Rammohan Roy's Views on Indian Judges and Jury

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The judicial reform in British India was seriously considered by the Home and local governments immediately before the renewal of the East India Company's Charter in 1833. It was in fact this period when the Indian intellectual class began to protest against new Regulations and to express their political claims through various petitions and newspapers.

Rammohan Roy (1774–1833), a wellknown Indian reformer in the early nineteenth century, had, as he himself wrote,[1] a good knowledge of the judicial system in Bengal taken from his personal experience for many years. Besides his civil service experience in some districts in 1803–14, he had been greatly worried by several civil suits against him as well as his eldest son's case of the embezzlement of public money.[2] Therefore he was eager to lay before the English public the operation of the judicial system and his proposals for its reform. After his arrival in London in 1831, he had an opportunity to express his opinions on the judicial and revenue systems, answering the questions of the Board of Control. These were published in the Parliamentary Papers for 1831 (Vol. V) and immediately reprinted in some newspapers and journals in London and Calcutta.[3] In 1832 he himself published them in a book entitled "*Exposition of the Practical Operation of the Judicial and Revenue Systems of India, etc.*" This is indeed the first Indian opinion concerning with wide questions of the judicial system of India.

Roy's aims in his proposals for judicial reform were to eliminate the various abuses of the system and to extend the authority of native Indians in the administration of justice, and he sought to realize the former through the latter. As for this latter, the main points of his proposals may be said to have been (1) the establishment of more courts with a *sadr amin* so as to make them more accessible to the people and the appointment of two native assistant judges to each district court in order to supervise the *sadr amins*; (2) fixing the number of assessors to conduct trials together with the English judge in the courts of circuit at three and having them function as a jury; (3) the establishment of juries composed of Indians in the district judge's courts. In this article we shall examine successively questions relating to Indian judges, law officers, and lawyers, and then juries in Supreme Court at Calcutta and Company's courts.

A. Native Judges

Let us first consider the table illustrating the extension of the jurisdiction in the courts of native judges (below). The judicial system established by Governor-General Cornwallis in 1793 was rooted in a distrust of Indian competence in the administration of justice, and Indian *munsifs* were permitted to try cases involving only moveable property of up to 50 rupees. But thirty-five years later, when Bentinck took up his post as Governor-General, the

Changes in Each Judge's jurisdiction of Civil Cases

Regulation	*munsif*(1)	*sadr amin*	register	district judge
No. 40 of 1793	40	—	200	unlimited
No. 49 of 1803		newly established 100	500	
No. 13 of 1808				5,000
No. 23 of 1814	64	150	500+(3)	
No. 19 of 1917				10,000(2)
No. 2 of 1821	130(3)	500		
No. 4 of 1827		1,000(3)		

Figures indicate in rupees the highest permissible sum at issue in the cases which each level of judge was empowered to try; a blank space indicates that there were no changes made.

(1) The *munsif* dealt only with cases relating to moveable property.
(2) Cases involving sums of 5,000 to 10,000 rupees could be brought before either a provincial court of appeal or a court of district judge.
(3) Those able to try cases involving these sums were limited to those who had been granted approval on a district judge's recommendation.

jurisdiction of the *munsifs* had been extended to cases of up to 150 rupees, although they were still limited to cases involving moveable property, and their superior judges, the *sadr amins*, had been entitled to try cases of up to 500 rupees or, in the case of those given approval on the recommendation of a district judge, of up to 1,000 rupees. This represented a considerable break from the restrictions imposed by Cornwallis. As a result of this extension in their jurisdiction, the number of cases dealt with by native judges gradually increased, and this increase became especially pronounced during the 1820's, when native judges disposed the majority of cases at the first trials.[4]

Concerning criminal cases, Cornwallis had become distrustful of the Indians upon witnessing the abuses of the criminal court of the *nawab* of Murshidabad, and so when setting up criminal courts in 1793 he did not grant the Indians any judicial authority.[5] This policy was maintained for many years thereafter, but in 1821 it became necessary to have native law

officers and *sadr amins* conduct minor cases under the superintendence of the magistrate in order to lighten the excessive duties of the latter and to expedite the handling of criminal cases.[6] Thenceforth the number of cases dealt with by natives rapidly increased, reaching 3,571 in 1824, 3,872 in 1825, and 4,270 in 1826.[7]

In regard to these native judges, Roy was dissatisfied at the fact that they were placed under the complete superintendence of the district judge and that they were responsible to him alone in their duties and not directly to either the government or the public. This was a point to which he returned over and again. He himself believed many of the native judges to possess sufficient qualifications and ability and demanded that they be given higher positions of responsibility, saying, "If proper care can be taken in the selection, all the situations might be filled with well-qualified persons (§ 19)". But his demand was a moderate one, for he demanded only that in cases where natives had been found to have fulfilled their duties ably should they be progressively appointed to posts of greater responsibility (§ 78).

Here it is worth noting that, unlike in the case of the post of collector, Roy did not demand that natives replace the English as district judge. In a supplementary paper on the revenue system he gave a detailed list of the duties of collectors, and claiming that the native officers already had sufficient knowledge of and competence in these duties, he demanded that the post of collector be filled by natives. Furthermore:

> Whereas under the present system the credit or discredit is attributed to the European head of the department; while the natives who are the real managers of the business are entirely overlookd and neglected, and consequently they seem most of them to be rendered quite in different to anything but their own temporary interest.

Thus describing the evils into which natives who had not been granted positions of responsibility were liable to fall, he reasoned that if the natives were instead to become collectors, they would attend diligently to their duties, improve their qualities, and form an attachment to the government.[8] In the case of the English district judges, on the other hand, he levelled severe criticism against them, saying that they were unfamiliar both with the languages and customs of their areas of jurisdiction and with the law to be applied in their trials and that they were incapable of administering justice without the assistance of native law officers. But he did not demand that the post of district judge be filled by natives. Roy himself was well aware of this difference in his demands for Indianization in revenue posts and judicial posts (§ 78). What, then, did he consider to be lacking in the natives as far as the post of district judge was concerned?

Roy criticized the English judges for being ignorant of the languages and

customs of the Indians, but at the same time he was quite frank in pointing out the shortcomings of the natives at the time, saying, "the natives who possess this knowledge have been long accustomed to subordination and indifferent treatment, and consequently have not the power of commanding respect from others, unless joined by Europeans." He then suggested a tentative principle in regard to judges, namely, "the only remedy is to combine the knowledge and experience of the native with the dignity and firmness of the European (§30)." Thus it may be considered that this want of dignity and firmness on the part of the natives constituted an important reason for his failure to demand the Indianization of district judges.

The fact that Roy gave "dignity" and "firmness" as the qualities of a judge is probably indicative of his careful observation of judges. He makes no comments on the question of how the dignity and firmness of the English judges at the time were born or how they were maintained. But he did feel that the Indians, especially the Hindus, had been under foreign rule for a long period and were thus incapable of possessing dignity and firmness. This understanding of his was directly linked to his advocacy of British rule.

Next, let us examine the actual contents of Roy's proposals relating to the native judges. He believed that it was the duty of the British, as the rulers of India, to guarantee the security of the life and property of all Indians and to extend justice to the door of every home. He was critical of the situation at the time which was such that, on account of the small number of courts in Bengal and their attendant shortcomings, it was difficult for peasants and other poorer classes to go to the courts for legal redress when they had suffered from encroachments on their rights and oppression on the part of *zamindars* and government officials (§ 4). His proposal for the rectification of this deformity was to increase the number of *sadr amins'* courts. He demanded, namely, that *sadr amins* be stationed not only at the same place where a district judge held court but also at proportionate distances in different parts of each district and that they themselves be empowered to take up cases and adjudicate upon them. He claimed that as a result of this increase in the number of courts and in their sphere of jurisdiction with more independent responsibility it would no longer be necessary for suitors to travel far from their homes in order to seek justice. He further proposed that a new post of "assistant judge," to be filled by natives, be established as a judge superior to the *sadr amin*, that two be appointed to each district, and that they superintend the *sadr amins*, one being stationed where the district judge held court and the other at an appropriate distance therefrom. "There will thus be as complete a check over them as under the present system, and justice will be brought home to the doors of a great majority of the inhabitants of each district, since causes under 500 rupees are exceedingly numerous in every Zillah [district] or City Court (§ 30)."

Here Roy makes no mention of the *munsifs'* courts which were located

in each pargana. The *munsifs'* courts had been established by Cornwallis primarily for the *zamindars*; the post of *munsif* was filled by *zamindars*, and lawsuits against *zamindars* were not taken up.[9] At the time when Roy was writing this situation had improved, but the *munsif's* jurisdiction was restricted to cases relating to moveable property of up to 150 rupees. They were also lacking in legal knowledge, their ability and qualifications as judges were inadequate, corruption and bribery were in evidence, and generally they were not held in high regard.[10] It was probably for such reasons that Roy did not take up for consideration the question of *munsifs*.

In regard to the assistant judges, Roy suggested only that they be put in charge of appeal against the decisions of *sadr amins*, and he mentioned nothing of their own first trials or of appeal trials against the decisions of *munsifs*. However, this post may be compared with the post of principal *sadr amin*, established by Regulation No. V of 1831, which became the highest judicial office which natives could assume. The reason that Roy made special mention of appeal against the decisions of *sadr amins* was perhaps that he attached particular importance to these appeals, which are said to have accounted for one case in seven.[11] He proposed the adoption of an assessors in these appeal courts, and since the assessors were to be paid a monthly salary of 200 rupees, the same as that for district law officers, he must have had in mind appointees as familiar with the law as law officers. In cases where the assistant judge and assessors were of the same opinion the decision was to be final, and only when there was a difference of opinion would it be possible to make a special appeal at a district judge's court. Roy considered one of the functions of the assessors and jurymen to be the removal of the evils attendant on appeals, which were excessively numerous at the time, and he advocated that in cases where the opinions of the jurymen or assessors agreed with that of the judge, this should be regarded as the final decision, with no recourse to appeal being permitted.

Roy expected a great deal of the assistant judges in their capacity as superior native judges. Firstly, the assistant judge would be in charge of registration duties, and Roy hoped to check the widely prevalent practice of forgery by having written deeds registered with the assistant judge within a certain number of days. Secondly, although the assistant judges would not be empowered to interfere with the police, he proposed that they be authorized to accept written complaints of any abuse of power on the part of police officers and to forward the complaints to the magistrate for his investigation (§ 30). This proposal was born of his recognition of the fact that at the time the poorer peasants had given up all hope of justice, even if they should find themselves oppressed by the police, because it was impossible for them to travel all the way to a magistrate's court.

