leadenhall Street".]

Court is nothing more than a channel of communication between Governor-General and Board of Control.

2. Your Honourable Committee must be too well acquainted with the Act of Parliament which regulates the Government of India not to be aware that it is my duty to pay regard only to the orders of the Court sanctioned by Her Majesty's Commissioners for the Affairs of India. Of the opinion entertained by the Court itself, I can constitutionally have no

1 Letter to Secret Committee, January 18, 1844. For a favourable view of Lord Ellenborough's administration see H. M. Durand, *Life of Sir Henry Durand*, Chapter IV.

knowledge. I only know the Court as the channel through which it has pleased Parliament to provide that the orders of the supreme authority in England shall be conveyed to India ; but that supreme authority does not reside in the Court itself. It resides altogether in Her Majesty's Commissioners for the Affairs of India who are empowered to alter as they may think fit every order the Court may desire to transmit and to direct the transmission of orders of which the Court may unanimously disapprove<sup>1</sup>.

3. It is true that while Parliament has provided that all the measures of the Indian Government shall be thus practically under the sole control of Her Majesty's Commissioners, it has left to the Court the independent power of evincing its real disapproval of the measures to which, under the control of the Commissioners, it may have signified its sanction, by removing from his office the Governor-General with whom those measures may have originated.

4. It is not for me to question the wisdom of this provision, but it is evident that it may be so exercised as to effect the removal from office in the midst of great public difficulties, of the person by whom it may be the opinion of the supreme authority in England, that those difficulties can be most successfully encountered.<sup>2</sup>

Court's  
power of  
recalling  
Governor-  
General

#### 41. CHARTER ACT<sup>3</sup>, 1853

[ When the term of the Charter of 1833 was about to expire, the authorities in London asked Lord Dalhousie to give them his opinion on the changes to be introduced. The

1 Sir Robert Peel, Prime Minister of England, wrote in a private letter on February 20, 1842, "The Court (of Directors) is becoming a very troublesome body, mainly from the want of efficient control. They presume upon the absence of it, and encroach accordingly".

2 Lord Ellenborough himself was recalled by the Court of Directors without the approval of the Board of Control.

3 16 and 17 Vict., c. 95.

Judges in  
Legislative  
Council

Council three persons of legal education from England, two of the judges of the Supreme or other Superior Court, and the Legislative Councillor. I hope that the result of this will be to introduce that improved spirit of legislation with which it is probable all those going from this country to India will be thoroughly imbued ; and with this admixture of English legal knowledge and skill, and of the intimate acquaintance possessed by the Indian civil servants of the customs and manners and wants of the different parts of India, we trust that a legislative body will be constructed fully equal to the discharge of its high and important duties. We propose to give the Governor-General a veto on their legislation, which he possesses indeed now when absent from his Council, but not when present.

Governor-  
General's  
veto on  
legislation

#### 42. MACAULAY ON COMPETITIVE SYSTEM FOR COMPANY'S CIVIL SERVICE

[ The system of restricted competition proposed in 1833 never came into force. Lord Ellenborough, who succeeded Charles Grant as President of the Board of Control, 'regarded the new scheme as clumsy and the method of selection by examination as suspect.' So he did not put the scheme into operation. In 1837 his successor, Hobhouse, secured for the Board of Control, through an amending Bill, permissive authority to introduce the scheme proposed in 1833, but he had no intention to interfere with the old system. Thus the Directors, with the connivance of the Board, 'cleverly and quietly cheated Parliament, and they retained their patronage until 1853.'<sup>1</sup>]

##### I. Speech on Sir Charles Wood's Bill, 1853.

.....There is something plausible in the proposition that you should allow him ( the Governor-General ) to take able men wherever he finds them. My firm opinion is that the day on which the Civil

<sup>1</sup> See C. H. Phillips, *The East India Company*, pp. 296-297.

### 43. DALHOUSIE ON HEAVY WORK OF GOVERNOR-GENERAL<sup>1</sup>

#### I. Private Letter to Sir George Couper, (October 2, 1852.

In the recognition which you have heard made of my being *de jure* G.-G., you will see the result of my insisting on my having submitted to me, and on doing my own business myself when I first arrived ; and you will understand the criticism which represented me as doing everybody's work. That criticism, if it had been correct, would have been a damnatory one...I have not been doing other people's work ; .....I only would not leave them, or permit them to do the work that is mine. So far am I from having more work sent to me than is necessary, I have greatly curtailed it, though even thus it is too much for any man. I reckon that (besides an enormous mass of formal detail which does not come up ) not less than 20,000 to 25,000 papers are submitted for the orders of the G.-G. in the course of each year. Yet by systematising ; by causing an analysis or *precis* of each paper to be made by the officers ; by making *them* dispose of each paper on its progress, not troubling me with it *till it is ripe for my orders* (unless my orders should be indispensable during its progress) ; and by causing all unimportant papers to be submitted, not in bulk but on a register, on which my orders are inserted in a column left for the purpose,—by all these rules, I say, which are directed to make the secretaries lighten my labour while they do not command my judgment or exercise my functions, I do make every man do his own duty ; and the aggregate work,... ..thus con-

Procedure  
followed by  
Dalhousie

---

<sup>1</sup> It is interesting to compare Lord Curzon's experience with that of Lord Dalhousie. He worked 'from 10 a.m., with the exception of an hour or two for meals, or a public function or a private drive, until 2 a.m. on the following

densed, does not fill more than eight despatch-boxes each week. Even thus, I repeat, the labour is incessant, and my performance of it unsatisfactory to myself... ..

