

## The History and Role of Subordinate Civil Judiciary in Uttar Pradesh

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The Subordinate Civil Judiciary in this State at present consists of

1. District and Sessions Judges	*44 <sup>1</sup>
2. Civil and Sessions Judges	40 <sup>1</sup>
3. Civil Judges	65 <sup>1</sup>
4. Munsifs	205 <sup>1</sup>
5. Nyaya Panchayats	8,662 <sup>2</sup>

Prior to the Independence, District Judges were mostly drawn from the Indian Civil Service. A limited few posts, seven out of thirty-seven, were gradually thrown open to the Provincial Judicial Service. A degree of Law was not an essential qualification for the Indian Civil Service; but for the Provincial Judicial Service, it was an essential qualification. On a very few occasions appointment of District Judges was made directly from the Bar. The last such appointment was of Shri Tej Narain Mulla in about the year 1920. After the Independence, the Indian Civil Service was replaced by the Indian Administrative Service. Recruitment to the cadre of District Judges from the administrative Service thereupon stopped and for a few years all the vacancies in District Judgeships were filled from the cadre of Provincial Judicial Service. In April, 1953, The Uttar Pradesh Higher Judicial Service Rules were promulgated. This Service was to consist of District and Sessions Judges, Civil and Sessions Judges. The strength of the Service and each class of posts therein were to be determined by the Government from time to time in consultation with the High Court. The scale of pay to the members of the Service were:

(i) For Civil and Sessions Judges: Rs. 600-50-800-50-1200 per mensem with an efficiency bar at Rs. 800.

(ii) For District and Sessions Judges: Rs. 800-50-1000-75-1750-50-1800 per mensem.

Recruitment to the Service are made to the post of Civil and Sessions Judges by - (i) promotion from the members of the U. P. Civil Service (Judicial Branch) and (ii) direct recruitment after consultation with the High Court from.

(a) Barristers, Advocates, Vakils, or Pleaders, of more than seven years' standing.

(b) Judicial Officers, viz. those exercising Magisterial and Revenue powers, who have put in a minimum of seven years' service as such.

The Supreme Court has now held, in Chandra Mohan Vs. State of U. P., reported in 1966 A. L. J. 778 the Higher Judicial Service Rules to be unconstitutional. It has thrown a very important portion of the service out of gear. New Rules for recruitment to the Higher Judicial Service are bound to be framed and promulgated.

Civil Judges and Munsifs constitute what is called the U. P. Civil Service (Judicial branch). The strength of the Service and of each kind of posts therein is to be determined by the Governor from time to time. Recruitment is made on the result of a competitive examination conducted by the U. P. Public Service Commission. No person is to be recruited, who is more than 27 years or less than 22 years of age on the first day of January next following the date of announcement of the examination by the Commission for recruitment to the Service. A Candidate must be either a Bar-at-Law or hold a degree in Law from a University established by Law or be entitled to practice in the High Court or in the Courts subordinate thereto. A condition of two years' practice at the Bar was deleted in 1958. Initially appointments are made to the post of a Munsif. Civil Judges are appointed from among the Munsifs by promotion. The time scale of pay of the Service now is Rs. 250-25-400-30-700-50-850 with efficiency bars at Rs. 490 and Rs. 640. Although Civil Judges perform far more responsible work than Munsifs, they have no separate grade, nor are they given any special pay.

The organization and jurisdiction of the civil courts in this State is governed by the Bengal, Agra and Assam Civil Courts Act, XII of 1887. The pecuniary jurisdiction of District Judges and Civil Judges is unlimited, while that of Munsifs is up to rupees five thousands only. District Judges have special jurisdiction under certain Acts and try certain special kinds of suits, e.g. cases under the Land Acquisition Act or suits relating to public and charitable trusts. District Judges can hear appeals from the judgments of Civil Judges in suits up to a particular valuation and revisions from the decisions of the Court of Small Causes. In certain cases, appeals from Revenue Courts also lie to the District Judge. All appeals from Munsifs lie to the District Judge but can be heard also by Civil Judges when transferred to them by the District Judge.