B. Law Officers

The native law officers were those whose task it was to explain the Hindu or Islamic law to be applied in individual cases tried by English judges. In 1772 the East India Company, establishing courts for the first time, laid down the principle that in regard to "inheritance, marriage, caste, and other religious usages or institutions" Hindu law was to be applied to Hindus and Islamic law to Muslims, and the native law officers called *pandits* versed in Hindu law and *maulvis* versed in Islamic law were assigned to each court. In other words, in colonial India the ruling British decided to apply Indian indigenous laws within certain field to legal suits of the ruled Indians, but since they were ignorant of Indian law the English judges were forced to engage those familiar with it as law officers. In this sense, these law officers represented an institution peculiar to the colonies. Furthermore, since the Hindus and Muslims had laws which differed considerably with respect to such matters as inheritance and marriage, it was necessary to assign separate law officers for them to each court, one versed in Hindu law and the other in Islamic law. But if with the passing of the years Hindu law and Islamic law should become familiar to the English judges, then the *raison d'être* of the law officers would proportionately diminish, and so this system was destined to be eventually abolished.

In regard to Hindu law, the ancient Sanskrit legal texts known as *śāstras*, especially those concerning laws of inheritance and adoption, had been successively translated into English since the end of the eighteenth century by Englishmen such as William Jones and H. T. Colebrooke and had thus become known to the English. At the same time, "opinions' (*vyavasthā*) of *pandits* accumulated, and in the 1820's introductory works on Hindu law based on selections of these *vyavasthā* were published. These were *Considerations on the Hindoo Law as it is Current in Bengal* (1824) by Francis W. Macnaghten, judge at the Supreme Court at Calcutta, *Principles and Precedents of Hindu Law* (1829) by W. H. Macnaghten, Register at the Sadr Diawni Adalat, and *Elements of Hindu Law* (1825) by Thomas Strange, chief justice at the Supreme Court at Madras, and they were used as reference works by the English judges.[12] In addition, a collection of precedents at the Supreme Court and Sadr Diwani Adalat began to be published by W. H. Macnaghten and others. In this manner it had become possible by 1830 for the English judges to acquaint themselves with the general principles of Hindu law without relying on the assistance of *pandits*. The situation was probably similar in the case of Islamic law too.[13]

The *maulvis* were selected from among graduates of the Madrassa in Calcutta and the *pandits* from among graduates of the Sanskrit Colleges in Benares and Calcutta. Since both were knowledgeable in legal matters, they also began to perform the duties of the *sadr amin* from 1805 onwards.[14]

These judges-cum-law officers gradually came to devote more and more time to their duties as judges, and it is to be surmised that this tendency became all the more marked after they came to preside over criminal cases as well in 1821.[15] From 1826 onwards a law examination was conducted annually for the engagement of law officers, and successful candidates were appointed to courts with vacancies.[16] This examination was directed at those who had received an education at colleges such as those mentioned above, and the subjects examined were either Hindu law or Islamic law.[17] In this manner further advances in the legal knowledge and competence of the law officers were promoted.

Since Roy does not make any special mention of the district law officers, let us move on to the question of *muftis*. The *mufti* was the Muslim law officers who accompanied the English judge of circuit; sitting with the judge in court, he would hear criminal cases and following the hearing he would give his opinion on the case, known as *futwa*. Consequently the *muftis* were often referred to as "assessors." Among the native judges and law officers, Roy attached special importance to the *muftis*, for he held them in high regard, judging them to be capable and fully qualified to perform their duties, and gave them as an example of the Indian knowledge and experience to be added to the European's dignity and firmness, thus using them as grounds for his advocacy of the extension of native authority in the administration of justice.

In regard to the *mufti's* competence, Roy answered as follows to a question posed by the Board of Control:

> Some of the Muftis (Mussulman law assessors) are men of such high honour and integrity, that they may be entrusted with the power of a jury with perfect safety; and they are all of the most essential utility, and indeed the main instrument for expediting the business of the criminal courts. However highly or moderately qualified the European judges may have been, the business has been advantageously conducted through the assistance and co-operation of these Mohammedan assessors for a period of 40 years past (§ 58).

Thus Roy believed that the *mufti* was quite competent in the discharge of his duties in the courts of circuit, the most important of the criminal courts, and that he was of useful assistance to the judges of circuit. According to Roy, there were some judges of circuit who were highly qualified, but generally they were not competent to determine difficult questions of evidence among the Indians (§ 57). Thus he held the assistance of the *muftis* to be indispensable in the courts of circuit. He also declared that although the Bengal government had been continually altering the systems in other branches during the past forty years, in the case of the courts of circuit the

mufti system had so well answered the purpose of government that it had been unable to devise an arrangement superior to that of the *mufti* having a seat with the judge on the bench (§ 30).[18]

Here we wish to draw attention to Roy's statement that the *mufti* fulfilled the function of a jury. Immediately prior to his answer quoted above, he stated that "in a vague sense the Mohammedan law assessor may be considered as analogous to the jury in English courts (§ 55)." Roy evinced a strong interest in the jury. His claim that a single *mufti* fulfilled a function analogous to a jury was born of his strong demand for the establishment of a native jury in the courts of the East India Company, his contraposition of the native *mufti* to the English judge, and his view, freed from the fixed notion that a jury be composed of twelve members, that even a few persons could fulfill the functions of a jury. His ideas for the reform of the *muftis*, described below, developed from these views of his on the jury.

As a result of the reform of the courts of circuit in 1829, the *muftis* were abolished and their former duties were taken over by the *maulvis* of the district courts through which the judges of circuit passed.[19] Even though the *muftis* of the courts of circuit and the *maulvis* of the district courts may have been equally well versed in Islamic law, still the abolishment of the *muftis* would not have been in accord with Roy's wishes. In response to the situation subsequent to this abolishment, he demanded that the number of assessors at each court of circuit be increased to "three or five (at least three) (§ 63)," and made the following proposal in regard to the courts of circuit: "The judge of circuit previous to his departure for any Zillah (district) or city or try criminal causes, should summon, through the magistrate, one or two additional Maulvis attached to the adjacent courts, with a few other learned, intelligent and respectable inhabitants of the district or city, to join him on his arrival with a moderate extra allowance for their services, and every morning before he takes his seat on the bench, the judge should, without previous intimation, direct three of them to sit with him during the whole trials that may come on for that day as his law assessors and they should be required to deliver their opinions in each case in open court, immediately after the close of the proceedings, without previous opportunity of communicating with any one whatsoever, on the same principle as an English jury: and the judge should immediately inform the parties of the verdict (§ 64)."

This proposal corresponded to that for a jury. Roy himself stated that the duties of these *maulvis* would be more resembling those of the former law assessors (*muftis*), and he added that the difference between them was not important and the result would be the same (§ 65). This is worth noting as an expression of his views on the jury, which took into account the state of affairs obtaining in Bengal at the time.

In accordance with these views, Roy proposed that a system of assessors

having the same duties as the former *muftis* be introduced to the civil courts as well. Judging from the assessor's qualifications and salary to be discussed below, "civil courts" in this case probably refers not to the district courts but to the provincial courts of appeal. In the civil courts of that time the English judge would try cases without any native assessor in attendance and would seek explanations of Hindu and Islamic law from the law officers. But Roy, who had set high value on the role of the *mufti* in criminal courts, demanded that native assessors sit on the bench in civil courts too.

In Roy's opinion, these assessors were to be carefully appointed by the government on the basis of the recommendation of the Sadr Diwani Adalat and with a view to their character and qualifications. Since appointees were to be selected from among those who had had at least five years of experience as *muftis* in the courts of circuit, *maulvis* in district courts, or head officers in the judicial department, it is evident that he regarded this post as one equal or superior to that of *mufti* and that he intended appointing those familiar with laws and regulations and experienced in judicial posts. Although he here mentions *muftis* and *maulvis,* both Muslim law officers, this does not necessarily mean that, as in the case of the assessors in criminal courts, he was considering the appointment of only Muslims.[20] The post was to be held for life, with a monthly salary of 300 to 400 rupees, which was a high salary for native civil servants. These assessors would be responsible to both the government and the public, as were the English judges, and would be able to correspond directly with the Judicial Department of the Governor-General in Calcutta. In addition, a casting voice would be allowed the English judge in giving a decision, but the native assessor would have the right to record his dissent (§ 30). In this manner Roy proposed that the authority and responsibility which had been wanting in the native law officers be given to these assessors.

The *muftis* had been appointed from among Muslims. This was because criminal law had, since 1793, been based upon Islamic law. Roy was not critical of Islamic law and said, "As the criminal laws now established are already in general very familiar to the natives, I think they may better remain in their present state, until the government may be able to introduce a regular code (§ 67)." Recognizing the fact that Islamic criminal law was studied primarily by Muslims, he considered selecting the above assessors for the courts of circuit from among Muslims. But he did not think it desirable for this post to be forever monopolized by Muslims. He stated that once adherents to other religions studied criminal law and had acquired the same qualifications as the Muslims, they too should be appointed, and that then the Muslims would become reconciled to cooperating with them (§ 66).

Among the English, on the other hand, there was the view that it would be desirable to have Hindu law officers participate in hearings on Hindu criminal cases.[21] But in a judicial letter dated 9 March 1830 the Bengal

government expressed its opposition to this view on the ground that it would result in the introduction of Hindu law to the criminal code. This letter quoted the following opinion of Edward Colebrooke:

> The proposed introduction of the Hindoo law officer as an assessor to the Court of Circuit, either singly where both parties may be Hindoos, where one only of the parties may be a Hindoo, does not appear to be equally judicious. The Mahomedan law, when divested as it has been by our printed Regulations, of its remains of barbarism, (such as multilation, retaliation and pecuniary commutation of punishment) and of the distinction of sex and religious belief, is as applicable to a general state of society as any other criminal code can be, while the Hindoo law, founded on the distinctions of Hindoo society, can by no modifications be made applicable to any other. The Hindoo system of crimes and punishments, has in fact been wholly superseded for centuries past, in every part of this country, over which the administration of justice through British agency extends.[22]

It was thus held that it would not be possible to adopt Hindu criminal law in the courts of the East India Company because it was grounded in ideas peculiar to Hindus. Roy, too, did not propose the adoption of Hindu criminal law. Except for the Presidency of Bombay,[23] Hindu criminal law was at the time in a state of total neglect, and there existed no English translations of the relevant portion of the *śāstras*.