## II. Private Letter to Sir George Couper, May 28, 1854.

Working  
hours

.....I drive for an hour at day-dawn, and ride for another hour or so after sunset—work from 6 to 8½ A. M., and from 10 A. M. to 6 P. M.—sleep, or rather toss about, from 10½ P. M. to 4½ A. M..... That's my life; and if there is any one whom you wish especially ill you cannot serve him out better than by wishing him the miserable dog's life I lead. I could not sustain it for another year.....

## 44. DALHOUSIE ON RELATIONS BETWEEN 'HOME' GOVERNMENT AND GOVERNMENT OF INDIA<sup>1</sup>

### I. Private Letter to Sir George Couper, December 8, 1851.

Nature of  
despatches  
sent by  
Court of  
Directors

.....The fact is, these despatches (from the 'Home' Government to the Government of India) are penned for the most part by head clerks, and signed by many without being read, and by all *as members of a body*. The penmen—d—d fellows who do the mechanical work, which others sign—fancy themselves the hidden springs by which this Empire is in reality moved, and they write in a tone which no Secretary of State would address to the Lt.-Governor of the bulls and bisons in the Falkland Islands. The Directors, who have not an atom of real power, cling

morning or sometimes later.' The Secretary of State wrote to him on March 28, 1899. "I hear.....you were working eleven hours a day.....spare yourself as much as you possibly can, and recollect that in doing so you are really acting in the true interests of good and efficient government in India." See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 26, 54

1. See Lord Curzon, *British Government in India*, Vol. II, pp. 210, 215

## 45. DALHOUSIE ON LEGISLATIVE COUNCIL.

Dalhousie  
on inclusion  
of Indian  
member in  
Legislative  
Council

[In his essay entitled 'The Government of India', dated October 13, 1852, Lord Dalhousie wrote, ".....amidst the general unfitness there are already some Native gentlemen whose intellectual qualities, whose experience of our government, and whose extensive and minute knowledge of Indian details would render any one of them a very valuable member of the Legislative Council. For my part I should be personally glad to see such a gentleman appointed at once under the new Act". The Charter Act of 1853, however, did not provide for the appointment of any Indian member to the Legislative Council. Lord Dalhousie then nominated Babu Prasanna Kumar Tagore of Calcutta to be Clerk-Assistant of the Council, describing him in a letter to Sir Charles Wood as 'a man of ability, learning, wealth, and influence'. Lee-Warner says, "Lord Dalhousie had created some alarm in the mind of the Directors by suggesting that one seat in the Council might be filled up by a native legislator."

Charge  
against  
Dalhousie

After the establishment of the Legislative Council sharp differences arose between Lord Dalhousie and Sir Charles Wood about its functions and constitutional importance. Three definite charges were brought against the Governor-General. "He had allowed it to take up grievances and thus weaken the Executive; he had permitted it to challenge the authority of the local Government, and even of the Court of Directors; and its proceedings had agitated the public mind and so predisposed the people to rebellion.....behind them lay a larger question, and that was whether the thin end of representation was being introduced". Lee-Warner argues that these charges are baseless and concludes, "During his term of office Lord Dalhousie checked the discussion of grievances, and kept debate within reasonable limit. But the independence which he claimed might, it was argued, be misused by others, and it cannot be denied that his zeal for the Council's freedom of action was calculated to arouse fears that were justified by the course of events after his retirement from office"<sup>1</sup>.]

### I. Diary, October 12, 1854.

By the beginning of June<sup>2</sup> the Council was in operation, and since that time has gone on steadily

<sup>1</sup> Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 231, 239-245.

<sup>2</sup> June, 1854.

**III. Letter to Sir Charles Wood, March 16, 1855.**

I must be guided by the statute of 1853. Its provisions have given to the Legislative Council the independence which I have ascribed to it. The Governor-General cannot help himself. Except in the final veto after the passing of the Act, he has none of that overruling power over the Legislative which the law gives him over the Supreme Council.

Relations between Governor-General and Legislative Council

**IV. Minute, February 28, 1856.**

A Council was appointed as the Legislature of India which was no longer identical with the Supreme Council, but included divers other members, and exercised its functions by separate and distinct proceedings of its own.