Nyaya Panchayats were established in this State by the U. P. Panchayat Raj Act, 1947 (U. P. Act XXVI of 1947); and there are now nearly 9000 Nyaya Panchayats in the State. In 1962, the number of suits instituted in the Nyaya Panchayats was 49164. They have jurisdiction in Civil, Criminal and Revenue

\* This number includes 39 District and Sessions Judges in 39 Judgeships, the Registrar High Court Allahabad, 1 Judicial Secretary and Legal Remembrancer to Government, Deputy Legal Remembrancer and 2 post for Deputation Reserve.

<sup>1</sup> Vide Civil List, Part I of U.P., corrected up to July 1, 1964.

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<sup>2</sup> Vide p.51 of the Report on the Administrative of Justice in U.P. for 1962.

cases, and can try civil suits (a) for money due on contracts other than a contract in respect of immovable property (b) for recovery of movables or for value thereof, (c) for compensation for wrongfully taking or injuring movable property, and (d) for damages caused by cattle trespass. Cases against the State or Central Government or against public servants, for acts done in their official capacity, or against minors or lunatics or for balance due on partnership account or for a share under an intestacy or a legacy are barred from their jurisdiction. Legal practitioners cannot appear before them. On an application of any of the parties, and after notice to the opposite party, the Munsif of the territorial area may, in a case pending before, or decided by, any Nyaya Panchayats, withdraw and dispose of the same or transfer it to another Nyaya Panchayats or pass such order as may be just.

The sub-divisional Officer, after inviting nominations from Gram Panchayats concerned and scrutinizing them, forwards the same to the District Magistrate who, after consulting the advisory committee concerned, appoints Panches of the Nyaya Panchayat. Subject to a minimum of ten and maximum of twenty-five, every Nyaya Panchayat shall have such number of members as may be prescribed. Every person nominated for membership of the Nyaya Panchayat must be a member of Gram Panchayat, be able to read and write Hindi and be at least thirty years of age. On appointment to the Nyaya Panchayat, he ceases to be a member of the Gram Panchayat. The Panches so appointed elect a Sarpanch and a Sahayak Sarpanch from amongst themselves. For the disposal of cases the Sarpanch constitutes Benches of five Panches each. The distribution of cases between the Benches are made by allotting cases to Benches in serial order.

The entire original Civil work, except a very few cases, which may be transferred to the High Court in the exercise of its Extra ordinary Original Civil jurisdiction, and first appeals from Munsifs and Civil Judges and revision applications against the decisions of the Courts of Small Causes and Nyaya Panchayats, are done by the subordinate Civil Judiciary. The institution of original suits in Civil Courts in 1962 was 71912. 16038 regular appeals and 3880 miscellaneous appeals were instituted during the year. Apart from this, there was election, insolvency, execution and miscellaneous work before the courts. This gives a broad idea of the volume of work done by the Subordinate Civil Courts. It is unnecessary to quote the figures of each type of work. The annual reports of the administration of civil justice give them in detail.

Although the separation of the judiciary from the executive is one of the directive principles of State Policy, according to Article 50 of the constitution of India, the separation is complete only in civil cases, inasmuch as the presiding officers of civil courts are under the supervision and control of the High Court under Articles 233 to 236 of the Constitution. Broadly speaking, there are at present three classes of courts in Uttar Pradesh: (1) Civil (2) Criminal and (3) Revenue. The presiding officers of the criminal and revenue courts are under the supervision and control of the Executive Government. No notification under Article 237 of the Constitution, applying the provision to the Magistracy, has so far been issued.