It is here a matter of great interest that Roy, a Brahmin, should have held the Muslim law officers in such high regard. In the case of lawyers, too, he held the Muslims in higher regard than the Hindus and declared that although he had met with some honest men among the Muslim lawyers, the Hindu lawyers were in general not well spoken of and did not enjoy much of the confidence of the public (§ 23). In his answer relating to the condition of India, he also stated that Muslims were more active and capable of exertion than Hindus.[24] This evaluation of his is noteworthy in that in Calcutta at that time there existed a distinct social division between Hindus and Muslims and, what is more, Hindus referred derogatively to Muslims as *yavana* or "foreigners."[25]

Roy was so familiar with Islamic doctrine that he had even been called a *maulvi*,[26] and in this respect he was probably second to none among the Hindus at the time. He had associated with Muslim scholars and jurists from an early age and would have had no prejudices against the Muslims.[27] He was severely criticized by those of the Hindu conservative party for having invited a Muslim acquaintance to his home for a meal, since this represented a violation of the Brahminical code relating to meals.[28] These are no doubt indications that Roy harboured no feelings of discrimination against the

Muslims.[29]

C. Lawyers

After having discussed the native judges and law officers, we must now consider the native lawyers. Since Roy had as a result of his own experiences come to evince considerable interest in lawyers, his ideas on the subject contain some noteworthy points.

At the time, the English term for lawyer was "pleader," while in the Indian languages the term "*vakīl*," deriving from Arabic, was in use. Prior to British rule in India, *vakīl* referred to an envoy or representative who had been commissioned to undertake negotiations for a specific purpose, being dispatched for example by the *zamindar* to the government in order to negotiate tax arrears or by one prince to another for the purpose of diplomatic negotiations, and those who had been charged with arguing on behalf of litigants in court were also called *vakīls*.[30] However, although there did exist people who were versed in law and connected with the courts, called *pandit* or *śāstrī* among the Hindus and *kazi*, *mufti* or *maulvi* among the Muslims, the profession of lawyer is thought to have been nonexistent at the time. In other words, it was a profession which was born in the courts under British rule.

The great importance for the judicial system in Bengal of the establishment of a system of lawyers had been emphasized by Cornwallis. In 1793 he laid down for the first time a regulation relating to lawyers, according to which the Sadr Diwani Adalat would select a suitable number of lawyers from among Hindus and Muslims for each court and empower them alone to argue in court.[31] The reasons for the enactment of this regulation were as follows. Those who had until then been arguing in court on behalf of litigants had been ignorant both of Hindu and Islamic law and of the regulations of the Bengal government, nor were they familiar with court proceedings. In this respect the *mukhtars*, servants and attendants of the litigants, who were commissioned by the latter to argue on their behalf, were especially conspicuous in their ignorance of these matters. In addition, they would also protract the trials by inappropriate methods such as summoning unnecessary witnesses and betray their clients by accepting bribes from the opposite party. As a result, they were unable to provide either their clients or the English judges with useful assistance. Cornwallis sought to reform this poor state of the lawyers' learning, competence and quality and, through the above regulation, to appoint as lawyers educated people of fine character and have them fulfill their duties towards their clients faithfully and diligently and cooperate in the promotion of speedy and fair trials. To this end lawyers were to be selected firstly from among those who had studied at the Madrassa in Calcutta or the Sanskrit College in Benares, while in cases where it was

not possible to obtain sufficient numbers by this means other people would be selected on the basis of their legal knowledge, education, and character. In addition, detailed rules were laid down relating to the duties, fees and dismissal of lawyers.

In spite of Cornwallis's intentions, however, the new profession of lawyer was still not of sufficient appeal to men of ability, nor did it enjoy a high public estimation. Consequently there appeared very few from among the graduates of the above two colleges who chose the path of lawyer, and lawyers are said to have been chosen at each court from among the existing lawyers and experienced officials attached to the courts.[32] Thereafter the Bengal government made repeated improvements on the system of lawyers, and in 1814 it amended the Regulation of 1793 and enacted Regulation XXVII. This regulation was the law in force at the time when Roy was discussing the question of lawyers. It did not contain any special stipulations regarding the qualifications of lawyers, but in 1826 the government decided to conduct an annual legal examination in Calcutta for would-be-lawyers along with that for those aspiring to the post of law officer.[33] However, this was not a compulsory examination for those wishing to become lawyers. Successful candidates were given preference in the selection of lawyers at each court, but the competition for this position is said to have been not so great that it was necessary to have passed the examination.[34] Furthermore, the level of this examination was lower than that for law officers, and in order for a lawyer to become a law officer it was necessary to have more advanced knowledge of either Hindu or Islamic law.[35]

It will be noticed that lawyers occupied an extremely low position in comparison with the English Judges. Here there did not exist any autonomous organ such as the Bar Council of today. The power to appoint and dismiss lawyers lay with the Sadr Diwani Adalat and provincial courts of appeal, while in the case of lawyers at the district courts they were appointed by the provincial courts of appeal on the basis of the magistrate's recommendation. Having been appointed, the lawyer took the oath of office and was given a certificate (*sanad*) guaranteeing his status as lawyer, but the court was able to dismiss a lawyer for the encouragement of unnecessary lawsuit, the prolongation of trials with evil intent, unwarranted refusal or omissions after the form promising his legal services (*vakīlnāma*) had been drawn up, demands for or receipt of fees or goods in excess of the fixed level, fraudulence in duties, negligence or other misconduct, or debauchery and private misdemeanours.[36] In the case of lawyers at the district court, the district judge would record his reason for a dismissal and report it to the provincial court of appeal, and if following investigations the court of appeal should give its approval, the lawyer could be dismissed. In cases of fraudulence and misconduct, the district judge was able to suspend a lawyer of his duties without the consent of a provincial court of appeal.

As regards the lawyer's duties, he was to take care to write the real names of the litigants on the *vakīlnāma,* and if a false name were used he could be removed from office. It was also demanded of him that when submitting documents such as indictments to the court, he check their contents carefully and draw them up in accordance with the regulations, and that he take care not to produce unsuitable evidence or summon unnecessary witnesses; if, in spite of a warning from the court, he should commit such a deed, he would be fined, and if this happened three times, he could be removed from office. In addition, if he did not appear in court without notice or assumed a disrespectful attitude towards the judge, he would also be fined. A further point worthy of note concerns the lawyer's fees, which were fixed according to the sum at issue in a particular case. Prior to the opening of court both parties litigant would pay the lawyers' fees to the court, and after it had been decided by court ruling which party should bear the fees, the lawyers would receive their fees from the court.[37]

In this manner the Bengal government subordinated the native lawyers to each court, placing them under the supervision of the English judges, and further laid down strict and detailed rules relating to their duties, thus seeking to promote the education of lawyers. Consequently the native lawyers were by no means working in independence of the English judges.

Roy was extremely dissatisfied at the inferior status of the lawyers and, comparing them with the barristers of England, made the following comment: "The native pleaders are so unfortunately situated from there being such a great distance between them and the judges who belong to the rulers of the country, and from not being of the same profession, or of the same class as the judges, and having no prospect of promotion as English barristers have, that they are treated as an inferior caste of persons (§ 13)." As is clearly pointed out here, the judge and lawyer stood in the relationship of ruler and ruled, and the lawyer was discriminated against on counts of his race and social status. In England judges were chosen from among the barristers and, being all members of the Inns of Court, both felt a sense of affinity and oneness as members of the same professional group. By way of contrast, the native lawyers in India at this time represented quite literally a caste inferior to the judges, and they could not even become district judge.

Roy pointed out that, as a result of their inferior position, the lawyers in the lower courts were not treated by the English judges with the consideration and respect due to their office (§ 12), and he also observed that "the pleaders are held in a state of too much dependence by the judges, particularly in the inferior courts, which must incapacitate them from standing up firmly in support of the rules of the court (§ 25)." He further deplored the fact that the lawyers were able to exert almost no influence over the English judges in regard to the latters' irregular appearance in court and that they did not even attempt to show their dissatisfaction (§ 30). In a word,

there did not exist "the same relation between the native pleaders and the judge as between the British bar and the bench (§ 7)."

In this manner Roy discussed the native lawyers in comparison with barristers. It was only natural that he should always bear barristers in mind when considering the question of native lawyers, for he himself had committed his own case to a lawyer at the Supreme Court and had comprehended the functions of a lawyer through his direct observation of the barrister's work. He does not say much about barristers, but he did note that the barrister "often proves of essential service to the bench in the king's court [Supreme Court], by able expositions of the law as applicable to every case, by great acuteness in cross-examining witnesses, and in the detection of false evidence (§ 46)"; these words should be sufficient evidence of his understanding. Hence, in reply to the question of the Board of Control, "Does the native bar assist the judge, and form a check on the accuracy of the decisions?" he answered," It is no doubt intended to answer this most useful purpose, and does so to some extent"; but because there did not exist the same relation as between the English bar and bench, "not to the extent that is necessary to secure the principles of justice (§ 11)."

Roy thus criticized the position of the native lawyers. It was probably only natural that there should be such a great difference between the native lawyers who had been educated under colonial rule and the barristers of England who boasted of a history going back to the middle ages. But if one considers the role fulfilled by the barristers at trials, it may be said that even if the judicial system of England were introduced as it stood into Bengal, so long as the lawyers occupied such an inferior position the justice of which the English were so proud would come to nought.

When considering lawyers at this time, it is not sufficient to discuss only lawyers in general as we have in the above; one must also take into account the differences existing between lawyers attached to courts of different levels. Roy's pointing out of this difference constitutes one other interesting point in his ideas on lawyers. In this regard he makes the following comments:

> Many pleaders of the Sudder Dewany Adawlut are men of the highest respectability and legal knowledge, as the judges are very select in their appointment, and treat them in a way which makes them feel that they have a character to support. Those of the provincial courts of appeal are also generally respectable, and competent in the discharge of their duties. In the Zillah [district] courts some respectable pleaders may also be met with, but proper persons for that office are not always very carefully selected (§ 25).