Legislature separated from Supreme Council

The organization of the Legislative Council proved to be a work which involved great labour, and was attended with many difficulties. The proceedings of the Council, however, were speedily reduced to form. The duties of legislation have subsequently been laboriously and faithfully performed. The public has long since had access to its deliberations. Its debates and papers are printed and published ; and I trust, and believe that Parliament and the public will each year see reason to be more and more content with the manner in which the Legislative Council of India will fulfil the purposes for which it was established.<sup>1</sup>

Debates in Legislative Council open to the public

**46. SIR CHARLES WOOD<sup>2</sup> ON LEGISLATIVE COUNCIL, 1854.**

.....I am afraid that you are inclined to place them (i.e., the Members of the Legislative Council)

<sup>1</sup> Lord Dalhousie wrote in a private letter on July 22, 1854 : "Our Legislative Council is getting on really very well. Most of them are as yet a little afraid of the sound of their own voices, but we get through a good deal of business, and I play the compound part of the Speaker and old Shaftesbury (Chairman of Committees, H. of L.), I flatter myself, with much effect."

<sup>2</sup> Letter to Lord Dalhousie, December 23, 1854.

Legislative Council not intended to be an independent body

in a position which I do not think and never intended that they should occupy. I never wished to raise up a great independent body in India.....I look upon all the Councils, Secretaries, etc., as so many machines for lightening the labour of the Governor-General, and for doing what I may call the mechanical work of the Government. I have made him more absolute than he was in the Executive Council, and I do not wish to make the Legislative Council a body which does more than aid him in law-making. The Executive Council is to aid him in administering, the Legislative Council in law-making. I admit of course that the latter must be more independent, but I do not wish to make it a body that is likely to take upon itself more weight or authority than is necessary for the purpose of elaborating laws. I do not look upon it, as some of the young Indians do, as the nucleus and beginning of a constitutional Parliament in India.

Legislative Council not to be a Parliament in embryo

#### 47. DALHOUSIE ON TRANSFER OF INDIA TO THE CROWN<sup>1</sup>, 1858.

Company should not be abolished without providing a better substitute.

.....I am no blind partisan of the E. I. Co., nor believe in the perfection of the Court of Directors, but common prudence and sense ought to forbid our sweeping them away in order to substitute something else in their room, until we have deliberately assured ourselves that the substitute we provide is better than, or at all events as good as, that which we destroy. Most certainly that assurance cannot as yet be felt.

Lord Palmerston's bill.....was as bad as possible, if Lord Derby had not actually produced another bill which is very much worse<sup>2</sup>.....

<sup>1</sup> Private Letter to Sir George Couper, April 22, 1858.

<sup>2</sup> See *Indian Constitutional Documents*, Vol. II, Document No. 1.

Virtual  
abolition of  
Double  
Government

authorities—into one authority. The double government, so called, would be got rid of, while the new system would retain much of the good which the old one possesses, and would acquire advantages which experience has shown to belong to the form of administration long existing in India itself.....I think my project more practical and more likely to succeed, and less accompanied with risk, than the vast changes proposed by Lord Palmerston and Lord Derby.

#### 48. EAST INDIA COMPANY'S PETITION TO PARLIAMENT<sup>1</sup>, 1858.

That your petitioners, at their own expense, and by the agency of their own civil and military servants, originally acquired for this country its magnificent empire in the East.

India ac-  
quired by  
the Com-  
pany with-  
out assis-  
tance from  
the Crown

That the foundations of this empire were laid by your petitioners, at that time neither aided nor controlled by Parliament, at the same period at which a succession of administrations under the control of Parliament were losing to the Crown of Great Britain another great empire on the opposite side of the Atlantic.

India ruled  
without cost  
to British  
Exchequer

That during the period of about a century which has since elapsed, the Indian possessions of this country have been governed and defended from the resources of those possessions without the smallest cost to the British Exchequer, which, to the best of your petitioners' knowledge and belief, cannot be said of any other of the numerous foreign dependencies of the Crown.

That it being manifestly improper that the administration of any British possession should be inde-

---

<sup>1</sup> February, 1858. This petition was drafted by John Stuart Mill.

# APPENDIX

## DOCUMENTS ON INDIAN STATES

### 49. SUBSIDIARY TREATY WITH MYSORE<sup>1</sup>, 1799.

Territorial  
acquisitions  
of the  
Company

[The Fourth Anglo-Mysore War came to an end in May, 1799, with the capture of Seringapatam and the heroic death of Tipu Sultan. Lord Wellesley annexed to the Company's dominions Kanara, Coimbatore, some districts in the east and the fortress of Seringapatam. To the Nizam were given certain districts in the north-east, and to the Peshwa some districts were offered on certain conditions, which he refused. The districts offered to the Peshwa were then divided between the Company and the Nizam. In 1800 the Nizam surrendered his acquisitions in order to settle the Company's claims for the payment of the subsidiary force. The annexation of the Mysore districts to the Company's dominions was based on a leading principle of Wellesley's policy—to secure territory the revenues of which should suffice for the payment of the subsidiary force of the State concerned. He wrote to the Court of Directors on August 3, 1799 :

