IMPLICATIONS OF BRITISH EXTRATERRITORIAL JURISDICTION

OVER INDIANS IN NINETEENTH CENTURY ZANZIBAR

by

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SUMMARY

This thesis examines the implications of British extraterritorial jurisdiction over the Indian community in nineteenth century Zanzibar. It attempts to relate the legal aspects of British jurisdiction over the Indians to the political and commercial context in which they operated. Since political, legal and commercial factors are interrelated, this study, by using this format, attempts to bring into a sharper focus the complex status of Indians during nineteenth century Zanzibar.

The introductory part of the thesis recites the political and economic history of nineteenth century Zanzibar and places the Indian community in this context. Since British extraterritorial jurisdiction was exercised because of Indian involvement in the East African Slave Trade, this had major political implications for the Indian community. This was especially true since the slave trade was a fundamental economic institution of the Omani Empire. The political implications of slave trade jurisdiction spilled over into the relations of the Indian community, with the Imperial British East Africa Company and Germany.

The role of British consuls who exercised jurisdiction over the Indians as British subjects and protected persons is also examined, especially to assess their ability to protect British Indian interests as opposed to the interests of British imperialists like Sir William Mackinnon. The consuls operated within a complex legal framework to exercise jurisdiction over the Indians, especially in the abolition of the
slave trade. The implementation of such legal measures affected the commercial, civil and social standing of the Indians in nineteenth century Zanzibar. This necessitates an examination of the jurisdiction over commercial matters by the British consuls because of the treaties of 1839 and 1886, and their role in controlling institutions like the Customs House. More fundamentally, the British assumed pre-eminence because of their superior technology and control of the communication network of the Indian Ocean.

The exercise of the British extraterritorial jurisdiction in the nineteenth century laid the foundations for the use of the Indian community more directly to serve British colonial interests in the twentieth century at lower and middle levels of trade and administration. This jurisdiction thus determined their position in the East African society and asserted their legal status as British subjects and protected persons.
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BIBLIOGRAPHY
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I have one note of regret, that many members of my family died before the completion of this study. I would therefore humbly like to dedicate this work to the cherished memories of Mr Darbar Singh Gundara, Mr and Mrs N.S. Mangat and Mr W.R. Boake.
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BISN</td>
<td>British India Steam Navigation Company</td>
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<tr>
<td>EIC</td>
<td>East India Company</td>
</tr>
<tr>
<td>EHR</td>
<td>Economic History Review</td>
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<tr>
<td>EIHC</td>
<td>Essex Institute Historical Collection</td>
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<td>FJA</td>
<td>Foreign Jurisdiction Act</td>
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<tr>
<td>FO</td>
<td>Foreign Office</td>
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<td>FOCP</td>
<td>Foreign Office Confidential Print</td>
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<td>HJ</td>
<td>Historical Journal</td>
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<tr>
<td>IBEAC</td>
<td>Imperial British East Africa Company</td>
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<tr>
<td>IPC</td>
<td>Indian Penal Code</td>
</tr>
<tr>
<td>JCLIL</td>
<td>Journal of Comparative Legislation and International Law</td>
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<tr>
<td>MP</td>
<td>Mackinnon Papers, School of Oriental and African Studies</td>
</tr>
<tr>
<td>MT</td>
<td>Maria Theresa Dollars</td>
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<tr>
<td>NAI</td>
<td>National Archives of India</td>
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<tr>
<td>O in C</td>
<td>Order in Council</td>
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<tr>
<td>PRO</td>
<td>Public Record Office</td>
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<tr>
<td>Rs</td>
<td>Rupees</td>
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<tr>
<td>SNL</td>
<td>Scottish National Library</td>
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<td>SRO</td>
<td>Scottish Record Office</td>
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<td>TBGS</td>
<td>Transactions of Bombay Geographical Society</td>
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</table>
GLOSSARY

Babu (Babbo) A clerk or a writer in an office (Hindustani).

Baggalas Large Indian Ocean dhows.

Caste Hindu hereditary class, with members socially equal, united in religion and usually following the same trade and having no social intercourse with persons of other castes.

Dayabhaga One of the main Hindu schools of law which lays down that religious efficacy is its ruling canon, and denies that property can be inherited by birth.

Hartal To strike (Hindustani).

Hedaya (Hadiyya) Gift requiring the carriage of its subject from one place to another (thus excludes houses or landed property) (Hindustani, Urdu, Swahili).

Heshlma Respect, honour, dignity (Swahili).

Hud Specific penalties according to Sunni law of crime.

Imam (Imaum) Religious leader.

Jati See, Caste.

Kadi (Cadi) Sultan's Judge in Zanzibar who administered civil and criminal law and was referred to as a Kazi in India (Arabic).

Liwali See Wali, a headman, usually an Arab who deals with the affairs of the Muslim community (Swahili).

Maistre Gangers, who mainly came to work for the Uganda Railway during the last decade of the nineteenth century (Hindustani).

Mofussil (Mufassal) Rural localities, a subordinate or separate district (Anglo-Indian, Hindustani, Arabic).

Maria Theresa Dollars $MT, Austrian Crown worth approximately Rupees 2.25.

Mayukha School of Hindu law which differs from the Mitakshara school of Hindu law in case law although there are no differences of opinions in the text. The Mitakshara school is dominant in Gujerat, Bombay and Konkan, and favours the perpetual integrity and fixed succession of family property.
<table>
<thead>
<tr>
<th><strong>Nominal</strong></th>
<th><strong>Definition</strong></th>
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<tr>
<td><strong>Mualim</strong></td>
<td>A navigator, a pilot, also called a <em>Nakhuda</em> (Arabic, Hindustani).</td>
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<td><strong>Nautch</strong></td>
<td>Indian exhibition of professional dancing girls (Hindustani).</td>
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<tr>
<td><strong>Panchayat</strong></td>
<td>Village council in India (Sanskrit, Hindustani).</td>
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<td><strong>Qualnamah</strong></td>
<td>A Treaty (Arabic).</td>
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<td><strong>Rokra</strong></td>
<td>A written acknowledgement for money borrowed (Kutchi-Gujerat).</td>
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<tr>
<td><strong>Sepoy</strong></td>
<td>Indian soldier (Hindustani).</td>
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<tr>
<td><strong>Seth (Sheth)</strong></td>
<td>Wealthy merchant, banker; a chief merchant who sometimes, as the head of the merchant community, exercises authority over them in matters of caste and business (Hindustani).</td>
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<tr>
<td><strong>Shamba</strong></td>
<td>A plantation, an estate (Swahili).</td>
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<td><strong>Sharia</strong></td>
<td>According to the classical theory of Islamic jurisprudence, the sharia or divine law derives from the Koran, the Sunna (practice of the prophet), and the Ijma (the consensus of the Doctors of Laws).</td>
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<tr>
<td><strong>Shia</strong></td>
<td>A major Muslim sect who are followers of Ali, the son-in-law of Mohammed and considered by them to be his lawful successor. They mainly consist of Ithna-asheri and the Daudi Bohras.</td>
</tr>
<tr>
<td><strong>Sunnite</strong></td>
<td>A major traditional sect of Muslims which affirms the lawful succession of the first four Khalifs, whose sub-divisions include the Hanafi school, the Shafi and the Maliki schools of Islam.</td>
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<tr>
<td><strong>Sunmud (Sanad)</strong></td>
<td>Patent or warrant (i.e. grant) under the seal of the ruling authority (Urdu, Hindustani).</td>
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<td><strong>Taqiyya</strong></td>
<td>Concealment of their own religious opinions and adoption of alien religious forms either from a desire to avoid giving offence or from dread of persecution.</td>
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<tr>
<td><strong>Tazeer</strong></td>
<td>Punishment inflicted at the discretion of the judge with a view to public justice, that is, if legal penalties might be escaped or evaded these discreional penalties are to be imposed.</td>
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<td><strong>Vakil (Wakil)</strong></td>
<td>A person invested with authority to act for another, an ambassador, a representative, an agent, an attorney.</td>
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<td><strong>Wali</strong></td>
<td>Omani consuls on the East African coast during the eighteenth century, who became Omani governors with legal powers as guardians and protectors during the nineteenth century.</td>
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</table>
Wakf  A bequest for religious or charitable purposes, an appropriation or gift of property by will or gift to the service of God, in such a way that it will be beneficial to men (Hindustani).