The same view was held by Holt Mackenzie too.[38] The difference between the lawyers in courts of different levels in regard to learning and ability are

still quite marked today, and they may be described as one of the distinguishing features of the Indian lawyer system ever since its beginnings.

As was noted above, the lawyers in Roy's day were enrolled by the courts and were attached to the court which had enrolled them. Insofar as the lawyer's fees were fixed according to the sum at issue in a particular case, there existed no distinction between lawyers of the different courts. But it is to be surmised that lawyers at the Sadr Diwani Adalat handled cases involving higher sums and earned a larger income than the lawyers at district courts, and some did in fact have quite large earnings.[39] In addition, a clear distinction was drawn in regard to the fees for legal advice, with the lawyers of the Sadr Diwani Adalat receiving 24 rupees, those of the provincial courts of appeal 16 rupees, and those of the district courts 8 rupees.[40] In other words, the lawyers of the Sadr Diwani Adalat were carefully chosen with due regard to their legal knowledge, ability and character, and they were both treated with respect by the English judges and held in high regard by the general public.

Among the lawyers of the district courts, the number of those who had received an education was rising at this time, and a betterment in their legal knowledge and qualities was said to be in evidence, but as was pointed out by Roy, they were by no means respected and there was no end to rumours of their degeneration and corruption.[41] Holt Mackenzie was favourably disposed towards the lawyers and proposed that the judges be chosen from among the lawyers, but even he said that he had not heard of any lawyer who had become a judge and that it was even rare for them to become law officers.[42]

In 1831 the reforms of the Bengal government were to extend to the lawyers as well, and the profession of lawyer was opened to all regardless of race or religion. It also became permissible for the lawyer and client to decide freely the lawyer's fees for hearings of appeal, provided that the fees did not exceed one quarter of the sum at issue. Then in Regulation XII of 1833 new rules were laid down in regard to the opening up of the profession and the fixing of fees. As a result, lawyers were able to take the first step towards freedom from their subordination to the courts, but at the same time fresh impetus was given to the widening of the gap between lawyers of the Sadr Diwani Adalat and district courts. Immediately afterwards, men of ability who had received an English education, such as the Brahmins Prosanna Kumar Tagore and Roy's second son, Ramaprasad, were to become lawyers at the Sadr Diwani Adalat and greatly enliven legal circles in Calcutta.

D. The Participation of Indians on the Jury of the Supreme Court

The trial by jury has for long been regarded as a bulwark of liberty against oppression. William Blackstone wrote as follows, "the truth of every

accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion. So that the liberties of England can not but subsist so long as this palladium remains sacred and inviolate."[43] There was probably no period in the history of England in which the jury received more praise than that extending from the second half of the eighteenth century to the early nineteenth century. Casting their eyes towards the political situation on the European continent, especially in neighbouring France, the Englishmen of this time feared the spread of revolutionary upheavals to Great Britain. Hence they emphasized the superiority of the British constitution over that of any other country and its guarantee of the right to civil freedom, and here they found reason to praise the significance of their jury trial. This was also the time when the jury was being introduced in countries outside of Great Britain. In the United States trial by jury was guaranteed by the Constitution in 1791 (Bill of Rights, 5th and 6th Amendments) as one of the fundamental human rights of the people, while in France the jury was adopted in the same year following the French Revolution. Thereafter, with the establishment of democratic forms of government in other countries of Western Europe, the jury was introduced together with parliamentary elections. It was during this same period that juries were established with native participation in the Supreme Courts at the three presidency towns in India.

In the Supreme Court at Calcutta, which was set up in 1774 an indictment jury (grand jury) and trial jury (petty jury and special jury) composed of British subjects were established for criminal cases.[44] Through the medium of this jury at the Supreme Court, Indian intellectual class in Calcutta became acquainted with the significance of the jury. One of the earliest among them to understand its significance would have been none other than Roy, and the first article by an Indian on the jury was probably that which appeared in the Bengali newspaper *Sambad Kaumudi* (11 December 1821) published by Roy. There it was stated that in comparison with the criminal trials staged by the *kazis* under the former government of the *nawab*, which had been of "untolerable hardship and oppression," trial by jury as performed by twelve "disinterested, honest and intelligent men" represented, alongside "the freedom of the press," one of the praiseworthy institutions of the British constitution and was giving the inhabitants of Calcutta infinite satisfaction. The same newspaper went on to report that the natives of Ceylon were already serving as jurymen and demanded that the jury be introduced the *mufaṣṣal* courts of the East India Company, with the right to participate on the jury being given to Indians.[45] Then, in April 1824, Roy wrote as follows in the inaugural issue of the Persian-language newspaper *Mirat-al-Akhbar*: "The rules for administering justice and awarding punishment

which they have established in this city, agreeable to the Laws of England, have secured the full enjoyment and prevented licentiousness; so that the lowest individual in demanding his rights, stands upon an equal footing with the great, nay, even with the high personage at the head of the Government. Here too the jury was extrolled alongside of "the freedom of the press."[46]

In connection with Roy's understanding of the jury, we here wish to draw attention to the *Calcutta Journal* (December 11, 1821) edited by one of his friends, J. S. Buckingham.[47] On the same day that the *Sambad Kaumudi* published the leading article referred to above, this newspaper reprinted from Robert Gifford's *Abridgement of the Commentaries on the Laws of England* (1821) "Golden Rules for Jurymen," consisting of twenty-six rules to be kept in mind by jurymen. Buckingham had been accused several times of libel and had been brought before trial by jury, and so he printed these golden rules, with the sections relating to libel especially italicized, probably in order to arouse public attention. Roy and others no doubt deepened their understanding of the jury by reading this piece in the *Calcutta Journal.*

For ten years thereafter Roy, standing in the forefront of intellectual circles in Calcutta, demanded firstly the participation of Indians alongside British citizens on the jury of the Supreme Court at Calcutta without their being subjected to unjustified discrimination, and secondly the establishment of native juries in the Company's courts. In regard to the first of these demands, he played a leading role in a petition demanding the removal of the racial and religious discrimination against Hindus and Muslims in the East India Jury Act of 1826, and after his arrival in England he refuted the arguments of the Court of Directors of the East India Company against the reform bill prepared by the Board of Control, thus contributing to the successful removal of this discrimination with the amendments to the act in 1832.[48] As for the second of his demands, he proposed, taking into account the condition of the *mufaṣṣals* at the time, a special form of jury called a *panchayat*-jury and thereby sought to eliminate the many evils of the judicial system. Although the jury was never transplanted completely in India, Roy was to leave his mark on the history of the Indian jury through these activities.[49]

The circumstances in which the right of Indians to serve as jurymen was realized differed from the circumstances under which the jury was introduced to the countries of Western Europe and Japan, for it was realized under British colonial rule amidst the intersection of the views of the ruling British and ruled Indians. Considered from this angle, jury rights proved to be suitable as the first rights for the Indians to demand for the purpose of extending their political rights and served to open the way to their subsequent political demands. The British, on the other hand, who had given birth to the jury in the first place, were apprehensive of the lack among Indians of the qualities necessary as potential jurymen, but they did not forget to

consider this question from the standpoint of the need to ensure the permanent stability of their rule in India. In other words, under colonial rule the essentially judicial question of the jury became a question with political overtones. Accordingly, in this section we shall describe the process which led to the aforementioned removal of discrimination following the amendment of 1832 and consider Roy's views during this period.

The question of Indian participation on the juries was examined by the British government in 1825. This coincided with the year in which the law providing the basis of England's present-day jury system was enacted.[50] Home Secretary Robert Peel consolidated the laws relating to the jury which had been laid down in more than eighty-five statute laws since the time of Henry III, widened the sphere of those qualified to serve on juries by lowering the property qualification to £ 10, and also widened the sphere of those qualified to serve on the special jury, which was plagued with many problems, and improved the method for their selection.[51] At about the same time the qualifications of jurymen in Scotland were similarly amended, with detailed rules for the preparation of the registers of jurymen and for the procedure of their selection also being laid down,[52] while in Ireland the special jury was improved.[53] (In the case of Ireland, jurymen's qualifications, the preparation of registers, and the procedure for their selection were reformed a little later, in 1833.[54]). These movements for the jury reform in the United Kingdom are probably not unrelated to the question of Indian juries.

The movements among the intellectual class of Calcutta in regard to the question of juries do not seem to have been very active until 1825, for apart from the above views of Roy and others in 1821–22 nothing else is unfortunately known. On the other hand, the Anglo-Indians known at the time as "Indo-Britons" or "East Indians," had been repeatedly demanding their jury rights.[55] They adhered to their paternal religion of Christianity, used English in everyday life, and were distinguished from Hindus and Muslims in social life, but legally they were not included within the category of British subjects and did not enjoy the privileges of members of the ruling people, and so they occupied a special position in Indian society at the time. In answer to their petition, the British government decided that it would be inadvisable to give them alone special treatment in granting them jury rights and held that the same rights should be granted to Hindus and Muslims as well. But at the same time it was also considered by the English that the jury would be unsuitable for Indians since they were divided according to caste and religion with the adherents to each religion having different moral codes, they were further believed to have neither intelligence nor learning and to be lacking in sincerity and integrity, and their judicial qualities were also not trusted.[56]

Of great encouragement to the British government in overcoming this

way of thinking and granting jury rights to the Indians was the success of the jury in Ceylon. Prior to debates on the question of Indian juries, the government questioned Alexander Johnston,[57] the former chief justice at the Supreme Court of Judicature in Ceylon who had since 1811 been staging at his court trials with juries composed of Ceylonese in criminal cases involving Ceylonese, and it was able to obtain his replies regarding his motivations in the introduction of these juries, the form assumed by the jury, and the results of their implementation.[58] He had been of the opinion from the first that the jury in Ceylon would be of experimental significance for the jury to be introduced at some time in the future in India.

In order to suit the circumstances in Ceylon, the jury which had been operating there had been altered in many ways from the jury in England. For example, taking into consideration the fact that the people of Ceylon were divided into various religions and castes, the jury was formed in principle of freemen belonging to the same religion and caste as the accused, while the number of jurymen was fixed at thirteen instead of twelve and the verdict was not made unanimous but based on the decision of the majority. During more than ten years following this jury trials, which had formerly been unpopular among the Ceylonese, came to be handled promptly and without delay, the burdens of the judges were lightened, and government expenses also decreased. What was more, interest in trials developed among the Ceylonese, their moral character improved, and selection as juryman came to be welcomed by them as an indication of social status. Furthermore, what was of even greater importance to the British was the fact that through the jury opposition to British rule had grown less among the Ceylonese while thoughts of cooperating with the British had become stronger. Having thus received the reply from Johnston that the implementation of the jury in Ceylon had brought nothing but favourable consequences for the British, the government was reassured in its conviction that the participation of Indians on the jury would produce desirable results for British rule in India.