Nature of  
Company's  
control over  
Mysore

"In framing this engagement, it was my determination to establish the most unqualified community of interests between the Government of Mysore and the Company, and to render the Rajah's northern frontier, in effect, a powerful line of our defence. With this view, I have engaged to undertake the protection of his country, in consideration of an annual subsidy of seven lacs of star pagodas ; but recollecting the embarrassments which have arisen to all parties concerned under the double governments and conflicting authorities unfortunately established in Oudh, the Carnatic and Tanjore I resolved to reserve to the Company the most extensive and indisputable powers of interposition in the internal affairs of Mysore, as well as an unlimited right of assuming the direct management of the country (whenever such a step might appear necessary for the security of the funds destined to the subsidy), and of requiring extraordinary aid beyond the amount of the fixed subsidy, either in time of war, or of preparations for hostility. Under this arrangement I trust that I shall be enabled to command the whole resources of the Rajah's territory, to improve its cultivation, to extend its commerce, and to secure the welfare of its inhabitants. It appeared to me a more candid and liberal, as well as a more wise policy, to apprise the Rajah distinctly at the moment of his accession, of the exact nature of his dependence on the Company, than to leave any matter for future doubt or discussion."

---

1 July 8, 1799.

ned with the advancement of His Highness's interests, the happiness of his people, and the mutual welfare of both states<sup>1</sup>.

## 50. WELLESLEY'S TREATIES WITH HYDERABAD<sup>2</sup>.

[In 1795 the Nizam was defeated at Kharda by the Marathas. He received no help from the British Government as Sir John Shore was determined to pursue the non-intervention policy. The Nizam then handed over the training of his troops to French officers, the most famous of whom was Francois Raymond. Lord Wellesley thought that these officers were 'men of the most virulent principles of Jacobinism'<sup>3</sup>. He was afraid that the French commanders in the armies of Indian powers like the Nizam and Sindhis might some day 'establish the power of France in India upon the ruin of the states of Poona and of the Deccan'<sup>4</sup>. In 1798 the Nizam was persuaded to enter into a defensive alliance with the Company against Tipu Sultan. British troops were moved to Hyderabad and the French-trained troops were disbanded. The treaty of September 1, 1798, was 'obviously of a temporary nature and contracted for a special purpose'. Its main defect was that it did not promise the Nizam British assistance against the Marathas.

Treaty of  
1798

After the fall of Tipu it was felt necessary by Arthur Wellesley (later Duke of Wellington) 'to extend the basis of the treaty of September 1, 1798, to make it generally defensive against all powers; and, in fact, to take the Nizam under the protection of the British government'<sup>5</sup>. 'The model subsidiary treaty' of 1800 'saved Hyderabad at once from external ruin and from internal decay'.]

Treaty of  
1800

### I. Treaty, September 1, 1798.

*Article 1.* Such parts of the letter from Earl Cornwallis to His Highness the Nizam, dated the 7th

1 Article 9 of Lord Wellesley's treaty with Travancore (1805) is couched in the same language.

2 See Roberts, *India Under Wellesley*, Chapter VIII.

3 Martin, *Wellesley's Despatches*, Vol. I, p. 182.

4 Martin, *Wellesley's Despatches*, Vol. I, p. 186.

5 Owen, *Wellington's Despatches*, pp. 20-21.

ness's children, relations, subjects, or servants with respect to whom His Highness is absolute.

*Article 16*.....in the event of any differences arising (between the Nizam and any other Power), whatever adjustment of them the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with full approbation and acquiescence (of the Nizam).

Company's  
control over  
Nizam's  
foreign  
policy

### 51. WELLESLEY'S TREATY WITH SINDHIA<sup>1</sup>, 1804.

[War broke out between Daulat Rao Sindhia and the Company in August, 1803, and it was ended by the treaty of Surji Arjungaon on December 30, 1803. Sindhia surrendered his territory in the Doab, gave up the overlordship of Delhi and Agra and accepted a subsidiary alliance of the usual kind. A defensive alliance was concluded in February, 1804. On November 5, 1817, Sindhia was compelled to sign a treaty which bound him to give assistance against the Pindaris and abolished his overlordship in Rajputana<sup>2</sup>.

Treaties of  
1803, 1804,  
1807

The treaty of 1804, 'though never denounced, had been objected to by Lord Cornwallis, and treated as a dead letter when new compacts were made with Gwalior in 1805 and 1817.' In 1843 Lord Ellenborough construed the disturbances in Gwalior as falling under the spirit of Article 6 of the treaty of 1804, by which the British Government undertook to support the Maharaja, should necessity arise, with a subsidiary force<sup>3</sup>.]

Subsidiary  
force

*Article 8*.....the Maharajah (Daulat Rao Sindhia) agrees to receive, and the Honourable East India Company agrees to furnish, a subsidiary force .....This force is to be stationed at such place near the frontier of Dowlut Rao Sindhia as may hereafter be deemed most eligible by the British Government.

1 February 27, 1804.

2 See Grant Duff, *History of the Marhattas*, and Mehta, *Lord Hastings and the Indian States*.

3 *The Cambridge History of India*, Vol. V, p. 580.