Zoolum (Zulm)  Tyranny, oppression (Hindustani).

Sources


J.D. Mayne: Hindu Law (Madras, 1953).


F.B. Tyabji: Mohammedan Law (Bombay, 1940).

MAP OF THE INDIAN OCEAN
Hindu Schools of Law, based on J. R. Charpure: Hindu Law (Bombay: 1931), 4th ed.

Key to Map: Customary

Mitakshara

Dayabhaga

Mithila
INTRODUCTION

This thesis describes the nature and implications of the extension of British extraterritorial jurisdiction to Indians living in Zanzibar. The concept of extraterritoriality is used to describe the condition of law under which foreigners were exempt from local jurisdiction and were subject to their own national authorities by virtue of well-established usage or treaty. This jurisdiction was, for instance, exercised in both Muslim and Buddhist countries. In the Muslim countries of the Middle East law and religion were combined and foreign traders, while being generally welcomed to trade, were kept apart by the local Muslim community. In the Far East, where Buddhism taught tolerance and indulgence, no distinction was made between natives and foreigners. Western powers, however, exercised extraterritorial jurisdiction in both areas.

The legal phenomenon of extraterritoriality is examined from a non-specialist point of view, especially as it pertains to the Indian community. G.W. Keeton, a writer on extraterritoriality, denies that power relationships enter into the making of treaties. Keeton further asserts that these treaties were not reciprocal because the Chinese or Turkish traders hardly ever visited Europe. This can hardly

1 G.W. Keeton: Extraterritoriality in International and Comparative Law (Paris, 1948), p. 350, "extraterritoriality treaties with some few exceptions were more generally freely concluded than many other international undertakings. Even if they were not, it is unquestioned international law that a treaty obtained by exercise of pressure by state upon another even at the end of a was is no less binding". See also Francis Deak: "Organs of States in their external relations...", in Max Sørensen (ed.) Manual of Public International Law (London, 1968), 6.23-6.26, pp 355-360.
be construed a legal reason to explain what he considers to be a "purely legal question".\(^2\) A student of extraterritoriality, Shih Shin Liu, viewed the problem from a totally different perspective. He asserted that those countries whose judicial powers were impaired ought

to get rid of the yoke of extraterritoriality, and those countries which are still the beneficiaries of this system may realise that it is a decadent institution and that reasonable demands for its progressive abrogation should at times be countenanced and granted.\(^3\)

The Indians over whom this jurisdiction was exercised were British subjects and protected persons from the west coast of India.\(^4\) They were either settled before the arrival of Sultan Said of the Al bu Said dynasty from Oman, or migrated with him when the capital of his kingdom was moved to Zanzibar in the nineteenth century. Hence the Indians were involved in the extension of Said's coastal trading state across the Indian Ocean from Oman in the Persian Gulf to Zanzibar off the East African mainland. The familial and business connections of the Indians extended from Zanzibar to the Indian states of Kutch, Kathiawar, Surat and Gujerat. It is this identity of Indians as British subjects and protected persons operating as traders in the Omani kingdom which is the subject of this study.

The British extraterritorial jurisdiction in the nineteenth century was mainly used to stop the involvement of

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2) *ibid.*, p.359.


4) The British subjects were mainly from Bombay and Gujerat directly controlled by Britain, while the protected persons were mainly from Kutch, a protected state. Amongst the various Hindu and Muslim communities were the Bohras, Parsis, Khojas, Bhattias and Baluchis; see Chapter I, Part 3.
Indians in the East African slave trade. However, since slavery was a predominant feature of the economy of the Omani Empire, British extraterritorial jurisdiction spilt over into the political, commercial and social life of the Indians. This study will examine the wider consequences of legal jurisdiction into extra-legal spheres. A purely legal perspective would have allowed only the production of "formal analysis of legal texts", which is not suitable for the purposes of this study.

This study in politics does not adopt an experimental systems analysis, which is considered to be highly developed. It instead uses the historical approach for three reasons. Firstly, the present condition of the East African Asians arises directly out of decisions taken about them in the nineteenth century. Secondly, the role of the Government of India in the Omani Empire has been stressed hitherto. In this study stress is laid more on the consular role of the officials appointed by the Foreign Office, which assumed complete control over the British consulate in Zanzibar in 1883. Certain other studies only stress the importance of the colonial period on the question of status of Indians, thus ignoring the significance of the roots of the nineteenth century British control over the Indians. In the present

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study it is contended that the complex and sometimes contradictory position of the Indians at the end of the nineteenth century can only be brought into sharper focus if their position throughout that century is examined. Thirdly, the legal and historical approach is used because, as Professor Ghai has said, law was one of the major tools used by the colonial power to establish its presence in East Africa.

It is necessary to have a mode of analysis in this thesis which is part politics, part history, part law and part economics, but which, however, has certain drawbacks. There is the unavoidable tendency to repeat material, which can be explained by stating that the multi-faceted implications of British extraterritorial jurisdiction on the same group of people would invariably involve some overlap. This is, however, not a history of the Indians in Zanzibar, but an examination of the changes in their status from the beginning to the end of the nineteenth century.

The Omani Sultanate spent the first half of the nineteenth century expanding its empire to encompass Zanzibar and the East African mainland. While it was fundamentally a coastal trading state, the concept of territorial sovereignty was not totally lost on the Omani elite. Extraterritoriality negated some of the attempts made by the Omanis to impose a territorial sovereignty over their African possessions. Furthermore, the unilateral advantages granted by the Zanzibari Sultans to Britain neglected the interests of the Omani trading class while conferring advantages on British subjects who were mainly Hindus and Muslims. Since as Indians they

were subject to jurisdiction by English consuls, who did not always identify with Indian interests, the advantages accruing to them because of their nationality were not distinct and need further examination.

It is not intended to examine in detail the motivations of British policy in this region, a subject well covered, but to concentrate on the implications of British policy for the Indians. The protectorate status over Zanzibar after 1890 was not the result of a totally deliberate policy carefully and systematically applied, but neither was it a result of a "fit of absentmindedness". It was rather a consequence of limited pragmatic decisions made throughout the nineteenth century at many levels of government in Zanzibar, in India and in London.

The links between the East coast of Africa with India and the direct involvement of the Government of India till 1883 over the Political Agent in Zanzibar for strategic reasons has been widely stressed. In this study it is the role of the British consulate, under Foreign Office control,


10) See, M.E. Chamberlain: The Scramble for Africa (London, 1974), pp 63-4; see also E.T. Salmon: The Nemesis of Empire (London, 1974), p.18, who stresses that while strategic interests were important to safeguard Indian Ocean, "Nevertheless, the thought of trade was always uppermost. Even where the British professed other reasons for their action, they were never entirely oblivious of the commercial prospects." Further, that the "notorious 'scramble for Africa' was largely a race for materials, markets and money" (p.19).
which will be stressed, to examine other than strategic features in Eastern Africa.\(^{11}\)

The Zanzibar segment of the Kingdom of Muscat relied heavily on commerce to meet the demand for goods because none were produced locally for consumption. The presence of economic factors is illustrated by studying one of the less important areas in Africa, of whose potential there were great expectations. Robinson and Gallagher point out that:

> Although east Africa was not a region of high importance to British policy, out of anti-slavery campaigns had grown an informal paramountcy along the coast, the work of ambitious consuls and naval officers.\(^{12}\)

This is to a large extent true, but the "informal paramountcy" was established by using commerce as one of the levers of control to abolish the slave trade. Even though Zanzibari and East African commerce was miniscule at the imperial level, it is important to show that even in such marginal areas with potential for growth the economic motivations were important.

The powers to abolish the slave trade and the use of naval patrols to control slavery were vested in the British Consul at Zanzibar. The policing activities of the British Consuls were not without their result on the commercial life of Zanzibar. The abolition of slavery entailed the control of internal structures of Zanzibar, especially the commercial ones; "legitimate commerce" was recommended to replace the slave trade.