The subordinate Civil Judiciary, in Uttar Pradesh, has enjoyed a high reputation for integrity, independence and efficiency. It has received tributes of praise from persons, British and Indian, who were competent to form an opinion. The judiciary received the compliments of Pandit Jawaharlal Nehru, on his release from jail, after the historic fight for freedom in 1942. Earl of Selborne, Lord Chancellor of England, in a speech, delivered in 1883, said that he had "considerable opportunity of observing the manner in which, in civil cases, the Indian Judges did their duty." He, unhesitatingly, said that "judgments of the Indian Judges bore most favorable comparison, as a general rule, with the judgments of the English Judges." He also said that "in every instance, "in respect of integrity, of learning, of knowledge, of the soundness and satisfactory character of the judgments arrived at, the Indian Judges were quite as good as those of the English Judges." Sir Lancelot Sanderson, in a speech delivered in London in June 1927 testified to the work of the Subordinate Judges and said that it had been a great pleasure to him to hear the remarks which had fallen from his colleagues on the Judicial Committee of the Privy Council in regard to the way in which the Subordinate Judges in India did their work, He, particularly, emphasized the care with which the cases were heard, the learning displayed in the judgment and pointed out that the comments of the Judicial Committee revealed that the "best traditions have been maintained in the Courts in India."

Aitchison commission of 1886 in their report spoke of the "very great aptitude for judicial office", displayed by Indians, appointed to posts in the subordinate judiciary; and Mr. S. P. Sinha (afterwards Lord Sinha) in his evidence before the Islington Commission, spoke of the "extremely satisfactory work done by the Munsifs and Subordinate Judges".

The Subordinate Civil Judiciary has received similar tributes from persons who were in closer touch with their work. Sir Henry Richards, the then Chief Justice of the Allahabad High Court, in his address, at the opening of the High Court Building by the Viceroy, acknowledged the valuable assistance received from the District Courts and "of the thorough and searching inquiry" made by those courts. Chief Justice Grimwood Mears, inaugurating the fourth session of the U. P. Judicial Officers Association, 1924 acknowledged, on behalf of the High Court, the ability displayed by the subordinate judiciary and of the "esteem in which the Judges of the High Court held the members of the subordinate judiciary". Chief Justice Sir Shah Muhammad Sulaiman, a few years later, said that the Provincial Judicial Service can take pride in the fact that those of its members who came up to the High Court have proved to be brilliant Judges of great experience, learning and ability. The Provincial Service has produced eminent and distinguished Judges who, for years, "adorned the Bench with luster, and commanded high respect for their clear thinking lucid expression and sound judgment".

Sir John Gibb Thom, in his inaugural address to the Eleventh Session of the U. P. Judicial Conference, in 1938, paid a tribute to the efficiency, diligence and high sense of duty of the members of the Subordinate Judicial Service. Similar tributes were paid by two Chief Judges of the Oudh Chief Court in March 1930. Sir Louis Stuart on the eve of his retirement, pointed out that the work done by the Subordinate Judges, in original cases, was exactly the same as was done by the Judges of the Kings bench and Chancery

Divisions of the High court of Justice in England and spoke of “the rare combination of quick disposal and careful and thorough hearing, given to cases before the Subordinate Judges”. In 1933 at the Eighth Session of the U. P. Judicial Officers Association, Sir Saiyed Wazir Hasan spoke of independence of judgment, purity of conduct and high sense of duty in dispensation of justice only between man and man but also between State and its subjects, of the Subordinate Judiciary. In 1946 Hon’ble Mr. Justice Ghulam Hasan pointed out not only to the efficiency integrity and devotion to duty displayed by the members of the service but also that the service had produced men of whom any judicial system would be proud and that they had left an indelible impress on the annals of judicial history by their judgments marked, invariably by legal acumen industry and ability of a high order.

Mr. Chintamani, while moving a resolution in the U. P. Legislative Council in 1919, spoke of “conscientious thoroughness with which the Provincial Judicial Officers performed their duties” and who, by “dint of arduous and good work have raised the whole tone of the judicial administration”. Sir Tej Bahadur Sapru, as member of the Executive Council of Viceroy in the Civil Justice Committee Report, said about the Subordinate Judges having reached a high standard of efficiency though he pointed out that they were so overworked that they were not able to spare time to keep abreast of the growing literature of law.