\* \* \* \* \*

*Article 14*.....neither of the two contracting parties shall enter into alliance, or have any concern with the tributaries or chiefs of the other; and, in order to support the independent authority of both Governments, it is agreed and declared, that hereafter neither of the contracting parties will give protection or countenance to the rebellious tributaries and subjects of the other, but they will use their utmost endeavours for the apprehension of such rebels.....

Each party to refrain from interfering with tributaries of the other

## 52. WELLESLEY'S TREATY WITH BHARATPUR<sup>1</sup>, 1805.

[In the Second Anglo-Maratha War the Jat Raja of Bharatpur abandoned the British side and co-operated with the Marathas. General Lake launched four successive assaults on Bharatpur, all of which were beaten back, and he had to make peace with the Raja in 1805, leaving him in possession of his fortress.

In 1825 Durjan Sal, a relative of the minor Raja who had been enthroned with the approval of the British Government, tried to usurp the *gadi*. Lord Combermere, the Commander-in-Chief, stormed the fort of Bharatpur in January, 1826.]

*Article 1.* A firm and permanent friendship is established between the Honourable the East India Company and Maharajah Sewas Bahadour, Runjeet Sing Bahadour, and between their heirs and successors.

*Article 2.* As friendship has been established between the two States, the friends and enemies of one of the parties shall be considered the friends and enemies of both, and an adherence to this condition shall be constantly observed by both States.

British guarantee of territorial integrity

\* \* \* \* \*

*Article 6.* In the event of any enemy evincing a disposition to attack the dominions of the Honourable Company, Maharajah Runjeet Sing binds him-

self to assist, to the utmost of his power, in expelling the enemy and in no measure to hold any correspondence or be in any way connected with, or assisting to, the enemies of the Honourable Company.

Military assistance

*Article 7.* As by the second Article of the present Treaty, the Honourable Company becomes guarantee to Maharajah Runjeet Sing for the security of the country against external enemies, the Maharajah hereby agrees, that if any misunderstanding should arise between him and the chief or any other chieftain, the Maharajah will, in the first instance, submit the cause of dispute to the Honourable Company's Government, that the Government may endeavour to settle it amicably, agreeably to justice and ancient usage. If, from the obstinacy of the opposite party, no amicable terms can be settled, then Maharajah Runjeet Sing may demand aid from the Company's Government. In the event above stated in this Article it will be granted.

British control over foreign relations

*Article 8.* The Maharajah shall not in future entertain in his service, nor give admission to any English or French subjects, or any other person from among the inhabitants of Europe, without the sanction of the Honourable Company's Government; and the Honourable Company also agrees not to give admission to any of the Maharajah's relations or servants without his consent.

Exclusion of Europeans

British non-interference with Raja's relations and servants

### 53. ARTHUR WELLESLEY<sup>1</sup> ON LORD WELLESLEY'S RELATIONS WITH INDIAN STATES, 1806.

#### 1. Weakness of the system inherited by Lord Wellesley.

Another circumstance which embarrassed Government in India at all times, and was a considerable source of embarrassment at the period under consi-

<sup>1</sup> Duke of Wellington.

Omra himself, to the cause of the British Government and its allies, the meaning of which was not discovered till Seringapatam was taken, and the papers of Tipu had fallen into the hands of the British Government. Among them was found all the written communications which had been carried on between the Nawab Mahomed Ali and the Nawab Omdat ul Omra, his son, and Hyder Ali and Tipu Sultan, without the knowledge of the Company's Government.

Nawabs  
guilty of  
treachery  
to the  
Company

The fact of the existence of the correspondence alone was a breach of the treaties by which the Nawabs of the Carnatic had been allied to the British Government.

## 54. LORD HASTINGS ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES<sup>1</sup>.

### I. Private Journal, February 1, 1814.

In our treaties with them (Indian Princes) we recognise them as independent sovereigns. Then we send a Resident to their Courts. Instead of acting in the character of ambassador, he assumes the functions of a dictator: interferes in all their private concerns; countenances refractory subjects against them, and makes the most ostentatious exhibition of this exercise of authority<sup>2</sup>. To secure himself the support of our Government, he urges some interest which, under the colour thrown upon it by him, is strenuously taken up by our Council; and the Government identifies itself with the Resident not only on the single point but on the whole tenor of his conduct.

Powers of  
Residents  
in Indian  
States

<sup>1</sup> See Mehta, *Lord Hastings and the Indian States*.

<sup>2</sup> Colonel Macaulay wrote to the Raja of Cochin, "The Resident will be glad to learn that on his arrival near Cochin the Raja will find it convenient to wait upon him." (*Cochin State Manual*, p. 138).

(especially with regard to the succession) would render the arrangement ample without complication or undue latitude. Were this made palatable to a few states, as perhaps it easily might, the abrogation of treaties with the Powers who refuse to submit to the arrangement would soon work upon their apprehensions in a way that would bring them at last within the pale of the compact. The completion of such a system, which must include the extinction of any pretension to pre-eminence in the court of Delhi<sup>1</sup>, demands time and favourable coincidence...