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11) The major source of information has been from the Foreign Office Records, held at the Public Record Office. The Proceedings of the Foreign Department of the Government of India have been consulted at the National Archives of India. Amongst the Private Collections, the Mackinnon Papers at the School of Oriental and African Studies were consulted.

The "ambitious consuls and naval officers" were not devoid of the control of what Robinson and Gallagher called the "official mind". Palmerston and Canning prided themselves on reading every word of the consular reports. The "official mind" might have had strategy and security uppermost in their considerations while calculating African policy; however, there seems to have been little distinction in official minds where matters of (strategy and security) and commerce and trade were concerned. During the long process of informal paramountcy, Zanzibar was subject to the slave trade treaties and the use of gunboats. In the last quarter of the century European politics did play a large role in changing events in Zanzibar. For example, the reluctant removal of Consul Holmwood by Lord Salisbury was a concession to Bismarck.13

Robinson and Gallagher further claimed that

The British advance at least, was not an isolated African episode. It was the climax of a longer process of growth and decay in Africa.14

The recognition of an independent African history propelled by her own internal dynamism is a healthy perspective, but in the case of the Omani Empire in East Africa the decay of the Sultanate was not independent of British intervention. They themselves admit earlier:

British power, although informal, tended to be drawn in to fill the vacuum which it had helped to create.15

As Eric Stokes points out:

These local crises on closer examination are

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15) Ibid., p. 51.
seen to have had their origins in the corrosive action of the expanding European economy on the indigenous political structures. 16

The Kingdom of Muscat had vast maritime and territorial interests, but the establishment by Britain of a maritime supervisory system backed by naval patrols and political surveillance during the first half of the nineteenth century laid the groundwork for British intervention in the second part of the century. This decay started much earlier than in 1870, and was a gradual and continuing process throughout the century. In the case of the Kingdoms of Muscat, the European expansionist policies were the cause of the breakdown of the kingdom and not a consequence of it. The role of the British Government consuls, who evaluated the complex situation in Zanzibar and constantly carried out the decisions of the Home Government, cannot be underestimated. This thesis does not try to study specifically this whole process of appendage or dependence, 17 but merely tries to illustrate it by studying the role of the Indian minority resident in Zanzibar. The Indian commercial community acted as agents of Indian and European commerce which undermined the traditional economy of the Omani Empire. 18 The imposition of the slave trade jurisdiction was the main method by which the Indians were brought under British control.


Robinson and Gallagher acknowledge the role of the British merchant on the West coast of Africa who was attracted by palm oil, but contend that "on the east coast of Africa there was a Sultan of Zanzibar through whom the British influence could generally be exerted" without the "inconvenience of rule". They refrain from developing the theme of another component of British power - the British Indian merchant on the east coast. The Indian businessmen generally traded in British and Indian goods, and since India was a secondary source of modernising influence in the Indian Ocean area, the British Indians acted as agents of this influence. The Indians as a class financed a segment of the slave trade and controlled a considerable amount of land for which they could not legally utilise slave labour. As British subjects, the Indians could purchase land under the 1839 Convention of Commerce without any restraints. Their ability to control large segments of land, and inability legally to utilise slave labour undermined the Sultan's slave based agricultural enterprises. Their role as merchants, while devoid of any civilising mission, was not entirely different from English merchants elsewhere.

The Indian merchants played an extremely subtle role. Compared to the Arab traders they were involved in the import-export trade on an advantageous basis, due to the 1839 and 1886 treaties, and were therefore resented by the Arabs who did not enjoy these advantages because of the political weaknesses of the Omani Empire. These advantages accrued

19. Robinson, Gallagher and Denny: Africa and the Victorians, p.42. See also p.41: "On the east coast of Africa the Government had set up the British interests, with only bare minimum of action by the trader."
to them by virtue of superior British power in the region. It is necessary to stress that the Indian minority operated within the framework of superior British power and the weaknesses of the Omani Empire. Unless they are viewed as operating within this larger context, they become subject to facile stereotyping and a scapegoat for events well beyond their control.

The Indians, because of their commercial influence, can be categorised as being a progressive mediating group indigenous to the Indian Ocean area which enabled the "decaying societies of the Orient" to "burst the feudal shackles and liberalise their political and economic life". However, the converse side of the collusion by the Indian minority with the British, despite the paucity of other options, contained the seeds of destruction of their own independent role as a commercial class in the Sultan's dominions. Their links with the Zanzibar Sultanate also became minimised and their role helped in subordinating the Sultan to Britain. This erosion of the Sultan's power takes place slowly but surely throughout the nineteenth century, and the Sultan was not in the constant state of being a British "puppet".

The Indian merchants colluded not entirely out of choice but through legal measures imposed by the British consul and accepted by the Sultan.

Sultan Barghash's attempts in the 1870s, upon coming to power, to rid his state of the British controlled Indian commercial influence, and his later increased dependence upon

20) ibid., p.4.
21) ibid., p.15.
them through the intervention of the British consul, are illustrative of this complex role of the Indians. The early defiance of Sultan Barghash was replaced by his acceptance of commercial powers of major Indian traders like Jairam Sewji and Tharia Topan. The paradoxical role of the Indians is exemplified by Topan and Sewji, who, as the Customs Masters, controlled his royal purse strings. Both these merchants had encouraged European explorers by outfitting, amongst others, Speke, Burton, Livingstone, Stanley and Cameron. It was explorations like these which exposed the impotency of the Sultan in the mainland dominions belonging to him. The European explorers themselves saw a contradiction in the role of the Indians and, while most of them applauded the Indian merchants, Burton and Speke described them as being opposed to European exploration.

The Indian merchants themselves gave varying levels of support to the British. Jairam Sewji led the initial revolt against the British but became increasingly dependent on and loyal to Britain. Topan was extremely friendly with the Americans, till very late, and Peera Dewji remained totally opposed to British interests. The big Indian businesses in Zanzibar collapsed because their links with Indian businesses were weakened by London-based firms and the Indians lost their Indian Ocean political base. Once the Bombay and Indian Governments had relinquished direct links with Zanzibar they became politically isolated from India. They had to compete with and play a role in a trading structure more

22. They were also Customs Masters: Sewji from 1835-75, 1880-6; Topan from 1875-1880. See Chapter VIII.
directly controlled by Britain, where they had no political base or links as did the Imperial British East Africa Company and other affiliated companies. Hence, in relative terms of finance and goods, Indian trade did not expand at a rate greater than the rate of expansion of the economy.

The first introductory chapter is divided into three parts: political history of Zanzibar; a short economic history; and finally the Indian community in Zanzibar. The first part gives a brief history of the Al bu Said Sultanate in Zanzibar, the political intervention by Britain and the assumption of total control over the British consulate by the Foreign Office in 1883 from the Government of India. The second part of the chapter gives a brief outline of the economic framework within which the Indian community operated, and the two key Indian traders, Jairam Sewji and Tharia Topan, are introduced at this point. The final part of the chapter focuses on the Indian population in Zanzibar and its growth. There is a short discussion of social change amongst the Indian community, and especially changes amongst the Khoja community because of contact with the British.

The second chapter considers the political implications of British anti-slavery measures over Indians in nineteenth century Zanzibar. The chapter also examines the political implications of the Imperial British East Africa Company’s control over the mainland because of the close relationship of political control and the operations of the IBEAC. This chapter ends with a brief account of the political competition between the rival European powers in East Africa and its effect on the Indians in Zanzibar.
The next six chapters form a detailed study of the consular activity, the legislation and the implications of the legislation which authorised the exercise of jurisdiction over Indians in nineteenth century Zanzibar. Chapter three, on the Consuls themselves, deals in the first part with the general issues relating to the consular service, while the second part deals with the relations of specific consuls with Sir William Mackinnon, the chairman of the IBEAC.

Chapter four describes the legal framework utilised by the consuls to implement extraterritorial jurisdiction over the Indian community in Zanzibar. Following the consideration of extraterritoriality in the Middle East and Asia in general, the legal enactments which the British considered gave them jurisdiction over the Indians are laid out and discussed in chronological order. They are the treaties, Foreign Jurisdiction Acts, the Orders in Council and various Indian Acts.