Thus in May of the following year, 1826, the British parliament passed without any great opposition the East India Jury Act,[59] consisting of three sections, the first of which granted Indians the right to sit on the petty jury of the Supreme Courts at the three presidency towns. The second section dealt with the qualifications, appointment, formalities of summons and refusal, and duties of the jurymen, and since parliament was unfamiliar with the situation in the far distant colony of India, it did not lay down any detailed rules on these matters, instead granting each Supreme Court the authority to make the necessary rules. According to the rules of the Supreme Court at Calcutta[60] which were enacted on 29 December 1826, those qualified to sit on the petty jury were males whose property was such that they occupied a dwelling worth no less than a monthly rent of 50 rupees or an annual rent of 500 rupees or who possessed property worth at least 50,000

rupees, who were between 21 and 60 years of age, and who read, wrote and understood English. In regard to their English ability, it was laid down that it should be checked by reliable means by the sheriff and clerks of the Crown, who were to prepare the registers of jurymen. This would suggest that the appointment of the Indian jurymen was left largely to the discretion of the sheriffs and clerks of the Crown. In addition, it was also stipulated that British subjects must account for more than half of both those recorded on the registers of jurymen for each court session and the members of the jury for each criminal case, and so the numerical superiority of the British was guaranteed as well. Hence, here too the Indians had by no means been granted rights equal to those of the British.

In this manner the Hindus and Muslims who were qualified by these rules to become jurymen were restricted to those of classes possessing enormous wealth and, furthermore, to the intellectual classes familiar with English. They would not have been very great in number. In the register of jurymen for 1827, for example, there are said to have been 82 Hindus and Muslims against approximately 600 Christians,[61] and in a similar register for 1833 39 Hindus and no Muslims as against 613 Christians.[62]

It was the third section of this act which Roy called into question. This section laid down that "the grand juries in all cases, and all juries for the trial of persons professing the Christian religion shall consist wholly of persons professing the Christian religion." In other words, Hindus and Muslims were denied the right to participate in grand juries and petit juries for criminal cases involving Christians.[63]

This racial and religious discrimination inflamed with anger Indian intellectual circles of Calcutta, and it was the *Sambad Kaumudi* (30 December 1826) which immediately reported on this Act and severely criticized it.[64] It asserted that it was unjust that whereas in hearings of criminal cases involving Hindus and Muslims they had to be tried by a jury of Christians, be they British subjects, Indo-Britons, or converts of the community in Serampore, in criminal cases involving Christians Hindus and Muslims had no right whatsoever to participate, even though they lived in the same country and might be living in the same house and observing the same moral code; it also pointed out that for the Christian church, which had been unable to make any true converts during the past thirty years, this Act opened the path for the convertion of the people to Christianity, and attacked this as an action damaging to the religions of India. The following year, when Hindus and Muslims were appointed as jurymen in accordance with the new jury rules referred to above, they adopted the policy of refusing to sit on the jury because they claimed that they could understand the English of neither the lawyers' arguments in court nor the judge's summing up at the end of a hearing.[65]

Then in about August of 1828 the intellectuals of Calcutta sent a petition

to the British House of Commons protesting against the discrimination of the third section.[66] The signatories numbered as many as 128 Hindus and 116 Muslims, far transcending community bounds, and were described by Thomas Cutlar Fergusson, a longtime resident of Calcutta, as including "all the natives of wealth and talent."[67] Roy played a leading role in this petitionary movement, and he was also involved in the drafting of the petition, which would appear to represent an expression of his thought.[68]

What received particular emphasis in this petition was the injustice of racial and religious discrimination. The signatories claimed that it was unjust and also unnecessary of the English, who had publicly declared that they would protect the religions of the Indians, to make a distinction in jury qualifications on account of the religions which the Hindus and Muslims had been following since ancestral times. They also emphasized the fact that the Indians already possessed sufficient qualifications and competence in regard to the jury, for Indian participation in juries had been recommended already fifteen years earlier by a special committee of the British parliament, and ever since then the inhabitants of Calcutta had become quite familiar with the English language and English law. That such discrimination had nevertheless been made could, they continued, be at best perhaps attributed to the following four reasons, which were then each refuted: (1) the conversion of Indians to Christianity with this Act as an incentive; (2) the prevention of the biases of Hindus and Muslims, who accounted for the greater part of Calcutta's population, being brought into the courts and thereby hindering fair trials; (3) the lack of men among the Hindus and Muslims with the property qualifications necessary for becoming a member of the grand jury; and (4) the need for more advanced knowledge in the case of the grand jury than in the petty jury. In the refutation of these points it was stated that it was the trial jury rather than the indictment jury which required the greater degree of intelligence and that there was no reason for people capable of discharging the duties of the petty jury being unable to perform the duties of the grand jury, that Indians had never been biased towards the followers of other religions, and that these biases had been created by this Act.

It is of interest to note that a similar petitionary movement was undertaken by the intellectuals of Bombay too. There, the leading role in the movement is said to have been taken by the Parasees Jamshedji Jijibhai and Framji Kavasji Banaji and the Hindu Jagannath Shankarashet, and although the movement would appear to have been centred on the Parsees, it was a movement transcending community bounds in which great numbers of Hindus, Muslims and Parsees participated.[69] It was in fact this movement relating to the jury question which provides the first example of a protest movement in which large numbers of Indians from a cross section of society and from two large cities such as Calcutta and Bombay participated, and for this reason it is worthy of special mention.

In the case of Bombay, the petitions relating to the jury question were submitted on two occasions to the House of Commons. In the first one, accepted by the House of Commons in May 1828, it was merely asserted that since Hindus, Muslims and Parsees were the equals of Christians both in regard to wealth, intelligence and integrity and also in regard to public estimation, they too were qualified to sit on the grand jury.[70] But in the case of the petition submitted in December 1829 with 95 signatures, although they did express a more cooperative attitude towards the British in comparison with the petition from the people of Calcutta, their demands were also of a broader scope. On the basis of their experience on the petty jury, they demanded the right to sit on both the grand jury and juries for civil cases and also the right to assume, together with British subjects, the office of justice of the peace, and they criticized the British for having stamped upon the Indians as an "inferior and degraded" social class and having made an abominable discrimination against them. In addition, they attacked the administration of justice in the *mufaṣṣal*, where "it is eminently defective, it affords no adequate protection for the rights of property, it affords scarcely any protection from personal wrongs, and in particular from false imprisonment, when committed by persons possessing public authority." They further claimed that in order for the British to ensure the permanence of their rule in India it would be necessary to reform the present political system and open up all judicial, financial and administrative offices to the Indians.[71] In this manner the intellectuals, who had gained a starting point with the acquisition of their right to sit on the petty jury, demanded not only the right to sit on the grand jury but also the right to assume higher government posts. Their demands for political rights had grown rapidly in content, and this fact cannot be ignored when considering the background to section 87 of the East Indian Company Charter Act of 1833 which proclaimed that there would be no discrimination on account of religion, birthplace, descent or colour in the appointment of civil servants to the East India Company.[72]

Let us now examine the views of the British in regard to the question of Indian juries. Firstly, there was that of the judges of the Supreme Court at Calcutta, who were directly involved in this matter. In his charge to the grand jury on 23 October 1826, Chief Justice Charles E. Grey referred to the East India Jury Act which had just arrived in Calcutta, saying that it had been a mistake to exclude Hindus and Muslims from the grand jury, for their knowledge was of great assistance to the English jurymen and their discharge of these duties together with influential Englishmen would be beneficial to the improvement of their own morals and intelligence, and therefore since this law was a dead letter as far as the Indians were concerned, it would be amended as soon as possible.[73] A view similar to that of Grey was expressed on 3 December 1827 by puisne judge Edward Ryan,

also in his charge to the grand jury,[74] and in its reply to Ryan's charge the grand jury also expressed its approval of participation by Hindus and Muslims on the grand jury.[75]

In Great Britain itself Wynn, president of the Board of Control who had accepted the above petition from the people of Calcutta, explained at the House of Commons in June 1829 that the law of 1826 had been of experimental significance and stated that he planned to abolish discrimination on the jury with the improving intelligence of the Indians.[76] Then when Charles Grant became president of the Board of Control under the Grey cabinet of the Whigs, he prepared in reply to the demands of the Indian petitioners a bill which abolished this discrimination and also granted Indians the right to become justices of the peace. In September 1831 he sent a draft of the bill to the Court of Directors of the East India Company in order to gain their approval, but the Court of Directors immediately opposed the bill and on 8 December sent Grant the reasons for their opposition in written form.[77] They held that granting these rights to the Indians would lower the dignity of Great Britain in India, that the Indians were without firmness and lacked the necessary judicial qualifications, that they would not care for such positions which were nonsalaried and in which they would be liable for prosecution for any error or neglect of duty, and that they would not be prepared to acquire of their own accord an adequate knowledge of the English law necessary for this position.