### 55. LORD HASTINGS'S TREATY WITH HOLKAR<sup>2</sup>, 1818.

[This treaty was concluded after the defeat of the Holkar's army in the Third Anglo-Maratha War.]

British  
protection

*Article 1.* Peace being established with the Maharajah Mulbar Raw Holkar, the Company's Government agree that it will not permit any state or any freebooter to be unpunished that shall commit any outrage or hostility against the territories of Maharajah.....and the British Government will at all times extend the same protection to the territories of Maharajah.....as to its own.

\* \* \* \* \*

*Article 9.* Maharajah.....engages never to commit any act of hostility or aggression against any

<sup>1</sup> Elsewhere Lord Hastings observes, "The House of Timur had been put so much out of sight, that all habit of adverting to it was falling fast in India; and nothing has kept the floating notion of a duty owed to the imperial family but our gratuitous and persevering exhibition of their pretensions—an exhibition attended with much servile obeisance in the etiquette imposed upon us by the ceremonial of the court. I have thence held it right to discountenance any pretension of the sort, either as it applies to us or to any of the native princes."

<sup>2</sup> January 6, 1818. See Grant Duff, *History of the Marattas, and Mehta, Lord Hastings and the Indian States.*

of the Company's allies or dependants or against any other Power or State whatever. In the event of differences arising, whatever adjustment the Company's Government weighing matters in the scale of truth and justice may determine, shall have the Maharajah's entire acquiescence. The Maharajah agrees not to send or receive vakeels from any other state or to have communication with any other state except with the knowledge and consent of the British Resident.

British control over foreign relations

*Article 10.* The British Government hereby declares that it has no manner of concern with any of the Maharajah's children, relations, dependants, subjects, or servants, with respect to whom the Maharajah is absolute.

Holkar's 'absolute' control over his subjects

\* \* \* \*

*Article 13.* Mulhar Raw Holkar engages never to entertain in his service Europeans or Americans of any description without the knowledge and consent of the British Government.

Exclusion of Europeans

## 56 LORD HASTINGS'S TREATY WITH BHOPAL<sup>1</sup>, 1818.

[The rulers of Bhopal had loyally supported the British Government since 1778. This treaty was concluded in connection with the Third Anglo-Maratha War.]

*Article 1.* There shall be perpetual friendship, alliance and unity of interests between the Honourable the East India Company and the Nawab of Bhopal, his heirs and successors; and the friends and enemies of one party shall be the friends and enemies of both.

Perpetual alliance

*Article 2.* The British Government engages to guarantee and protect the principality and territory of Bhopal against all enemies.

British protection

<sup>1</sup> February 26, 1818.

British control over foreign relations

*Article 3.* The Nawab of Bhopal and his heirs and successors will act in subordinate co-operation with the British Government and acknowledge its supremacy and will not have any connection with other Chiefs and States.

*Article 4.* The Nawab and his heirs and successors will not enter into negotiation with any Chief or State without the knowledge and sanction of the British Government.....

*Article 5.* The Nawab and his heirs and successors will not commit aggression on any one. If by accident disputes arise with any one, they shall be submitted to the arbitration and award of the British Government.

Military co-operation of Bhopal

*Article 6.....* Whenever required and when necessary, the whole of the Bhopal forces shall join the British army excepting such a portion as may be requisite for the internal administration of the country.

\* \* \* \*

No British interference in internal administration

*Article 9.* The Nawab and his heirs and successors shall remain absolute rulers of their country and the jurisdiction of the British Government shall not in any manner be introduced into that principality.

## 57. LORD HASTINGS'S TREATY WITH MEWAR<sup>1</sup>, 1818.

[Ravaged by the Marathas and weakened by internal dissensions, Mewar appealed for British protection as early as 1805, but it was not till the days of Lord Hastings that the Rajput States were brought within the Company's system of alliances.]

Perpetual alliance

*Article 1.* There shall be perpetual friendship, alliance, and unity of interests between the two States from generation to generation, and the friends and enemies of one shall be friends and enemies of both.

<sup>1</sup> January 13, 1818. See Tod, *Annals of Mewar*, Chapters XVII-XVIII; Mehta, *Lord Hastings and the Indian States*.

*Article 2.* The British Government engages to protect the principality and territory of Oudeypore.

*Article 3.* The Maharana of Oudeypore will always act in subordinate co-operation with the British Government, and acknowledge its supremacy, and will not have any connection with other Chiefs or States. British supremacy

*Article 4.* The Maharana of Oudeypore will not enter into any negotiation with any Chief or State without the knowledge and consent of the British Government; but his usual amicable correspondence with friends and relations will continue. British control over foreign relations

*Article 5.* The Maharana of Oudeypore will not commit aggressions upon any one; and if by accident a dispute arise with any one, it shall be submitted to the arbitration and award of the British Government.