The legal enactments described in this chapter were primarily used to abolish the slave trade. Chapter five concentrates on the criminal jurisdiction and the British attempts to control British Indian subjects and protected persons involved in the slave trade. Among the other aspects of criminal jurisdiction were murder, and the chapter contains some consideration of civil jurisdiction.

The following chapter illustrates the political nature of this control during the late Victorian era. The more overt nature of this jurisdiction became clear when Peera

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23. See Appendix I for dates during which the various consuls and sultans held office in Zanzibar.

24. For Mackinnon, read MacKinnon in the text.
Dewji was deported and the IBEAC assumed responsibility for administration over the East African mainland. These events foreshadowed the establishment of a protectorate over Zanzibar and the various considerations relating to this are considered.

Chapters seven and eight are concerned with commercial jurisdiction in general and describe its consequences for the Indian trade. Chapter eight focuses on the particular case of the Customs House which was the single most important institution regulating trade and providing the main part of revenue of the Sultan. Control of customs was in the hands of the Customs Master, a lucrative post, the appointment to which came through political influence and the payment of substantial fees to the Sultan. The ability of the British to exercise legal restraint on the Indians, especially the two Customs Masters, had important implications on the Customs House and thus for the Sultan to control his dominions.

The penultimate chapter deals with the narrow scope of the implications of British extraterritorial jurisdiction over the Indian community, their nationality, cohesiveness and their customary practices. This chapter also focuses on the implications of British control over Indo-Omani commerce and Indian Ocean communications, especially since the Omani Empire was primarily a coastal trading state.

The final chapter discusses the broader implications of British extraterritorial jurisdiction over Indians in the nineteenth century. It touches on the implications of British

25. See Chapter I, Part II.
control over the Zanzibar Sultanate, and the implications for the role and status of Indians in the nineteenth and twentieth century. 26

26. While millions of people have freed themselves from British colonialism and adopted independent national identities in the twentieth century, partly because, as Machiavelli said, "a prince who cannot defend his subjects will soon find himself without any" (E.T. Salmon, The Nemesis of Empire, p ), this is a study of a minority group which was more intricately caught in the sinews of imperialism,
This part describes briefly the political history of Zanzibar from 1798 to 1895. The first section concentrates specifically on the expansion of the Omani Empire to encompass Zanzibar, on Sultan Said's attempts to consolidate his power in Oman and simultaneously to establish his authority in Zanzibar. The last three sections look at the competition between the various European powers to secure a sphere of influence in the Zanzibar dominions, especially British ascendancy in the area.

1(a) The political limits of the Omani Empire

The Omani state in Zanzibar is considered to have been founded because when Arab colonists arrived in the nineteenth century they found the African population politically vulnerable and unable to resist the establishment of an Arab colonial state. 1

In the absence of an African political unity, the Omanis were able to impose a commercially-oriented state on the East African coast. Although there was no genuine interlocking of interests between the Omanis and the Africans, the Omani

dominance was of sufficient consequence to produce an inter-
mixture of Arab and African cultures.

Sultan Said's Omani Empire in East Africa, though
primarily a commercial venture, took, however, a political
form. One of the principal limitations of the empire lay
in its lack of a formal administrative structure. Power was
vested solely in the Sultan and delegated by him to a few
walis (governors) who relied on Baluchi mercenaries.²

Moreover, the commercial bias of Said's venture was responsible
for there being little emphasis placed on broad territorial
control, since attention was largely concentrated on the
control of trade and trade routes. A great deal of effort
was expended on keeping open the caravan routes on the main-
land, but the further into the interior these routes
penetrated, the less secure they became. Insofar as the
Omani Empire depended upon the trade in slaves and ivory
from the deep hinterland, its cohesion was undermined. The
empire was thus based on insecure political foundations, for
without broader political control, the further the caravan
routes penetrated into the interior, the more vulnerable
became the mainland part of the empire to the increasing
western competition. Furthermore, the Africans' acceptance
of Omani control along the trade routes was based mainly on
the value to the local rulers of the trade, and on a partial
conversion to Islam. It was thus of a negative nature.

² See Part 3 of this chapter. The Baluchis came from
north-west India, now part of Pakistan. In the 18th
century the walis were consuls of Omani Empire. See
G.S.P. Freeman-Granville: "Some aspects of the external
relations of the East African coast" in K. Ingham (ed.)
Foreign Relations of African States, Colston Papers No.25,
The lack of political perspective and administrative control thus created conditions which made it easier for western powers to penetrate the Omani Empire. The limited political outlook of Sultan Said and his successors led on the one hand to a lack of understanding of the impact of the empire on the fragmented African political system, and on the other hand to a failure to understand the consequences of the unequal treaties which they had entered into with the more powerful western states.

The implications of the first of these miscalculations became evident during the reign of Sultan Barghash (1870-88), who tried to change the Empire from a purely commercial one to a political one. His attempts to move his capital to the mainland, as well as his efforts to control the Customs House revenues directly, were unsuccessful.

Lack of political judgment extended not only to his African interests on the coast, but also to the nature of the operations of the western powers. Sultan Said's Omani Empire provided the link between the European powers and the African coast. In fact, increasing control of the coast by Said brought about a corresponding increase in British influence. The nature of this British control will be examined in detail in the body of the thesis. It is sufficient to mention one salient point, that while Britain benefited from the destruction of the Omani Empire and brought it about, this end of empire weakened the Sultan internally and necessitated greater British intervention.3

Hence the advent of British imperialism both exacerbated the

conflict between the East African mainland and Zanzibar, and prevented it from being resolved.4

1(b) The Sultanate 1804-1896: Sultan Seyyid Said 1804-1856

Sultan Said belonged to the Al bu Said dynasty of Oman. During this dynasty political and religious powers were separated for the first time. The holders of the religious office of the Imam were to continue to be drawn from the tribes in the interior, but his religious powers were limited. The secular executive power was to be vested in the Sultan of Muscat, who controlled the Omani Empire. During the first twenty years of Sultan Said's reign he was fully occupied in resolving the internal problems of Oman, and gave little attention to his African possessions. He was aware of the insubordination of many of the Arab governors appointed in East Africa, and especially of the disloyalty of the Mazrui family, governors of Mombasa. The subsequent problems resulting from the suppression of the latter, and of the Wahabbis in Oman, meant that Said could give little attention to his Zanzibar Empire in the 1830s.

Said began to re-establish control over the East African coast in 1828, but was unable to suppress the Mazruis until 1837, some five years after he had established his capital at Zanzibar itself. Said had already visited and surveyed Zanzibar in 1828, finding it fertile. His decision to base himself there, rather than at Kilwa or Mombasa, was, however, also based on its centrality and excellent harbour.

4. Ibid., p.272. The conflict between the Omani interior and the coast was similarly exacerbated but not resolved.
The power which he should have consolidated in his person was delegated to his administrators. A similar transfer of power can be seen in the commercial treaties signed with western powers, which granted extraterritorial rights over various foreign nationals - a clear incursion into the Sultan's sovereignty.

The basis of Omani prosperity was the slave trade, which Britain had begun to suppress in 1822. The richest source of income, Zanzibar, was split off from Oman in 1856 when the reigning Sultan, Said, died, and the empire was divided between his two sons. On his death, on 19 October, the British Consul, Colonel Hamerton, was the last person he called for. This was symbolic of the growing dependence of the sultanate on British power, and of the lessening of French and American influence.

Seyyid Majid, 1856-1870

Majid succeeded his father, Said, in 1856 as the Sultan in Zanzibar, and the Sultanate of Muscat was inherited by Said's eldest son, Thuwani. While Majid was content to remain the ruler of only the Zanzibar dominions, Thuwani laid claim to the whole of his father's empire.

Thuwani was prepared to sail for Zanzibar to enforce his rights but was stopped by the British Government, which then appointed the Muscat-Zanzibar Commission to evaluate the claims of the two rivals. Thuwani incited Barghash, one of his younger brothers, to rebel against Majid. This plot was quelled by the British Consul, and Barghash was sent to Bombay, where he lived until 1861.