The Subordinate Judicial Service in Uttar Pradesh has not only produced eminent Judges of the High Court, like Syed Mahmud, P. C. Benerji, Lal Gopal Mukerji and many other, who have shed lustre, by their judgments in the pages of the law reports but also persons who when they chose to go in other walks of like achieved unique distinction. Sir Syed Ahmed was when he was, in his earlier life a Subordinate Judge of the State, the center of educational activities and founded the M. A. O. College at Aligarh which later on blossomed forth into the Muslim University. His worthy son, Syed Mahmood, was a District Judge in the State and had, by the recognition of his extraordinary abilities, the unprecedented elevation to the Bench of the High Court, while he was still in grade III of the District Judges. The Law Reports have left immortal memorials to his profound knowledge of law and a deep study of subjects for far beyond the ordinary boundaries of legal knowledge. Syed Akbar Husain is ranked, even now, with the great poet Hali for his Urdu poetry which because of rich portrayal of modern life, is sung even today. Sri Baijnath Das, a subordinate Judge of the State, was an active social reformer and while in service presided in social conferences. Sri S. C. Basu, another subordinate Judge, became well-known for the scholarship and researches in Sanskrit and Pali. Sri P. C. Mogha, another member of the Service, was the author of two books-“The Law of Pleadings” and “Conveyancer”- books which did pioneer work and have since their first publication gone into several editions. There are many other members of the Service, some of them alive, who have achieved distinction in various walks of life.

By the year 1915 the Judicial Service of the State subordinate to the Allahabad High Court had full established its glorious reputation for honesty, integrity and legal acumen of its luminaries. The Government of India Act, 1915 laid down the following sources from which appointments of High court Judges could be made:

- (a) Barristers, with one third reservation for them
- (b) I.C.S. District Judges, with one third reservation for them and
- (c) Vakils of High Courts of not less than 10 years standing or Civil Judges of not less than 5 years standing.

At a time when the number of High Court Judges did not exceed 11, at least two of them were from amongst the members of the State Judicial Service. In the year 1925 when the Oudh Chief Court was constituted under the Oudh Courts Act it was provided in the enactment that at least one out of the total number of five Judges shall be from amongst the members of the Judicial Service of the State and at least two shall be the members of the Indian Civil Service, who have worked as District Judges for at least 3 years.

The Government of India Act, 1935 did away with the system of reservation. But the sources from which High Court Judges could be appointed continued to remain the same as contemplated by the Government of India Act 1915. In the absence of reservation the number of the Judges on the High Court Bench drawn from the State Judicial Service rose from 2 in the year 1935 to 7 in the year 1954.

There is no reservation for any section under the Constitution of India, under which the appointment of High Court Judges is contemplated only from the following two sources:

- (a) Advocates of not less than 10 years' standing, and
- (b) Members of the Judicial Service who have put in at least 10 years of service.

The members of the Indian Administrative Service are no longer eligible for appointment either as District Judges or as High Court Judges. Thus all the District Judges in the State are now members of the Subordinate Judiciary (known as Higher Judicial Service).

The recognition of the worth of the Subordinate Judiciary beginning from the Government of India Act, 1915 and culminating in the provisions of the Constitution of India is the greatest tribute which could be paid to the pioneer work done by the distinguished members of the State Judicial Service of Uttar Pradesh.

#### **THE DEVELOPMENT OF THE JUDICIAL SYSTEM FROM THE TIME OF THE EAST INDIA COMPANY**

**(1600-1857)**

It would be of interest to examine, briefly, the development of the judicial system from the times of the East India Company, though we are concerned only with the growth of the judicial system during the