*Article 6.* One-fourth of the revenues of the actual territory of Oudeypore shall be paid annually to the British Government as tribute for five years and after that term three-eighths in perpetuity..... Tribute

\* \* \* \*

*Article 8.* The troops of the State of Oudeypore shall be furnished according to its means, at the requisition of the British Government. Military service

*Article 9.* The Maharana of Oudeypore shall always be absolute ruler of his own country, and the British jurisdiction shall not be introduced into that principality.<sup>1</sup> No British interference in internal affairs

## 58. LORD AMHERST'S TREATY WITH SIROHI<sup>2</sup>, 1823.

*Article 1.* The British Government consents to take under its protection, and to receive amongst the British supremacy

<sup>1</sup> Similar treaties were concluded by Lord Hastings with other Rajput States—Jaipur, Jodhpur, Bikaner, Kotah, Bundi, etc.

<sup>2</sup> September 11, 1823.

Sirohi shall commit offences or be guilty of disobedience, the same shall be punished by fine or confiscation of lands, or such other infliction as may be in each case determined on, in concert and concurrence with the Officers of the British Government.



*Article 8.* The State of Sirohi shall pay such Tribute  
tribute to the British Government to defray the expense incurred by undertaking its protection, as may be determined on.....

*Article 9.* .....it shall be competent to the Officers of the British Government to recommend such rates of transit duties and regulations for the Collection of customs  
collection of customs within the limits of the Sirohi territory as may.....be judged expedient, and to interfere from time to time enforce or amend the same.

### 59. ELLENBOROUGH ON INDIAN STATES<sup>1</sup>, 1842.

[It has been said that Lord Ellenborough "was perhaps, the first Governor-General who fully realized the position in which the British Government now stands towards the Native States of India. Averse from wholesale annexation, as he showed in the cases of Gwalior and Indore, both of which States afforded him opportunities which Lord Dalhousie would hardly have allowed to pass, he was yet determined that our supremacy should be understood and respected by all, and that the Native States should for the future submit to such a measure of control as might be necessary for the general order and welfare of the Empire. Clearly perceiving that doctrines of European international law were not applicable in their entirety to our relation with those states, he refused to permit gross misgovernment or disorder in any principality within our external frontier."<sup>2</sup>

Ellenborough's policy

Lord Ellenborough placed a civilian, Robert Hamilton, in charge of the Central India Agency, and "the new agent

<sup>1</sup> Instructions to political officers, April 26, 1842.

<sup>2</sup> H. M. Durand, *Life of Sir Henry Durand*, p. 83.

ing Persian Memorandum, directly or through your subordinates to all the princes and chiefs with whom you are deputed to communicate.

## 60. ELLENBOROUGH'S TREATY WITH SINDHIA<sup>1</sup>, 1844.

[Daulat Rao Sindhia died in 1827. Under his successor, Jankoji Rao Sindhia, rival parties fomented endless intrigues in the State. Lord William Bentinck refused to interfere, on the ground that "it was immaterial who held the reins of power in a State, provided that hostilities did not break out." Jankoji Rao Sindhia died in 1843, to be succeeded by an adopted son, a minor, Jayaji Rao Sindhia. The army, about 40,000 strong, assumed complete control of affairs. This army was defeated by British forces in the battles of Maharajpur and Panniar, and a fresh treaty was made. "Lord Ellenborough's action in the Gwalior case was the object of much criticism and the main reason for his recall."\*]

*Article 6.* And whereas the British Government is bound by Treaty to protect the person of His Highness the Maharajah, his heirs and successors and to protect his dominions from foreign invasion, and to quell serious disturbances therein, and the army now maintained by His Highness is of unnecessary amount, embarrassing to his Highness's Government and the cause of disquietude to neighbouring states, it is therefore further agreed that the military force of all arms hereafter to be maintained by His Highness.....shall at no time exceed nine thousand men.....

British  
liabilities

Restriction  
on size of  
Sindhia's  
army

*Article 8.* And inasmuch as it is expedient to provide for the due administration of the government during the minority of His Highness.....it is fur-

<sup>1</sup> January 13, 1844.

<sup>2</sup> *The Cambridge History of India*, Vol. V, pp. 579-580. For Lord Ellenborough's own defence see *Law, India Under Ellenborough*, p. 28.

ther agreed that during such minority the persons entrusted with the administration of the government shall act upon the advice of the British Resident in all matters whereon such advice shall be offered, and no change shall be made in the persons entrusted with the administration without the consent of the British Resident acting under the express authority of the Governor-General.

British control during minority

## 61. ELLENBOROUGH'S LETTER TO HOLKAR<sup>1</sup>, 1844.

The intelligence of the early death of the late Maharajah<sup>2</sup> was a cause of much grief to me. By that event the guddee of the Holkar State became vacant, there being no one of the Holkar family remaining entitled to succeed to the principality or to adopt an heir to the guddee.

It became necessary for the Governor-General to make an arrangement for the administration of the government of the Holkar principality.

British control over succession

.....I was induced to direct the British Resident at Indore to nominate your Highness<sup>3</sup> to the occupation of the vacant guddee.