As a result of this Commission, the Canning Award, made public by the Governor-General of India on 2 April 1861, gave
Zanzibar to Majid. He had to pay $MT 40,000 annually to Thuwani, who was to retain Muscat and Oman. Since the de facto division of the state in 1856, Majid had become less powerful, and he was now also encumbered with the payment of an annual subsidy compensating Oman for abandoning all claims on the richer country of Zanzibar. During his reign Majid witnessed the severance of the Omani Kingdom and the increasing incursions into his sovereignty by British Consuls such as Rigby, Playfair, Pelly and Churchill. The early stirrings of European exploration of his mainland dominions had not yet begun to take any definite shape.

The remainder of Majid's reign remained uneventful. He died in 1870, at the early age of thirty-seven, and was succeeded by his brother Barghash.

Seyyid Barghash, 1870-1888

During his reign Barghash saw the culmination of European control. The increased activities of the European explorers, and the extension of British consular activity during Majid's reign combined in Barghash's period with increased incursions from the West, and in particular from Britain.

The change in the communications network further undermined his position. The opening of the Suez Canal in 1869, the initiation of the postal service between Aden and Zanzibar by the British India Steam Navigation Company (BISN), and the submarine cable laid by the Eastern Telegraph Company in 1879, played their part in consolidating British power in his dominions.

A major change occurred as well in the pattern of trade, which is discussed in greater detail in Chapter VII.
William Mackinnon, owner of the BISN, also held an interest in the British East Africa Association, which had been trying to obtain concessions since 1877. He succeeded in obtaining these for the Imperial British East Africa Company soon after Barghash's death on 26 March 1888.

British anti-slave trade pressures had been intensified by Sir John Kirk, the Consul General, after the Bartle Frere Mission had visited Zanzibar and the 1873 Treaty was signed with the Sultan.

Sultan Barghash also yielded to territorial pressures from Germany, and accepted the Berlin Act of 1886. In fact he saw the culmination of that western interference which had begun in Said's time; it is not surprising that Barghash should have become embittered by the humiliations imposed upon him by the political changes which deprived him of the vast possessions on the mainland of Africa which had hitherto been regarded as being under the domination of the Sultan of Zanzibar.5

The following reigns of Khalifa bin Said (1888-1890), Ali bin Said (1890-1893) and their nephew Hamad bin Thuwani bin Said (1893-1896) were notable mainly for the formal transfer of power to Britain, which declared Protectorate status for Zanzibar and Pemba Island in November 1890, and for the termination of Mackinnon's concession in 1895 (for which Zanzibar had to pay the bulk of the £250,000 concession).

1(c) Political Intervention. Sultan Said and the western powers, 1798-1856.

The intervention of the western countries, especially

Britain, took diverse forms. Formal powers, based on treaties, were imposed on Oman and reflected the superiority of British power in the region; they were exercised by the consuls. Consuls also exercised considerable influence in trade and had the ability to intervene directly, or threaten to do so, in the event of British interests being jeopardised.  

British political influence was manifested in treaties which formalised the position of Britain in the Omani Empire. The 1798 Treaty was concluded between the East India Company and Oman, and was intended to exclude the French from Omani territory, and both the French and the Dutch from Omani ports. It was more than just a commercial agreement and represented an overt political act:

This triumph of British diplomacy represented England's first political intervention and entrenchment in the affairs of Oman and the first political compact with an Arabian ruler.

This "virtually unilateral treaty" was confirmed and extended by Britain in 1800. The treaties concluded with the East India Company helped to replace French influence in Oman and began the process of British paramountcy.

The attempt by Sultan Said to extend and consolidate his empire on the East African coast, using Zanzibar as his base, was observed by the French and the British. Dallon visited Zanzibar in 1799 and reported on the extent of the

6. Fred Halliday: Arabia Without Sultans, p.271. "It is power not treaties that determines history. Only writers blinded by a fog of legalism and imperialistic ideology can doubt that Oman has been a de facto British colony, in that the regime depended on Britain, and Britain imposed its will when it wanted to."

7. See Chapter IV, on Legal Framework, for the details of the treaties mentioned hereinafter.

Sultan's control over Zanzibar to the French Governor of Mauritius. Ships of the British Navy visited Zanzibar soon afterwards, collecting information about the state of the Sultan's control over his dominions and the French involvement in Zanzibar. Subsequent visits in 1809 reported continued French influence over Governor Yacout and, in the interest of commercial security, the East India Company sent two schooners in 1811. Dallon reported that civil and military powers in Zanzibar had been vested by the Sultan in different persons, and that the individuals holding civil powers owned rich estates in Muscat, so that their loyalty to Said was guaranteed. The Sultan's political authority in his African dominions was, however, weak, and was vested in Governor Yacout, who exacted large sums of money from traders.

With the declaration of peace between France and Britain in 1814, the Sultan began to devote more attention to Zanzibar. At the same time British interests in the Indian Ocean were revived. The Royal Navy was actively engaged in clearing and policing the sea routes to India, and ensuring that the control of the East India Company could only be maintained with the help of the Royal Navy. The dual extension of British interest through the British Government and the East India Company was important both in strategic and commercial terms. These interests were further advanced by eliminating piracy and by widening the anti-slavery campaign through the Slave Trade Abolition Act of 1807, which covered the area.

9. John Gray: History of Zanzibar from Middle Ages to 1856 (London: 1956), pp 96-103. Indian traders were amongst those from whom the exactions were made. The Indian traders at Zanzibar were from Sind, while at Lamu and Mombasa the trade was in the hands of Muscat traders and adventurers from Kutch. ibid., pp 105-6.
from the Atlantic to the Indian Ocean.

In 1824, Captain Owen of the British Navy also intervened politically when he placed Mombasa under British protection. Although he did it without authority, and this protection was withdrawn in 1826, Owen's action strengthened the power of the Mazruis. This intervention was responsible for Said's efforts to re-establish his control on the mainland, which led to a weakening of his authority in his Muscat dominions, where his presence was also needed. The British, though the Sultan's allies, gave him no assistance to counteract the influence of the Wahabbi and the Qawasim.

Between 1828 and 1837, Said led four expeditions against the Mazruis, the last of which resulted in the signing of a peace treaty with Rashid bin Salim, the last of the Mazrui governors. Said subsequently arrested the leading members of the family, in an effort to prevent any further challenge to his authority from them. The long series of conflicts with the Wahabbi and the Qawasim in Muscat, and the Mazrui and Owen intervention in East Africa, left Said unable to strengthen the internal structures of Muscat. The establishment of an Omani administration in East Africa, deriving power from mercantile and maritime activity, inevitably left this organisation administratively and politically ineffective.10

Sultan Said was never confirmed as the Imam of Muscat. The lack of religious Ibadhi status made him rather more of a "secular" leader. He seems to have directed his energies

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towards the accumulation of wealth and property, and to the development of shipping and clove plantations. As a "secular" leader who allowed British slave trade edicts to be implemented, he contravened sharia law, and hence was able to temper somewhat this law at the insistence of the British. This predominant interest in commerce was responsible for the Sultan signing commercial treaties with western powers, such as the United States, France, the United Kingdom, Germany and Portugal.

The Americans were the first of the western powers to sign a commercial treaty. The impact of this Treaty of 1833 on Britain was immediate:

Captain H. Hart, R.N., on urgent Admiralty Orders, visited Said on HMS Imogene at Zanzibar on 30th January 1834, and was assured that no American colony was contemplated along the East African coast.

The political repercussions of this treaty were extensive and America's monopoly was considered inimical to British interests. The Americans had come mainly to trade, while the British interests in the Indian Ocean included the abolition of the slave trade. The Sultan therefore had qualms about the stationing of a British consul in Zanzibar, because such an establishment would formalise pressures for the abolition of the slave trade. However, the presence of a British consul provided an additional attraction and safeguard for the Indians, the majority of whom could claim the rights of British subjects. Since Said was interested

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11. Wendell Phillips: Oman, A History, p.103. In the matter of Customs Houses these were rented to Wat Shima and Jairam Sewji. John Gray: Zanzibar to 1856, p.143.
mainly in an economic, rather than a territorial empire, he agreed in 1841 to the establishment of the British Consulate. Once he had accepted this arrangement, he asked Britain to accord him direct contact with London. The fact that his request was not granted convinced him of the secondary importance of his kingdom vis-à-vis the imperial capital.