regime of the Company and not with the manner in which the Company, a trading concern, became a political power; It was in 1600 that Queen Elizabeth granted a Charter to the Company to trade in all parts of Asia. In 1601, the Queen granted to the Company power "to make, ordain and constitute such and so many reasonable laws as to them or the greater part' of them, being then and there present, shall seem necessary and convenient for the good government of the Company". The Charter was renewed by successive British Sovereigns, from time to time, in 1609, 1661, 1668, 1698 and so on, with additions and alterations. The Company, with the permission of the Mughal Emperors, built fortifications for its factories, four of which were originally built at Surat, Madras, Bombay and Hoogly. The last one, with which alone we are concerned, was established in 1640, because the Regulations originating in Bengal spread, in due course, to the territories of this State. Within these fortifications, Indians as well as Europeans built their houses; and when "the Nabob, on that account, was about to send a Qazi or Judge to administer justice to those natives, the Company's servants bribed him to abstain from this proceeding".<sup>3</sup> The government of the Company formally came to an end in 1857, when the great Mutiny, now popularly known as the First War of Indian Independence, took place. By the Government of India Act, 1858 (21 & 22 Vict. c. 106), which came into force on September 1, 1858, it was declared that thenceforth "India shall be governed by and in the name of" the Queen and that all the powers and territories of the Company would vest in her.

Parts of the territories, now comprised in the State of Uttar Pradesh, were known as Regulation provinces, because they were administered by Regulations made by the Governor-General under the Charter Acts of British Parliament. The other parts, e.g. Oudh, were non-Regulation territories because they were administered not by Regulations but by the executive orders of the Governor-General. The Judicial system, therefore, originally differed, in its character, in the two parts. This accounts for the existence, formerly, of two judicial services in this State, one in Oudh and the other in the rest of the State, though they are now amalgamated.

Early in the Company's career, in 1618, Sir Thomas Roe, the ambassador of King James I, had, by treaty with the then Mughal Emperor, secured, for the Factory at Surat, the privilege, giving a power to the Company to decide disputes between the Europeans only. As already pointed out, the Tribunals established by the Company for the administration of justice between Europeans usurped jurisdiction to try cases between Indians settled within the fortifications also.

By the Charter of 1726 granted by George I, the Crown established Municipalities and Mayor's Courts at Madras, Bombay and Fort William, each consisting of a Mayor and nine Aldermen, seven of whom, with the Mayor, were required to be natural born British subjects. This was the first type of courts established by the British Crown. They were empowered to try, hear and determine all Civil suits, actions and pleas between the parties. By the same Charter, the Governor and Council of each of the three towns were constituted Government Court of Record, to which appeals from the decisions of the Mayor's Court might be made, in cases involving sums under 1, 000 pagodas; a pagoda was then equal to about 8 shillings. The decision of the Government Court was final; but, if the sum involved was 1, 000 pagodas or more, an appeal lay from the Government Court to the King-in-Council.

By the same Charter, the Governor and five of the Members of Council of each town were appointed Justices of the Peace and were constituted a criminal court with powers to try and punish all offences, except high treasons, with the aid of Grand and Petty juries in the same manner as the Commissioners of Oyer and Terminer and Gaol Delivery did in England.

George I's Charter of 1726 was renewed by another Charter, granted to the Company in 1753 by George II, which continued the Mayor's Courts, with, certain amendments intended to remedy defects of which the Company had complained against. The new Charter also established a Court of Quarter Sessions for trying criminal cases, and also a small cause court to be called a Court of Request, in each of the three Presidency towns, for the determination of suits "□where the debt, duty or matter in dispute did not exceed five pagodas". All these Courts were made subject to the control of the Court of Directors, who were authorised by the Charter to make by-laws, rules and ordinances for the good government and regulation of the several courts of judicature established in India.

The chief alteration effected by the new Charter was that the Courts, which they established, were limited in their Civil jurisdiction to suits between parties who were not "Natives" of the several towns to which the jurisdiction applied. Suits between 'natives were directed not to be entertained by the Mayor's Courts unless by consent of the parties. They were all Courts of His Majesty, the King of England, and brought in the Common law of England. But their jurisdiction was limited within the Company's fortifications. Outside these fortifications, the Qazis and Muftis continued to administer justice, under the Mughal rule, in criminal matter & according to Mohammadan Law and in Civil matters according to personal law .<sup>4</sup>

The territories now comprised in the State of Uttar Pradesh came under the authority of the company by stages. Hence the judicial system in these territories underwent change by stages. William Crooke, in his book "N. -W. P. of India" (1897), summarizes, at pages 122 and 123, the stages by which the various parts of this State came under the authority of the Company.