Many of the arguments against this bill were born of the feeling that the British, who were the conquerors, should not be tried by Indians and of attitudes of contempt and distrust towards the Indians. Newspapers and magazines in London carried some of these objections,[78] and a petition expressing opposition was also submitted to the House of Commons by the British population of Calcutta.[79] Then, on the debate over the bill in the House of Lords in August 1832, Wellington, leader of the conservatives, delivered a fiery speech in opposition to it.[80]

In the course of these events Roy was once again given the opportunity to express his opinion. This was the tract which he wrote in refutation of the above-mentioned objections of the Court of Directors of the East India Company of December 1831, and it might be sent to Charles Grant. Here he stated that there was no country as tolerant as India in religious matters and that there had never been any discrimination against followers of minor religions, and he also declared that the Act of 1826 had itself discriminated against the Hindus and Muslims and that this had caused the Indian intellectuals greater discontent than the deprivation of all their political rights.[81]

Thus in August 1832 the British parliament passed an Act which abolished racial and religious discrimination on the jury and allowed both Hindus and Muslims to participate on the grand jury and the petty jury of criminal cases involving Christians and to assume the office of justice of the

peace.[82] Roy and the intellectuals of Calcutta welcomed this decision.[83] The *Reformer* rejoiced at the fact that the British government had changed its attitude and given the Indians positions of responsibility,[84] while the conservative *Chandrika* also extolled the jury and suggested that juries be established not only in the Supreme Court at Calcutta but also in the Company's courts and for both both criminal and civil cases.[85] The *Reformer* further demanded that Indians be also appointed to high-level government posts in the East India Company and suggested that of deputy collector as a start.[86] Then in December 1833, in reply to Ryan's charge to the grand jury, it made a strong appeal to Indians to volunteer for the jury.[87]

In closing this section, let us mention the juries of civil cases. Ever since its establishment in 1774, the Supreme Court at Calcutta had had juries only for criminal cases and not for civil cases. The reason for this had been that the British inhabitants of Calcutta were few in number, and the establishment of juries for civil cases would have added to their burden. There had existed some voices demanding the establishment of such a jury, for in 1774 the British inhabitants of Calcutta submitted a petition to this effect and in December 1786 puisne judge William Jones expressed a similar wish in his charge to the grand jury. The reason that these demands gained in strength among the British was probably that they received impetus from the discussions resulting from the question of Indian participation on the jury and that the burden of British subjects had been alleviated by the considerable increase in the number of qualified British subjects and the participation of Hindus and Muslims on the jury. The leaders in the movement for these demands were the English free traders, and Indian intellectuals with whom they associated also took part. On 15 April 1832 a meeting calling for the establishment of such a jury was held at the Town Hall. Alongside the Englishmen, Roy's close friend Dwarkanath Tagore and others gave speeches on this occasion, and it was decided to submit a petition to the parliament.[88] Nine Englishmen and three Indians were nominated to draw up the petition, the three Indians being Dwarkanath Tagore, Prosanna Kumar Tagore and Radhakant Deb. The participants in this meeting were virtually identical with those who had taken part in the meeting of December 1829 approving of settlement by the Europeans in the Indian interior,[89] and so if Roy had been in Calcutta he would have certainly taken part, for he would not have opposed the establishment of juries in civil cases. But, as it turned out, juries for civil cases were not to be instituted at the Supreme Court of Judicature in Calcutta.

E. The Introduction of Juries to the Company's Courts

Among the Indian intellectuals of Calcutta, it was none other than Roy and his acquaintance and editor of the *Reformer*, Prosanna Kumar Tagore,

who ardently demanded that juries be introduced to the company's courts as well. This demand was made at the same time as the demand for Indian participation in the jury of the Supreme Court, but it would no doubt have involved a number of difficult problems. The English judges of the East India Company had not received any formal legal education in England and had had no experience in the oral proceedings of trial by jury, while the lawyers were Hindus and Muslims unfamiliar with trial by jury. Furthermore the English apprehended Indians' ability on the jury at the *mufaṣṣal* from their distrust of the Indian disposition in regard to the administration of justice.

It was at such a time that a noteworthy editorial on the introduction of juries appeared in one of the early issues of the *Reformer* in February 1831.[90] The writer of this would have doubtless been the editor, Prosanna Kumar Tagore. He demanded that the English jury be introduced to the *mufaṣṣal* with as few changes as possible, and in reply to the apprehensions of the English, he asserted that it would be possible to appoint a sufficient number of jurymen, since the "qualifications of a Juror depend not upon any acquaintance with literature or the arts and sciences, they depend not upon any intimate acquaintance with the forms and technicalities of law, nor do they require any particular education to initiate a person into the secrets of a Juror's vocation. The requisite qualifications of a Juror arise from qualities, which are to be found in every community; for they depend upon principles, common sense, and understanding; which are to be met with in the *mufaṣṣal* as well as at Calcutta." It was, however, impossible to know who was possessed of the above intellectual qualifications, and so he proposed that members of a certain social class endowed with certain superior features be made jurymen. He probably intended having members of the same wealthy intellectual class as himself selected as jurymen.

In this editorial, Tagore proposed two further reforms which were to be implemented together with the introduction of the jury. One was the abolition of Persian as the language of the courts; since those who were to become jurymen would not be familiar with Persian, he advocated that the most widely used language of each region, such as Bengali, be adopted. His other proposed reform was the abolition of Mohammedan criminal law. He claimed that since Mohammedan criminal law was tyrannical and inconsistent with the principles of English law. "We really do not see any reason why we should be governed by a system of laws which has originated neither from us nor from our rulers; and the possesion of our lives and properties tried, by a single individual, in a language which none of us understand." Written in a youthful and passionate style, this editorial extolled English criminal trials and conveyed his strong desire to have them introduced as they were, and it may be counted as one of the representative editorials of Tagore, who was later to become one of Calcutta's leading lawyers.

This editorial appeared just after Roy's departure from Calcutta, and it was reprinted in *Alexander's East India Magazine* in London (September 1831). Roy's proposals for the jury differed from those of Tagore and were based on his own original ideas. The system he proposed was referred to as the "Punchayet-jury system." He pointed out that the principle of juries had been known in earlier times in India under the name of *Panchayat*, and because the questions and answers exchanged between him and the Board of Control had moved from the subject of this *Panchayat* to that of the jury, the two terms were joined by a hyphen. Although he did say, "As the Punchayet even in its present very imperfect form is still practised by the inhabitants, it would without doubt be much more so, were it reduced to a regular system, guarded by proper checks, and dignified by judicial forms, which would inspire the whole community with higher respect and confidence for this ancient institution (§ 35)," it was not his intention to reorganize the existing *panchayat* so that it might function as a jury.

The similarities between the *panchayat* and jury had been already pointed out by, for example, Thomas Munro and M. S. Elphinstone,[91], and at the time when Roy was expressing his views it was a matter of common knowledge among the English involved with India. Details of the *panchayat* as it functioned in Bengal at the time are not known, but Roy does mention that in former times it had been much more important in its functions, since it had been resorted to by parties at their own option, or by heads of tribes, who had assumed the right of investigation, or by the government, which had handed over causes to a *panchayat* (§ 33). Thus this system would appear to have been at this time in a state of greater decline than prior to British rule.

But even though both the *panchayat* and jury may have represented forms of trial by equals, this does not mean that Roy had lost sight great differences between the two. He was fully aware that the *panchayat* had a number of shortcomings in comparison with the jury, and he described them in the following terms:

> The Punchayet exists on a very defective plan at present, because the jurors (members of the Punchayet) are not regular in their meetings, have no power to compel the attendance of witnesses, unless by appealing to the court; they have no judge to preside at their meetings and direct their proceedings, and are not guarded in any manner from partiality or private influence. They are in fact at present only arbitrators appointed by the court with consent of the parties in a cause, each party nominating one arbitrator and the judge a third; and sometimes both parties agree to refer the decision of the case to one arbitrator (§ 32).

The *panchayat* was, as it were, an autonomous institution organized by

the village or caste, and since it had not been completely incorporated within the judicial structure of the state, its decisions were enforced on the authority of the *panchayat* itself. There was no judge to preside over the meetings, nor was there any distinction made between factual questions and legal questions, and the members of the *panchayat* staged the complete trial. Thus the members of the *panchayat* were zealous in their hearings of cases which interested them, but in cases in which they were not interested hearings were delayed and often dropped altogethr.[92] As was notd by Roy, the Bengal government did allow the courts to commit the arbitration of legal suits to the *panchayat*,[93] but the number of successful cases of arbitration was, to the disappointment of the government, far less than had been anticipated.[94]

The modification of "the Punchayet-jury system" as proposed by Roy in these circumstances was as follows:

> Three jurymen, or at most five, would, I conceive, answer the purpose as well as a greater number, and any Zillah (district) could easily supply a list from which these might be taken without inconvenience. Three times the number required for sitting on a trial should be summoned, and the persons actually to serve should be taken by lot, so that neither the judges nor the parties may be able to know before-hand what persons will sit on the trial of a cause. The general list of jurymen should be as numerous as the circumstances of the city or Zillah (district) will admit. It should be prepared by the European judge at the station, and altered and amended by him from time to time as may seem proper and requisite. He may easily select well qualified juries from respectable and intelligent natives known to be versed in judicial subjects, who reside in considerable numbers at every station. A necessary concomitant to the introduction of jurymen will be the sole use of the vernacular dialect of the place to the exclusion of the Persian language in proceedings. Publicity should be as much fostered as possible, and the jury should be kept apart and required to decide without separating, as in the English courts of law. In a trial thus conducted the resort to appeal will cease to be useful, and for the purposes of justice, need only be allowed where there is a difference of opinion betwixt the bench and the jury. For, where judge and jury are unanimous, an appeal would be more likely to produce injustice by vexatious expense and delay, than to rectify error on the part of the inferior court, and ought therefore to be prohibited (§ 36).

This proposal differed completely from the *panchayat*, which Roy here modified on the basis of the English petty jury so as to suit the circumstances of the *mufaṣṣal*. There were, however, two features in which it differed considerably from the English jury. The first concerned the number of

jurymen. As is well-known, the English juries had been composed of twelve members, whereas Roy proposed a smaller number, three, or at the most five. As for this point, we shall consider further below. The second distinguishing feature of his proposal concerned the qualifications of the jurymen, who were to be "respectable and intelligent natives known to be versed in judicial subjects." He further elaborated upon this as follows: ". . . the jurors at present may be judiciously selected from retired pleaders (wakils) and retired judicial officers, from agents employed by private individuals to attend the court (mukhtars) who are generally well qualified, and from the other intelligent and respectable inhabitants as above observed (§ 37)." Thus he attached importance to legal knowledge as a qualification for jurymen and intended having them selected primarily from among those with experience in judicial posts. In England, legal knowledge had not by any means been a requisite as a qualification for jurymen, and any emphasis thereof ran counter to the ideals of the jury. Needless to say, those holding judicial posts would have been excluded from the registers of jurymen, but those who had already retired from such posts would not have been excluded, and Roy intended forming the jury mainly of these retirees. Since he uses the phrase 'at present," this may have been intended as a temporary measure, and if the juries should prove to be successful, he may have had the intention of then having them composed of "respectable and intelligent" people. But even so, it is a fact that, in comparison with the English jury, he set importance on legal knowledge as a qualification for potential jurymen, and this may be regarded as the distinctive feature of his proposal.