Britain wanted influence but no commitments in Zanzibar. The appointment of A. Hamerton\(^4\) as the first Consul for Britain was made in conjunction with the India Office for political and financial reasons.\(^5\) Palmerston, the Foreign Secretary, was in favour of sending someone from India who would be familiar with the language and customs, especially as British Indian interests in the Middle East were affected. The Board of Control from India had, in 1834, rejected Captain Owen's candidacy as consul at the Sultan's Court.\(^6\) In order to avoid any more quarrels between the Foreign and India Offices, Palmerston accepted the suggestion that the Bombay Government should appoint an officer, who would be paid by the India Government and receive a Consular Commission from the Crown. The officer was to correspond directly with the Secretary of State for Foreign Affairs and the Bombay

\(^4\) A. Hamerton was formerly the itinerant Consul at Muscat and an officer of the East India Company. See C.S. Nicholls: The Swahili Coast: Politics, Diplomacy and Trade on East African littoral 1798-1858 (London: 1971), pp 176-177. There was confusion about Hamerton's appointment as Agent of East India Company and Consul for the Foreign Office. See also The Gulf Committee: The Oman War 1857-1952: A Critical History (translation) (London: 1974) which incorrectly states "A Mr Horton who was a British Consult (sic) in Zanzibar in 1846", p.7. This is obviously a reference to Consul Hamerton.

\(^5\) F.O. 54.17, I.O. to F.O., 19-11-1858.

\(^6\) F.O. 54.1, E.I.C. to F.O., 27-9-1834; Mr Rice to F.O., 26-9-1834.
Palmerston, in writing to Said, stressed the importance of intercourse between India and the Sultan's dominions. Although the Political Agency remained under Bombay Government control from 1841 to 1873, this Indian Presidency was interested mainly in preserving its influence in the Persian Gulf. It did not have any interest in the exercise of political power in Zanzibar even after the appointment of Captain Hamerton.

The creation of the post of British Agent and Consul was to deal primarily with the activities of the British Indians and to abolish the slave trade. Hamerton's constant intrusion on behalf of the Indians, particularly with respect to the abolition of the slave trade, drove the Sultan to complain about the damaging effect on his kingdom. These representations were delivered to the Foreign Office by the Sultan's London Agent, Captain Cogan, who was told that the Treaty of 1822 and Article XIII of the 1839 Convention of Commerce gave the British the right to search all the Sultan's vessels outside his territorial jurisdiction. The Sultan's great confidant in London was Captain Cogan, who had signed the Convention of Commerce with him, and who had considerable business interests in Zanzibar. Hamerton wrote to the Foreign Office to say that the Sultan had provided slaves to operate Cogan's sugar interests, while

the mill, and a person to superintend it, is furnished by Captain Cogan, who receives as

17. F.O. 54.3, India Board to F.O., 14-3-1840; F.O. to India Board, 16-3-1840.
18. F.O. 54.3, F.O. to India Board, 2-4-1840; C.S. Nicholls: Swahili Coast, pp 165-178.
his share half of the sugar, and the Imam receives the other half.  

This partly explains the good relations between the two men, and their ambivalence towards Hamerton, particularly as the campaign to stop the slave trade added to the scarcity of labour. One of the Sultan’s complaints was severe:

but we are constantly perplexed by petty annoyances from your Consul, Hamerton, at this place, and from the Jew agent Reuben at Muscat. They are the only agents of the British Government we have had occasion to complain of.  

The American treaty of 1833 was implemented by a trading consul in Zanzibar. R. Waters, the American Consul, who had been there before Hamerton, joined forces with the Sultan. He told him that British power in India was waning and that a new consul would be appointed. Consul Waters also advised the Sultan on his dealings with Hamerton, by priming him on English law.

Consul Waters’ influence derived from his very high profits, a result of restrictive trade practices at Zanzibar. However, as soon as Sewji, the Customs Master, realised that unrestricted trade was increasing rapidly, he started dealing with the large number of European ships calling at Zanzibar, thus undermining the base of Consul Waters’ influence. Hence Hamerton obtained the upper hand in the Sultan’s court.

20. ibid., No.2, Hamerton to F.O., 13-4-1844.
The Americans were not a major power in the area, and their various attempts to insist upon the nationality of Indians as being Arab, in the face of Britain's increasingly predominant influence, were unsuccessful. Although Said and Hamerton had formally settled the question of the Indians' nationality in 1841, the Sultan continued to talk about the issue ambivalently with the Americans. However, the State Department had no cause to interfere in this dispute.\(^{23}\) The American Civil War depleted the American presence, and the British, while having to compete with the French and Germans, had a breathing space in which to entrench themselves further. British jurisdiction over the Indian community ensured that this merchant community would help in extending British influence. At the same time the slave trade abolition laws intensified their role as subjects of British authority.

\(1(d)\) **Intensification of British control**

The interests of British Indian subjects required protection particularly during the succession crises between the Sultans of Muscat and Zanzibar. Colonel Rigby, who assumed office in 1858 as Consul, thirteen months after Hamerton died in office, took strong action favouring the incumbent Sultan Majid. The Foreign Office approved the action because "the lives and property of British subjects had become endangered. This fact should be made especially apparent in the letter to the Government of Bombay".\(^{24}\) The Government approved of the support given to the incumbent


\(^{24}\) F.O. 54.17, Rigby to I.O., 1-5-1860.
Sultan because a British subject had been killed and trade was threatened; Britain sent two vessels to the Dominion. Regarding the rebellion of Barghash against the Sultan of Zanzibar, Rigby wrote to the Royal Navy thanking them for the "important service rendered to British interests" against the rebels. Using the same phrase, Rigby thanked Lieutenant Berkeley on behalf of the Sultan.

It is difficult to assess how important this action was in protecting Indian life and property as opposed to reinforcing a British presence in the face of increased French influence. However, the differences with the French were to continue till 1862, and the agreement signed with the French in that year played a great role in subsequent events. The locus standi of the French in joining the Germans and Britain in deciding the limits of the Zanzibar Sultanate was that in 1862 they had joined Britain in guaranteeing Zanzibar independence.

On his arrival in Zanzibar, Rigby felt that British influence was rather weak, in comparison with the French and American consular establishments. He therefore sought to increase the staff of the Consulate. However, the attempts to suppress the slave trade prompted the India Office to suggest the removal of the Zanzibar Consulate to

25. ibid., F.O. to I.O., 22-3-1860; F.O. to Admiralty, 4-4-1860.
26. ibid., Rigby to Admiralty, 20-10-1859.
27. ibid.
29. NAI, Foreign Dept (Pol) File, No. 27/31 (1858), Rigby to Secretary of Bombay Government, enc., 12-8-1858.
the jurisdiction of the Foreign Office.\textsuperscript{30} As the main function of the Political Agency in Zanzibar was considered to be the Indian residents, the Foreign Office felt that the control of the Agency should remain with the India Office, although communications concerning the slave trade were to be addressed to the Foreign Office.\textsuperscript{31} Rigby explained the difficulties of his office by saying that there had not been a consul at Zanzibar for thirteen months, during which time the French had persuaded "the Sultan and Arabs that the British had lost India and that no British consul would again reside here".\textsuperscript{32} The belief of the Indian residents in these reports of British decline further increased French paramounty. These troubles with the French continued, aggravated by Rigby's posting of an indictment against a French subject at the Sultan's Customs House.\textsuperscript{33} Towards the end of his term of office, through the application of slave trade jurisdiction he had so transformed the situation that an American in Zanzibar was able to write that Majid was not able to withstand pressure, particularly if "that pressure is exerted by Her Majesty's Consul".\textsuperscript{34}

British political influence began to assume a totally new dimension in 1860, with the decision of the Muscat-Zanzibar Commission under Brigadier Coglan. This established beyond