Up to 1835, the territories, now comprised in Uttar Pradesh, except Oudh, formed part of Bengal Presidency and were governed by the Governor-General as part thereof. The judicial system introduced in Bengal extended to this State as and when the various parts of the territory of this State came under the sway of the Company.

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<sup>3</sup> Mayor of Lyons v. East India Company; (1836) 1 M. I. A. 174 (273).

<sup>4</sup> DUBEY; Courts of Law and Admn. of Justice, 1965 ed., pp. 3-4.

Space does not permit a description of the clash between the Executive and Judicial authorities or of the union separation and again a re-union of fiscal and judicial powers. Cowell in his lectures on the History and Constitution of Courts has given ample and illuminating details of the same.

Lord Clive landed in India for the last time in 1765. He decided to avail himself of the sovereignty of the Mughals. He proceeded to obtain the grant of the Diwani, the power of collection of revenue, from the Mughal Emperor and succeeded in this by obtaining the Farman, dated the 12th August, 1765, granted by King Shah Alam. The collection of revenue in India involved then the whole administration of civil justice. The Nizamat or the administration of criminal justice was for the time being left- with the Moghul's lieutenant, the "Nabob" of Murshidabad. The administration for the most part, of the revenues, and still more of civil justice, was conducted through 'native' agency till the 11th May, 1772, when the 'Company, by its Proclamation of the same date, 'stood forth as Dewan' and assumed the direct charge of the collection of revenue and administration of justice through its own servants.

In the same year Warren Hastings became the Governor of Bengal. He established, under the Judicial Regulations passed on August 21, 1772, Mofussil Diwani Adalats presided over by the Collectors of revenue in each district. These courts took cognizance of all disputes, real and personal, all causes of inheritance, marriage and caste, and all claims of debts, contracts and demand of rent. The questions of succession to the Zamindari and Taluqdari property were, however, not submitted to these courts but were reserved for the decision of the Governor-in-Council. A court of criminal jurisdiction, called the Faujdari Adalat, was also established in each district under the same Regulations. In it a Qazi and a Mufti, with the assistance of two Molvies appointed to expound the Mohammedan Law, sat to hold trial of all criminal offences. The English Collectors of Revenue were directed to superintend the proceedings of these courts. Established by the same Regulations, the Sadar Diwani Adalat and Sadar Nizamat Adalat, respectively, heard appeals from the Civil and the Criminal Courts.

In 1774, the Mayor's Court at Calcutta was abolished and, in its place, a new Crown Court, called the Supreme Court of Judicature, was established in that town, by the Charter granted under the East India Company Act, 1772 (13 Geo. III c. 63), popularly known as the Regulating Act of 1773. An appeal from it lay to the Privy Council. By another Act of Parliament, passed in 1781 and known as the Act of Settlement (21 Geo. III c. 70), it was expressly declared that the Supreme Court would not have jurisdiction in any matter concerning revenue, or concerning any acts done in the collection thereof, according to the practice of the country or the Regulations of the Governor-General-in-Council. The Sadar Diwani Adalat was constituted, by the Act aforesaid, to be a Court of Record; and it was also provided for the first time, by the same Act, that the decisions of / this Court, in cases valued at £5, 000 (Rs. 50, 000) or upwards, would be appealable to the Privy Council. Thus, although this Court was not established by a Royal Charter, it was nevertheless distinguishable from the ordinary courts of the Company and traced its final establishment to the recognition by, and sanction of, the British Parliament.