Through the introduction of the jury, Roy thus aimed at allowing Indians themselves to stage trials by equals and at thereby extending the rights of the Indians. At the same time, or perhaps even more so, he wished to eliminate the abuses of the judicial system by means of the jury. He touches upon this point repeatedly (§ 30, 34, 35, 39), and his views may be summarized under the following three points:

(1) Since the jurymen would be fully cognizant of the language and character of the litigants and witnesses, they would be able to check against false testimony and forged documents and would not commit any errors in their verdicts.
(2) The jurymen would be able to prevent the native law officers from exerting undue influence on the English judges and from being themselves subjected to undue pressure from others. In addition, the jury would serve as the only effectual check against the frequent practice of bribery.
(3) Through the speedy dispatch of their duties, the jurymen would do away with the vexatious delays in legal proceedings and with unnecessary appeals together with their deplorable costs.

In this manner Roy entertained great hopes for the jury as a means for eliminating the abuses of corruption, forgery and perjury. He offered many proposals relating to these abuses and their elimination, and that for the jury was presented as one of the more effective of these proposals. In other words, taking full cognizance of the situation in Bengal at the time, he proposed this original form of jury in order to eliminate the abuses prevalent at the time. As a result of the establishment of these juries in the court of district judge, it would mean that, in conjunction with the three *muftis* in the court of circuit and the assessors in the provincial court of appeal, native Indian assessors or jurymen would be sitting in attendance at all trials presided over by English judges. This represented a concrete proposal for the realization of joint hearings by English judges and native Indians, which Roy regarded as the desirable form to be taken by the judicial system in the immediate future, and it constituted the essence of his proposed reform of the judicial system.

One year after this proposal had been made, in July 1832, the Bengal government enacted Regulation VI, which recognized the establishment by English judges of juries in their courts.[95] This was modelled on Bombay Regulation IV of 1827. Stated in more detail, it enabled English judges to entrust the hearing of the facts in both civil and criminal cases to either a *panchayat*, assessors, or a jury. But the judge was not obliged to follow the views expressed by any of these three groups, and the authority to pass judgement lay with the judge himself. In addition, no detailed rules were laid down in regard to the number of jurymen or the methods for their selection and the return of their verdict; these matters were left to the discretion of the judge. Thus, although the jury had been recognized for the first time, it left much to be desired and fell far short of what Roy had been hoping for. Since the English judges would not in fact have been in favour of establishing juries, one may wonder to just what extent trials by jury would have been held, and judging by later records, they would appear to have been almost negligible in number.

Next, let us compare Roy's proposal for the jury with other views current at the time. The first is that of an editorial in the *Reformer* in May 1832.[96] in which the following proposal for a jury was made:

> The Judge should keep a list of persons in his district competent to serve on juries, revising it annually. Out of them he should select 36 and submit their names to the plaintiff and defendant, who or each of them to reject 12 of the 36, thus reducing the number to 12 jurors who are to be summoned before the court, and 6 or 5 of them to be chosen by ballot. There should have the evidence &c. as is here done, but in the vernacular language of the place, and must bring in an unanimous verdict. We have proposed so small number of jurors doubting of a

great number of competent persons, but we would recommended that in the selection of these the ancient method should be adhered to as far as circumstance may permit.

The *Reformer's* new proposal, however, was for a jury of only a limited number of members, similar to that proposed by Roy, and in this respect it differed from that of the editorial in the same newspaper the previous year. As the same time, a perusal of this proposal gives the impression that the writer, presumably the *Reformer's* editor, Tagore, had not yet read Roy's proposal for the jury, for it is not without a certain lack of refinement in regard to the selection and declination of jurymen, whereas Roy's proposals may be described as having been more practical and having reflected a better grasp of the immediate question of the elimination of abuses in the judicial system.

How, then, did the *Reformer* come to hit upon the idea of a jury of such limited numbers? Its editorial of the previous year had been reprinted with comments in the *Bengal Hurkaru* (February 24, 1831), where it was suggested that it might be possible to apply Bentham's proposals to the *mufaṣṣal*. As an example, it suggested a method whereby fifty, thirty or twenty people would be recommended as jurymen and, when summoned, twelve, nine or seven of them would be chosen by lot to sit on the jury. The *Reformer's* new proposal may be said to have been in line with this suggestion.

Let us now consider Bentham's views on the jury, which are set out in detail in his *The Rationale of Judicial Evidence* (1827).[97] Since mention is made of this work in one of Bentham's letters to Roy,[98] there is a strong possibility that Roy had read it. Bentham, a reformer of English law and judicial system, declared that the jury was also full of faults and without the benefits it was believed to have, and he criticized the method for selecting jurymen, the principle of unanimous verdict, the juryman's oath, the jurymen's lack of competence, the expenses and troublesomeness attendant on trial by jury, and the delays in trials. As a substitute for this he proposed a "quasi-jury." This was to be composed of three people, two of whom were to be "ordinary" members, chosen from among the general public, while the third was to be a "select" member chosen by the judge and endowed with learning. The duties of this juryman entailed sitting in attendance with the judge throughout the entire hearing of a case, checking documents, and questioning the judge and witnesses, and whereas the ordinary jurymen would return a verdict on questions of fact only, he could suggest amendments to the judge's decision. In cases of a divergency of opinion between the "ordinary" members and the "select" member, the opinion of the former would be followed. But high value was set on the latter for his role in bringing about a just decision.[99]

If one compares these proposals of Bentham's relating to the jury with those of Roy, it may be said that it was from Bentham that Roy gained the idea that even a limited number of members would be sufficient to fulfill the functions of a jury. But unlike Bentham, he adopted many elements of the existing form of jury, such as that relating to the jurymen's verdict, and although it is possible that the idea of selecting people acquainted with the law as jurymen may have been suggested by Bentham's "select" member, it is more probable that it was born of Roy's awareness of the actual circumstances obtaining in Bengal. We consider Roy to have been a most practical thinker, and the reason that he offered an original proposal differing from both the English jury and Bentham's proposals lay above all in the fact that he was taking into account the actual circumstances of Bengal and that he especially wished to rectify the abuses of its judicial system.

* This is a translated edition of Chapters 5 and 6 of the Japanese article entitled "Rammohun Roy's Views on the Judicial System," printed in the *Bulletin of the Institute of Oriental Culture*, No. 66, 1975, pp. 56–117. Since its publication there have been published several works on this topic, among which it should be specially mentioned Professor N. S. Bose's *"Racism, Struggle for Equality and Indian Nationalism"* (Calcutta, 1981).

NOTES

1) Judicial System of India, § 78, para 3. In this article we cited Rammohan Roy's writings from Kalidas Nag and Debajyoti Burman (ed.), *The English Works of Raja Rammohun Roy*, 6 Parts, Calcutta, 1945–51.
2) The documents of these cases are collected in Ramaprasad Chanda and J. K. Majumdar (ed.), *Selection from Official Letters and Documents relating to the Life of Raja Rammohun Roy*, Vol. 1, *1791–1830*, Calcutta, 1938. In addition to them an unknown case (Radhakishen Rai v. Rammohun Rai) (March 17, 1806) was printed in W. H. Macnaughten, *Reports of Cases determined in the Court of Sudder Dewanny Adawlut*, New ed., Calcutta, 1827, Vol. 1, pp. 130–31.
3) *Asiatic Journal*, N. S. Vol. 7, 1832, Part 1, pp. 220–34, 318–21, Vol. 8, Part 1, pp. 136–42, 227–30, 309–17, *Alexander's East India Magazine*, Vol. 3, 1832, pp. 246–58, 358–8, 587–92, Vol. 4, 1832, pp. 383–6, 465–74. *India Gazette*, June 13, 26, 29, 1832, *Bengal Hurkaru*, June 20, 22, July 14, 20, November 21, 1832. cf. *The Times*, August 1, 1832. J. K. Majumdar (ed.), *Raja Rammohun Roy and Progressive Movements in India, A Selection from Records, 1775–1845*, Calcutta, 1941, pp. 481–501.
4) *Parliamentary Papers*, 1831–32, xii, pp. 195, 205, 637.
5) A. Aspinall, *Cornwallis in Bengal*, pp. 41ff., N. Majumdar, *Justice and Police in Bengal, 1765–1793, A Study of the Nizamat in Decline*, Calcutta, 1960.
6) Regulation III of 1821, s. 3.
7) Judicial Letter from Bengal, April 17, 1828, *Parliamentary Papers*, 1831–32, ix, p. 373.
8) *Works*, Part III, pp. 59f., paras. 20–21.
9) Regulation II of 1793.
10) cf. *Samachar Durpan*, quoted by *Bengal Hurkaru*, December 22, 1831, Holt Mackenzie's Evidence, *Parliamentary Papers*, 1831–32, xii, p. 14, para. 127.
11) Holt Mackenzie's Evidence, *Ibid.*, p. 22, para. 196. cf. P. Spear, Holt Mackenzie, forgotten man of Bengal, *Bengal Past and Present*, Vol. 86, 1967, pp. 24–37.