\textsuperscript{30} F.O. 54.17, I.O. to F.O., 11-6-1860.
\textsuperscript{31} \textit{ibid.}, F.O. to I.O., 12-6-1860.
\textsuperscript{32} F.O. 84.1146, Rigby to F.O., 1-7-1861. The French influence temporarily became paramount, especially since the locally resident Indians believed in the downfall of British power.
\textsuperscript{34} E. Ropes Papers, Peabody Museum (Salem: Mass.), Acc.11884, 28-6-1988.
doubt that Oman ought to remain a united kingdom under Sultan Thuwani, and stressed that no rule of primogeniture operated within this kingdom. This position was initially supported by Reverend Badger, an Arab scholar and a member of the Commission, who later did a sudden \textit{volte face}. At the end of the proceedings Badger declared that he was in favour of a permanent division of the Sultanate. The evidence given by Rigby was suspect, as he was in favour of Sultan Majid.\textsuperscript{35} This separation of Oman and Muscat from Zanzibar and the East African ports weakened Sultan Majid and Thuwani immensely, and marked a phase of positive British intervention in Zanzibari affairs, without assuming a formal status of a protector.\textsuperscript{36}

Whether in making his award Canning had intended to destroy Said's Empire, as a power to be reckoned with, or whether he had no such intention, such was the result.\textsuperscript{37}

Lord Northbrook, on behalf of the Indian Government, agreed to an equal division of financial support between the British and Indian Governments, on the condition that the payments should further satisfactory arrangements on slave trade matters with Zanzibar, and provide a hold "over the future good conduct of Muscat".\textsuperscript{38}

The Canning Award gave independence to Zanzibar from Muscat, and it was hoped that the separation of the two states would lead to peace on the seas and increase commercial intercourse.\textsuperscript{39}

\textsuperscript{35} J.B. Kelly: \textit{Britain and Persian Gulf}, pp 53-54.
\textsuperscript{38} J.B. Kelly: \textit{Britain and Persian Gulf}, p.746, quoting Northbrook to Argyle.
\textsuperscript{39} \textit{ibid.}, p.744, Argyle quoted by Kelly.
Rigby had made inroads into the Sultan's power, but it was during Dr John Kirk's period as consul that the British hold on Zanzibar, particularly relative to other European powers, was systematically strengthened. He established British paramountcy over the affairs of the Sultan and maintained a close relationship with him, despite the Sultan's wish to reduce British influence to the level of other foreign powers. The British consul tried to supplant the commercial interests of the British Indians by increasing the English commercial presence, while at the same time bringing the Kutchis under the sole protection and jurisdiction of Britain. Kirk was proud that Britain held "the most wealthy and enterprising among the mercantile community" under its jurisdiction.

Kirk made his own view of the Indian Political Agency, as distinct from the British Consulate, clear in a letter to the Foreign Office in 1870, in which he argued for a removal of the Government of Bombay's control over the Political Agency at Zanzibar. His first contention was that "Indians have left their country and dislike very much the Indian Government regime. There is no doubt...that the Indians would much sooner be directly under England". Secondly,

40. R. Coupland: Kirk on the Zambesi (Oxford: 1928), esp. Chapter 2, pp 48-64. Kirk was a medical graduate of Edinburgh University.
41. F.O. 84,1373, Secretary of Government of India to Secretary of Bombay Government, 27-3-1873. Kirk was confirmed as the Political Agent by the Government of India in Gazette of India, 18-3-1873.
42. F.O. 84,1307, Kirk to Secretary of Bombay Government, 16-8-1869.
43. F.O. 84,1344, Kirk to F.O., 19-7-1871. Kirk probably did not want Bombay to see this private letter written after he had realised that he might be superseded by another man.
he felt that the Arabs knew that the Bombay Government alone had no influence. Over the Muscat Subsidy issue, Barghash was convinced "that Bombay and even Calcutta could do little of themselves and that in the end orders came from home". 44 Kirk thought that the Bombay Government was particularly timorous when faced with the Germans and Americans, since "the day for India carrying on the relations of foreign places that have to do with other nations is long past". 45 Therefore Kirk would have preferred an increased control by the Foreign Office over the establishment in Zanzibar, and possibly severing the connection with the India Government, which controlled the Political Agency in Zanzibar. Thirdly, he felt that the locally born Indians and the new arrivals from Kutch seldom entered their names on the Consular Register, since to "them the Arab law is more congenial, they are poor and have nothing to be plundered of...besides in Kutch what do the common people know of England or care whose subjects they are". 46 In this despatch he again asserted the importance for British interests of locally resident Indians as a bulwark against rival European and American Governments. The curbs on the slave trade, therefore, seem to have resulted in the lessening of Arab, Indian, American and European roles of independence and unrestricted functioning, while paradoxically enhancing British influence.

Although he was not a trained diplomat, Kirk was a shrewd politician. For instance, he did not foresee much political advantage in the poorer Indian traders becoming British

44. ibid., Kirk to Churchill, 25-9-1871.
45. ibid.
46. ibid., Kirk to Secretary of Bombay Government, 28-9-1871.
subjects, although the interests of the rich businessmen and money lenders were zealously protected. Hence, while these Indians helped British interests, Kirk ensured that they received protection.

1(e) Indian Government control over the Political Agency in Zanzibar

In this section the following three issues will be discussed. Firstly, the moves to lessen the control of the Bombay and Indian Governments, and the final assumption of control over the Consulate by the Foreign Office in 1883. Secondly, the concern of the Indian authorities that they mainly paid for the budget of the establishment in Zanzibar, while the Treasury resisted any moves to increase the Imperial Government's share in the budget. Thirdly, the dual control by the Indian Government and the Foreign Office over the establishment in Zanzibar raised the complex problem of control over the personnel, as exemplified by the position of Judge Foster, and that of the Indian clerical and subordinate staff who were governed by Indian Rules even after the Consulate was transferred to the Foreign Office.

The Indian Government became increasingly dissatisfied with certain aspects of its own relationship with the Sultan. It was reluctant to pay any compensation to the Sultan from the Subsidy paid to Muscat for abolishing the slave trade. Moreover, it wanted no more fresh charges on the Zanzibar Political Agent.47 At this time the Bombay Government proposed that it relinquish its external relations over

47. NAI, Foreign Dept, S.T. No.213/14 (1870), 14-5-1870.
Zanzibar to the direct control of the Indian Government. Since the Bombay Government, in any case, could only send unimportant communications to the Foreign Office, it was preferable that the Foreign Department of the Indian Government should address the "momentous and complicated questions" to the Foreign Office. The Indian Government thought that the Political Agent in Zanzibar should address copies of the correspondence relating to the Bombay Presidency directly to Bombay.

Increased commerce, the increased importance of political relations and the fact that questions of "purely imperial character, such as no authority but the highest in India could venture to decide", therefore determined that the Indian Government assume direct control over the Agency on 23 January 1873. Furthermore, the Government of India was dissatisfied with the Bombay Government's under-rating of the importance of certain problems (such as the role of Consul Churchill in Barghash's claims to the Sultanate). In such cases the Indian Government often heard of the matter long after its actual occurrence. The improvement of steam and telegraph communications meant that the relations with foreign powers could only be conducted to the advantage of the British Empire if the British Indian Government conducted them directly.

48. NAI, Foreign Dept, Secret, No.226/231 (Jan.1873), No.226, Secretary of Bombay Government to Secretary Government of India, Foreign Dept, 30-12-1872.


There was some doubt, however, in the Foreign Department of the Government of India as to whether the cost of the Political Agency was commensurate with the returns from it. In addition, the question of the slave trade was considered to be an imperial concern, and therefore the Indian Government recommended that the consulate be placed under imperial control.51

Since the consulate served the dual function of preserving Indian dominated commerce and suppressing slave trade, the British Treasury considered that the Indian and British Government should share the expenses of the establishment in Zanzibar. The Foreign Office informed the Treasury that the Indian Government was reluctant to pay for the abolition of the slave trade, as it was an imperial matter, and pointed out that this was a cabinet decision, and not a departmental matter.52 The Indian Government did not object to the equal sharing of the expenses, but they were not sure about the status of the Political Agent in this matter,53 especially on the issue of abolition of slavery, which was a direct responsibility of the Consul and the Foreign Office.