In 1793, Cornwallis completely reorganized the Mofussil courts. The Governor-General-in-Council passed, in that year, a large number of Regulations establishing Courts of Zillah and city Magistrates for trying petty offences, and four Courts of Circuit in the Presidency of Bengal, under the superintendence of English Judges, assisted by Indians versed in Mohammadan Law, for trying, in the first instance, persons charged with crimes or misdemeanours, and enabling the Governor-General-in-Council to sit in the Sadar Nizamat Adalat and superintend the administration of Criminal Justice throughout the Presidency. For the hearing of civil actions) Courts of Zillah and City Judges were created. Four Provincial Courts of Appeal were established within the provinces of Bengal, Bihar and Orissa for the purpose of hearing civil appeals from the several Zillah and City Courts; the Sadar Dewani Adalat at Calcutta being vested with appellate jurisdiction and general power of supervision over the inferior courts in all suits of a value above Rs. 1, 000. Below the City and Zillah Courts, were two classes of inferior Judges. "First in order, the Registrars of those courts who, when authorised by the Judges, were empowered to try and decide causes of amounts not exceeding Rs. 200; their decrees not being valid until revised and countersigned by the Judge. The next and lower grade of Judges were the Native Commissioners who were empowered, by Regulation XL of 1793, to hear and decide civil suits for sums of money or personal property of value not exceeding 50 Sicca rupees. Of these officers the head Commissioners were called Sadar Ameens and the rest were called Moonsiffs.<sup>5</sup>

Diwani and Faujdari Adalats on the Bengal pattern were established in Benares in 1795, and in the Ceded and Conquered provinces, i. e. the rest of the present Uttar Pradesh, except Oudh, in 1803-05. At the same time, two Provincial Courts of Appeal and Courts of Circuit were also established, one at Benares and the other at Bareilly; and the jurisdiction of the Sadar Adalats at Calcutta was extended, by various Regulations, up to these places. It was in 1832, that a separate Sadar Diwani and Nizamat Adalat was established by Regulation VI of 1831, for the North-Western Provinces (the present U. P., except Oudh), with similar powers as those possessed by the Sadar Courts at Calcutta.

This is the general outline of the system which was established for the administration of civil and criminal justice. The year 1793 marks the era of judicial independence. The Government endeavoured to separate their judicial and executive functions and to render the officers who performed the latter functions amenable to the authority of those who exercised the former. The Courts so established lasted for a considerable time, nearly eighty years; but because of the process of occasional extension and repeal, the statutory provisions which created them are enveloped in some obscurity.

Regulation V of 1831 made some important alterations. The object was recited in the preamble to be the gradual introduction of respectable Natives into the more important trusts connected with the administration of the country. Moonsiffs were invested with power to try and determine suits for money- and other personal property of the value of Rs. 300, and suits with regard to land of the value of Rs. 300,

<sup>5</sup> Cowell; History and Constitution, etc., p. 176.

except such land as was exempt from the payment of revenue. The Judges were empowered to refer to the Sadar Ameen any suit the value of which did not exceed Rs. 1, 000. A new office, that of Principal Sadar Ameen, was created, to whom suits of value not exceeding Rs. 5, 000 might be referred. Registrar's Courts were abolished; Provincial Courts of Appeal were gradually superseded, and, in two years, finally abolished; and original jurisdiction was given to the Judges in all suits exceeding in value, Rs. 5, 000 with an appeal direct to the Sadar Dewani Adalat.<sup>6</sup>

In the period which intervened between 1793 and 1831, the relations of the Collectors to the Civil Courts underwent considerable alterations.

With regard to the Civil Courts throughout the Presidency of Bengal, the course of legislation had introduced considerable confusion as to the precise functions of some of the Judges. The original legislation on the subject was contained in the Regulations of 1793, the provisions of which had been extended in 1795, 1803 and 1804 to Benares and the Ceded and Conquered provinces, respectively.

The Adalat system itself remained in some obscurity, so far as the legislation on which it rested was concerned, till a very recent period. In order to ascertain the constitution and the jurisdiction of the Civil Courts at any time before 1871, it is necessary to trace out and piece together various bits of legislation which were distributed over no less than thirteen different enactments.

It was in 1868 that the old designations of various Judges in the Presidency of Bengal, including the North-Western Provinces, were altered. By Act XVI of 1868, the office of Sadar Ameen was abolished, and Principal Sadar Ameen were designated 'Subordinate Judges'. Three years later, the Bengal Civil Courts Act, VI of 1871, which repealed all the previous Acts and Regulations relating to the constitution of Civil Courts in the Presidency of Bengal, provided for the appointment of 'District Judges, Additional Judges, Subordinate Judges and Munsiffs'. Ultimately, came the present Bengal, Agra, and Assam Civil Courts Act, XII of 1887, which also provided for the same four classes of Civil Courts in the aforesaid provinces.