It is the intention of the British Government..... that the chiefship should descend to the heirs male of your Highness's body lawfully begotten, in due succession, from generation to generation.

Until the period of your Highness coming of age the affairs of the government will be administered in your behalf, as at present, by a competent Regency acting under the general superintendence, and in all matters of importance the instructions, of the British Resident.....

British control over administration during minority

1 November 9, 1844. For the historical background see Alchison, *Treaties, Engagements, and Summits*, Vol. IV, 1864, pp. 286-288.

2 Hari Rao Holkar.

3 Tukaji Rao Holkar.

## 62. DALHOUSIE ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES<sup>1</sup>, 1851.

[Lord Dalhousie inherited the system consolidated by Lord Hastings, which has been described by Lee-Warner as follows: ".....protection was given to nearly every state, and with it a recognition of internal sovereignty." The engagements concluded with Khairpur in 1832, with Bahawalpur in 1833, with Kashmir in 1846 and with the petty State of Jind on the very eve of Lord Dalhousie's appointment contained assurance of non-interference in internal affairs. Thus "an excessive importance was attached in 1847 to the obligations imposed upon the protecting power by its promises to avoid interference with the domestic affairs of its allies."

System of  
Lord  
Hastings

"Lord Dalhousie found himself in a dilemma. Should he remain loyal to treaty obligations and incur the reproach of conniving at misadministration in States like Oudh and Hyderabad, or should he interfere in internal affairs in violation of treaties to ensure good government? The case against tampering with the sacred principle of non-interference was strong. If once he began to correct misrule in a small State, he must do the same in a larger one. The Company had not public servants whom it could spare for the work of supervising reforms in the principalities. Nor had Lord Dalhousie at his command the military forces, the powerful support of railways, the influence of education, or the public opinion which, owing to his administration, his successors were able to employ. It was therefore out of the question to depart from the rule of inactivity."

Dalhousie's  
problem

Lord Dalhousie tried to solve the problem by dividing the States into two classes—'independent' and 'dependent'. The classification was neither logical nor clear, but it offers a clue to his policy. Hyderabad was an 'independent' State. As a prelude to introducing administrative reforms there the Resident had proposed that the State should be placed under the direct administration of the Company for a term of years. Lord Dalhousie recorded his 'entire dissent from, and disapproval of, the policy suggested.'<sup>2</sup>

'Independent'  
'and'  
'dependent'  
States

<sup>1</sup> Minute, May 27, 1851. See Panikkar, *The Evolution of British Policy Towards Indian States*, pp. 67-68.

<sup>2</sup> See Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 108-115.

British agreements with States described as 'international contracts'

ment in India as can justify its ruler in disregarding the positive obligations of international contracts, in order to obtrude on Native Princes and their people a system of subversive interference which is unwelcome alike to people and Prince.

### 63. DALHOUSIE ON ANNEXATION OF INDIAN STATES.<sup>1</sup>

[It is necessary to remember that Lord Dalhousie did not invent the Doctrine of Lapse, and that he restricted it to 'dependent' States. It was an accident that in his time several princes of 'dependent' States should have died without male heirs and provided occasions for applying the Doctrine more frequently than in the time of his predecessors.

Doctrine of Lapse applicable to 'dependent States'

As early as 1834 the Court of Directors observed, "Wherever it is optional with you to give or to withhold your consent to adoptions, the indulgence should be the exception and not the rule, and should never be granted but as a special mark of approbation". In 1840 sanction to adopt an heir was not granted to the widows of the Angria family who ruled in Kolaba. Mandavi was annexed and treated as a lapse. In 1842 the titular dignity of the Nawabs of Surat was abolished, and Lord Auckland's Government declared their policy 'of abandoning no just and honourable accession of territory or revenue, while all existing claims of right are at the same time scrupulously maintained.' ]

#### I. Doctrine of Lapse<sup>2</sup>, 1848.

Right of British Government to acquire territory on failure of heirs

I take this fitting occasion of recording my strong and deliberate opinion, that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or to neglect such rightful opportunities of acquiring territory or revenue as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all heirs of every description whatsoever,

<sup>1</sup> See Lee-Warner, *Life of Dalhousie*, Vol. II, Chapter V.

<sup>2</sup> Minutes, August 30, 1848.

NOTABLE BOOKS ON  
INDIAN HISTORY AND CONSTITUTION

By

Dr. A. C. Banerjee

MEDIEVAL STUDIES

PESHWA MADHAV RAO I

THE EASTERN FRONTIER OF BRITISH INDIA

**History of India**

FROM THE EARLIEST TIMES TO

THE PRESENT DAY

By

Dr. I. B. Banerjee

**Evolution of the Khalsa**

VOL. I : : VOL. II

By

Dr. N. K. Sinha

**Haidar Ali**

**Ranjit Singh**

**Rise of the Sikh Power**

A. MUKHERJEE & CO., PRIVATE LTD  
2. BANKIM CHATTERJEE STREET :: CALCUTTA-12