12) cf. J. D. M. Derrett, *Religion, Law and the State in India*, London, 1968, pp. 225–73.
13) cf. W. H. Macnaghten, *Principles and Precedents of Moohummudan Law*, Calcutta 1825 (4th ed., Madras, 1870), Preliminary Remarks.
14) Regulation XV of 1805.
15) Regulation III of 1821.
16) Regulation XI of 1826.
17) cf. K. K. Datta (ed.), *Selections from Unpublished Correspondence of Judge-Magistrate and the Judge of Patna, 1790–1857*, Patna, 1954, pp. 393–4.
18) cf. *Works*, Part IV, pp. 37–8.
19) Regulation I of 1829, s. 3(4), Regulation III of 1829, s. 7.
20) cf. *Works*, Part III, p. 18, note.
21) Judicial Letter to Bengal, August 4, 1824, *Parliamentary Papers*, 1831–32, ix, p. 356.
22) Judicial Letter from Bengal, September 3, 1830, *Ibid.*, pp. 375–6.
23) cf. G. S. Rankin, *Background to Indian Law*, Cambridge, 1946, pp. 185–95.
24) *Works*, Part III, p. 66, § 8. But he added that the Hindus "are also generally patient of labour, and dilligent in their employment", and that "those of the Upper Province are not inferior to the Mohammedans themselves in industry".
25) cf. R. C. Majumdar, *Glimpses of Bengal in the Nineteenth Century*, Calcutta, 1960, p. 5.
26) Periodical Accounts of the Serampore Mission, Vol. 6 (1817), cited in E. D. Potts, *British Baptist Missionaries in India, 1793–1837*, Cambridge, 1963, p. 231.
27) cf. Roy's letter to Lord Minto on 12 April, 1809. *Works*, Part IV, p. 111.
28) S. D. Collet, *The Life and Letters of Raja Rammohun Roy*, 3rd ed. Calcutta, 1962, pp. 297ff.
29) cf. S. K. De, *Bengal Literature in the Nineteenth Century (1767–1857)*, 2nd ed., Calcutta, 1962, p. 504.
30) cf. H. H. Wilson, *A Glossary of Judicial and Revenue Terms, etc.*, London, 1855, p. 554. B. B. Misra, *The Indian Middle Class*, Oxford, 1961, pp. 162–3, M. B. Ahmad, *The Administration of Justice in Medieval India*, Aligarh, 1941, pp. 189ff.
31) Regulation VII of 1793. cf. Cornwallis' Minute, February 11, 1793, *Parliamentary Papers*, 1812, xi, pp. 119–20.
32) C. Sinha, The vakeel in the early days of British rules in India, *Journal of the Indian Law Institute*, vol. 12, 1970, pp. 289–90.
33) Regulation XI of 1826.
34) C. Sinha, *op. cit.*, p. 291.
35) R. Clarke's Evidence, *Parliamentary Papers*, 1831–32, xii, p. 5, paras, 54 and 59.
36) cf. B. S. Cohn, From Indian status to British contract, *Journal of Economic History*, Vol. 21, 1961, pp. 627–8.
37) Regulation XXVII of 1814.
38) Holt Mackenzie's Evidence, *Parliamentary Papers*, 1831–32, xii, p. 16, para. 140.
39) Holt Mackenzie's Evidence, *Ibid.*, para. 140.
40) Regulation XIV of 1814.
41) cf. P. Spear, *Twilight of the Mughal*, Oxford, 1951, p. 95.
42) Holt Mackenzie's Evidence, *op. cit.* para. 140.
43) W. Blackstone, *Commentaries on the Laws of England*, Vol. 4, 14th ed., 1825, p. 349.
44) Charter establishing the Supreme Court of Judicature at Fort Wiliam in Bengal, March 26, 1774, s. 19.
45) *Sambad Kaumundi*, December 11, 1821, quoted by *Calcutta Journal*, December 20, 1821, J. K. Majumdar (ed.), *Raja Rammohun Roy and Progressive Movements in India*, pp. 339–40.
46) *Mirat-al Akhbar*, quoted by *Calcutta Journal*, April 22, 1822, J. K. Majumdar, *op. cit.*, p. 298.
47) cf. N. S. Bose, J. S. Buckingham and Indian affairs, *Quarterly Review of the Historical Studies*, Vol. 6, 1966–67, pp. 90–94, *National Dictionary of Biography*, Vol. 3, pp. 202ff.
48) cf. Amiya Sen, A forgotten episode in the life of Raja Rammohun Ray, *Modern Review*,

January 1964, pp. 29–39, J. K. Majumdar, *op. cit.*, pp. lxvi–lxxvii.

49) Concerning the jury in India, see T. O. Beighton, The modern history of trial by jury in India, *Asian Review*, 3rd series, Vol. 17, 1904, pp. 17–52, T. K. Banerjee, *Background to Indian Criminal Law*, Calcutta, 1963, pp. 267–77, M. C. Setalvad, *The Common Law in India*, London, 1961, pp. 37–8.

50) 12 Geo. III. c. 50.

51) *The Speeches of the late Right Hon. Sir Robert Peel, delivered in the House of Commons*, Vol. 1, London, 1853, pp. 275f., 347f. 376f. cf. N. Gash, *Mr Secretary Peel*, London, 1961, pp. 332–5.

52) 12 Geo. III, c. 22.

53) 12 Geo. III, c. 51.

54) 3 & 4 Will. IV, c. 91.

55) cf. J. K. Majumdar, *op. cit.*, p. lxvii.

56) *Hansard*, 2nd series, Vol. 21, cols. 1773ff. (June 5, 1829). J. K. Majumdar, *op. cit.*, pp. 370f.

57) cf. *National Dictionary of Biography*, Vol. 10, pp. 940f. Concerning Roy's call on Alexander Johnstone and Henry Brougham, see *Alexander's East India Magazine*, November 1833, p. 447.

58) *Parliamentary Papers*, 1831–32, xii. 151ff. J. K. Majumdar, *op. cit.*, pp. 340ff. cf. A. Johnstone's Evidence, *Parliamentary Papers*, 1831–32, pp. 136ff. Johnson's answer on the Ceylonese jury was reprinted in Bentham's *The Rationale of Judicial Evidence* (1827), the inaugural issue of the *Jurist* (or *Quartery Journal of Jurisprudence and Legislation*) (March 1827), and John Miller's *On the Administration of Justice in the British Colonies in the East-Indies* (1828). Henry Brougham refered it in his famous speech on the judicial reform at the House of Commons on February 8, 1828.

59) 7 Geo. IV, c. 37. cf. *Hansard*, 2nd Series, Vol. 15, 1826, cols. 1f., 107f.

60) Rules relating to Juries in the Supreme Court of Judicature at Fort William in Bengal, *Parliamentary Papers*, 1828, xxiii, pp. 227–31.

61) *Journals of the House of Commons*, Vol. 84, 1829, pp. 384–6, J. K. Majumdar, *op. cit.*, pp. 360ff.

62) *Calcutta Government Gazette*, April 30, June 15, 1833.

63) cf. *Hansard*, 2nd series, Vol. 21, 1829, cols. 1053–6, *Mirror of Parliament*, 1829, Vol. 3, p. 2061, J. K. Majumdar, *op. cit.*, pp. 370–4.

64) J. K. Majumdar, *op. cit.*, pp. 357–8.

65) *Calcutta Gazette*, December 6, 1827, *Selection from Calcutta Gazette*, p. 241.

66) *Journals of the House of Commons*, Vol. 84, 1829, pp. 384–6, J. K. Majumdar, *op. cit.*, pp. 360ff.

67) *Hansard*, 2nd series, Vol. 21, 1829, col. 1755.

68) cf. S. D. Collet, *op. cit.*, p. 266, *Works*, Part IV, p. 39.

69) cf. Christine Dobbin, *Urban Leadership in Western India, Politics and Communities in Bombay City, 1840–1885*, Oxford, 1972, p. 18.

70) *Journals of the House of Commons*, Vol. 83, 1828, pp. 372.

71) *Ibid.*, Vol. 66, 1831, pp. 805–6.

72) 3 & 4 Will. IV, c. 85, s. 87. cf. A. Lester and G. Bindman, *Race and Law*, Penguin Books, 1972, pp. 383ff.

73) *Selection from Calcutta Gazette*, p. 157.

74) *Ibid.*, pp. 239–41.

75) *Ibid.*, p. 246.

76) *Hansard*, 2nd series, Vol. 21, 1829, pp. 1753.

77) *Parliamentary Papers*, 1831–32, xxxi, pp. 111–22, J. K. Majumdar, *op. cit.*, pp. 377–86.

78) *John Bull*, refered in *Bengal Hurkaru*, November 19, 1831, J. K. Majumdar, *op. cit.*, pp. 403f. *Works*, Part IV, p. 40.

79) J. K. Majumdar, *op. cit.*, pp. 391f.

80) *Hansard*, 3rd series, Vol. 14, 1832, cols. 1355f. cf. *Ibid.*, Vol. 13, 1832, cols. 819ff.

81) *Works*, Part IV, pp. 35–9. cf. J. K. Majumdar, *op. cit.*, pp. 398–403.
82) 2 & 3 Will. IV, c. 67.
83) *Works*, Part IV, pp. 39–41.
84) *Reformer*, quoted by *Bengal Hurkaru*, April 3, 1832.
85) *Chandrika*, quoted by *India Gazette*, April 17, 1832.
86) *Reformer*, quoted by *Bengal Hurkaru*, November 27, 1832.
87) *Reformer*, December 8, 1833.
88) *Journals of the House of Commons*, Vol. 89, 1834 pp. 342–3.
89) *Bengal Hurkaru*, December 17, 1829, J. K. Majumdar, *op. cit.*, pp. 437f.
90) *Reformer*, quoted by *Bengal Hurkaru*, February 24, 1831.
91) A. J. Arbuthnot, *Sir Thomas Munro, Selections from his Minutes and Other Official Writings*, Vol. 2, London, 1881, pp. 3ff., 56ff., K. N. Venkatasubba Sastri (ed.), *The Munro System of British Statesmanship in India*, Mysore, 1939, pp. 241–53. M. Elphinstone, *Report on the Territories conquered from Paishwa*, 1822, 2nd ed., Bombay, 1872, p. 60.
92) Judicial Letter from Bengal, February 22, 1827, *Parliamentary Papers*, 1831–32, xii, pp. 239ff. paras. 32ff.
93) C. Sinha, *op. cit.*, pp. 20ff.
94) Judicial Letter from Bengal, February 22, 1827, *Parliamentary Papers*, 1831–32, xii, pp. 239ff. paras. 32ff.
95) cf. Judicial Letter from Bengal, June 15, 1830, *Parliamentary Papers*, 1831–32, ix, pp. 376ff., xii, pp. 279ff.
96) *Reformer*, quoted by *Bengal Hurkaru*, May 1, 1832. cf. *Reformer*, quoted by *Bengal Hurkaru*, May 9, 1832.
97) *The Works of Jeremy Bentham*, vol. 4, pp. 554–68. cf. Elie Halévy, *The Growth of Philosophic Radicalism*, translated by Mary Morris, Beacon Paperback edition, Boston, 1966, pp. 400–403, W. Holdsworth, *History of English Law*, vol. 13, pp. 90f.
98) *The Works of Jeremy Bentham*, Vol. 10, pp. 589ff., S. D. Collet, *The Life and Letters of Raja Rammohun Roy*, pp. 488ff.
99) This Benthamite idea on jury was seen in the Dispatch from the Board of Directors to the Government of India, December 10, 1834, printed in C. Ilbert, *The Government of India*, Oxford, 1898, pp. 515–6, paras. 62–3. It was said a draft of James Mill.