The Courts established by the British Crown and Parliament, for the most part, applied English law, both civil and criminal; exceptions being made in favour of Hindus and Mohammedans. In suits against parties belonging to either of these religions, by whomsoever, instituted, whether by-Europeans or Indians, the law applicable to the defendant prevailed. The proceedings of the Courts were governed by the English law of procedure. Until at least 1834, they, for the most part, were amenable only to the Legislative authority of Parliament, and to such Regulations of Government as the Supreme Court might choose to acknowledge and register.

The Mofussil Courts, on the other hand, had nothing to do with English law, but were amenable, in all respects, to the Regulations of Government, and, when Hindu or Mohammadan Law did not apply, or when no Regulations were applicable, were directed to proceed according to justice, equity, and good conscience.

Oudh was annexed in 1856, to which the judicial Regulations of Bengal did not apply. Like all other non-regulation provinces, it also remained a non-regulation territory and the judicial system in Oudh followed the pattern of other non-regulation territories and was different from that of the N. - W. Provinces.

Various grades of Courts were established in Oudh, by Act XIV of 1865, similar to those provided for the Central Provinces under the same Act. But, as this Act was framed chiefly with reference to the Central Provinces, it was found incomplete and inconvenient as regards Oudh. Accordingly, in 1871, the Oudh Civil Courts' Act was passed, which applied to all Civil Courts in Oudh. It reconstituted, almost on the same model as that of the 1865 Act, five grades of Courts, viz., those of (1) the Tehsildar, (2) the Assistant or Extra Assistant Commissioner, (3) the Deputy Commissioner or the Civil Judge of Lucknow, (4) the Commissioner, and (5) the Judicial Commissioner. The Governor-General-in-Council was empowered to fix, and, from time to time, to vary, the number of Courts of each grade. The general control over all the Courts of the first and second grades in any District vested in the Deputy Commissioner, and the control over the Courts of the first three grades, in any division, vested in the Commissioner, subject to the superintendence of the Judicial Commissioner. The Court of the Deputy Commissioner was the Principal Civil Court of Original jurisdiction in any district and he could direct the business in the Courts of the first and second grades to be distributed among such courts as he thought fit, having regards to the limits of their jurisdiction. He entertained appeals from those courts except when the amount in dispute exceeded 1, 000 rupees, in which case the appeal lay to the Commissioner. Appeals lay also from the Deputy Commissioner to the Commissioner and from the latter to the Judicial Commissioner, who was empowered to refer cases, in which he entertained any doubt, to the High Court of the North-Western Provinces, which latter Tribunal was directed to deal with the case so referred as if it were an appeal instituted in that very Court.

Civil Courts, on the lines of those in the N. W. Provinces, were established in Oudh by Act XIII of 1879, which Act, as amended by Act XVI of 1891, established the following grades of Civil Courts in Oudh; namely, (1) the Court of the Judicial Commissioner, (2) the Court of the District Judge, (3) the Court of the Subordinate Judge, and (4) the Court of the Munsif. The Oudh Courts Act, IV of 1925, created another Court in Oudh, namely, that of the Additional Judge and also altered the designation of the 'Subordinate Judge' to 'Civil Judge'. This alteration of designation took place in the erstwhile province of Agra in 1936. Under the Same Act, the Court of the Judicial Commissioner of Oudh was replaced by a Chief Court, which was ultimately amalgamated with the Allahabad High Court in 1948. The Bengal, Agra and Assam Civil Courts Act, 1887, was extended to Oudh in 1956 by U. P. Act no. II of that year; and thereupon all the Civil Courts of Oudh, constituted, and the powers conferred thereon, by the Oudh Courts Act, 1925,

<sup>6</sup> Cowell; History and Constitution, etc., p. 178.

were deemed to have been respectively constituted and conferred under the provisions of the Act of 1887.