The Treasury's view, however, was that the Indian Government should continue to pay the Canning Award Subsidy, in order to avoid further burdens on the British taxpayer. The Treasury also felt that the abolition of the slave trade would release them from any further financial obligation in this area.54

51. NAI, Foreign Dept (Secret) No.48/51, Secretary of State (I.O.) to Government of India, No.48, 7-8-1874.
52. F.O. 84,1694, Treasury to F.O., 18-1-1877, and F.O. Memo, 18-1-1877.
Between 1868-71 the Omani throne was usurped by a ruler whom the British did not recognise, and the Sultan of Zanzibar was excused from paying the Subsidy. In 1871 an approved candidate succeeded to the throne and the British and Indian Governments began to share the subsidy equally. The Government of India, however, annexed fresh conditions to the Subsidy in 1873, namely the fulfilment of treaty engagements and friendship with Britain. These new conditions were inconsistent with the previous condition of the unqualified right of the Sultan of Oman to the Subsidy, so long as he refrained from attacking Zanzibar. The Indian Government continued to feel that the imperial government should play a greater role in the area:

Imperial policy has been from the force of circumstances connected with the suppression of slave trade, and the increase of direct communication between England and Zanzibar, so to say overridden the policy and interests of India. 55

The Indian Government eventually assumed the whole payment of the subsidy to Muscat, and Gladstone "who at the time of the Persian War had assailed Palmerston over the constitutional impropriety of using the Indian revenues to finance objects of imperial policy, had no such scruples when it came to using them for his own purposes". 56 The Indian Government paid this subsidy until its independence in 1947.

The strained relations between the India and Foreign Offices over Zanzibar were further exacerbated when Foster was nominated a consular judge without any consultation with the India Office. The Foreign Office said that since all

55. F.O. 84.1513; F.O's observation on I.O. to F.O., 23-8-1878.
directions were made under the Order in Council of 1866, and since Lord Derby had wanted Foster to be a part of the Foreign Service and not the India Office, there was no need to consult them. However, the India Office pointed out that Kirk had asked the India Office to pay Foster. Finally, the Foreign Office did an about-turn and informed Foster that his appointment would come from the India Office. Foster was not happy about this arrangement as there were substantial social and service differences between India and Foreign Offices and he would not have chosen to work with the former. Lord Salisbury regretted that he could not be re-transferred to the Foreign Office, and thus Foster suffered a reduction in his annual salary. Foster died in office, still hoping to be transferred to the Foreign Office, while the India Office became even more convinced that its interests in Zanzibar were decreasing and that it should not have to pay for the establishment there. Despite the complications arising from joint control over the Consulate and the Political Agency in Zanzibar by the Foreign and India Offices, the Foreign Office interests increased in scope.

Lord Harrington of the India Office was aware of the preponderant interest of Europe in Zanzibar and that "the interests of the Government of India in Zanzibar had proportionately decreased". Lords Mayo, Lytton and Northcote

57. F.O. 84, 1694, F.O. to I.O., 2-2-1878.
58. ibid., F.O. to Foster, 29-3-1879; I.O. to F.O., 17-6-1878.
59. ibid., Foster to F.O., 7-4-1879.
60. ibid., F.O. to Foster, 30-4-1879; I.O. to F.O., 17-7-1879.
The reduction was from £750 to Rupees 7,500.
61. ibid., I.O. to F.O., 26-10-1881.
similarly contended that an expensive Political Agency in Zanzibar was not required for Indian interests. They wrote to Kirk asking if the Political Agency was still necessary, or if the Consul General under the Foreign Office would not equally well serve Indian interests. Kirk, in a private letter, had previously made known his interest in Foreign Office control over the consulate.

The India Office finally heard that Zanzibar would be transferred to the Foreign Office on 1 September 1883, after ten years of direct control by the Government of India and thirty-two years of control by the Government of Bombay. Kirk felt that the Indian Government's interests were reduced to "management of the internal affairs of the Indian community, the presence of the British representatives being otherwise sufficient to afford Indians full protection". However, the role of the Bombay and Indian Governments in paving the way for the Foreign Office takeover is quite clear:

In this final act the eastern side of Africa comes greatly into prominence, and Zanzibar becomes a great starting point and jumping-off place, British influence exercised from India being all powerful there.

Imperial interests had increased with the anti-slavery policy. The advent of steam and telegraph communications with Europe and America had made them paramount, while the interests of India had "descended". Thus the Political

64. F.O. 84.1601, n.63.
66. F.O. 84.1694, I.O. to F.O., 1-8-1883.
Agency was transferred to the Foreign Office after Indian interests had diminished, severing a long connection with India and demonstrating the direct and overwhelming interest of the imperial government. The Indian Post Office was the one agency which still retained a branch. Most of the English staff (Holmwood, Cracknell) were transferred to the Foreign Office and their past services were to be considered for career purposes. The Indian clerks and some of the peons were still governed by Indian Rules. The compounder in the consular medical establishment was made a meteorological observer, and then sent back to India on duty as an employee of India.

Consul General Euan-Smith recommended that the last vestige of formal Indian Government interest, the Post Office, be taken over by the Foreign Office. His contention was that the Indian Government made considerable profits from the Post Office without, however, paying any mail subsidy, and that it would be advisable, with the assistance of the Imperial British East Africa Company, to supplant it with imperial influence.

A Quaker missionary wrote:

Indian surveyors have aided the construction of the map of British Africa, Indian traders conduct the retail supply and not a little of the general business of the East African ports and are pushing inland. Indian organisations created the Zanzibar Post Office, a task on which the home government looked askance, and after twenty years administration handed it over, a financial success, to the British authorities.

67. F.O. 84,1645, No.85, Kirk to F.O., 12-9-1883.
68. F.O. 84,1678, No.31, Kirk to F.O., 2-6-1884.
69. F.O. 84,2060, No.112, Euan-Smith to F.O., 13-3-1890.
PART 2: ECONOMIC HISTORY OF NINETEENTH CENTURY ZANZIBAR

In this brief economic history it is intended to show the effect of the underdevelopment in the Zanzibar dominions during the nineteenth century on both the Omani elite and the Indian merchant class. In as much as the dominant Omani class allowed themselves to be controlled by the British agents in Zanzibar, the Indian merchant community, as a minority, had to follow suit. The fact that the Indians were either British subjects or British protected persons made the task of British consular control easier. It is beyond the scope of this study to discuss the structural transformations in the East African economy since 1500, but the dominant feature of this process was that the area became an exporter of slaves and primary products. In this part there will be a short examination of the underdevelopment of the East African coast during the nineteenth century within the framework of the Omani empire, of the commercial role of the Indian minority within this empire, and of the nature of the metropolitan firms operating prior to the establishment of the Imperial British East Africa Company.


2(a) Commercial Framework of the Omani Empire in East Africa

The Omani demand for slaves for the date plantations and the consequent necessity for trade with the East African mainland initiated a rapid expansion of Kilwa's hinterland, thus considerably increasing Zanzibar's role as an entrepot during the first half of the nineteenth century. During the second half of the century the growth of plantation agriculture on Zanzibar island further expanded this role. The fact that Sultan Said based his commercial empire in Zanzibar, and that it was the centre of customs collection, assisted in centralising Zanzibar's entrepot functions.

The export trade increased the exploitation of the interior, since it was generated by totally external factors such as the Indo-Arab markets and maritime activity. Caravans operated not according to local conditions but in order to catch the correct monsoon seasons, which facilitated the export of slaves and ivory. The French trade in goods and slaves suffered because of the Napoleonic wars. Following the abolition of the French slave trade, the flow of slaves could be directed to the clove plantations of Zanzibar. The other major factor which helped the export trade was the collapse of the Portuguese export of ivory from Mozambique because of high taxation. The trade supplying Indian, American and European markets shifted during the

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74. C.S. Nicholls: Swahili Coast, pp 75-6. The vessels used were the larger Indian dhows, baggalas and ganjas; from Muscat the shalingas and bedeni. Nicholls contradicts herself when she mentions (p.79) that Indians were skilled navigators and that even Arab vessels carried Indian navigators, and (p.348) when she asserts that Indians did not pursue maritime activities and that their goods were carried by Arab vessels manned by Arabs.
first quarter of the nineteenth century to the northern ivory hinterland.

The commercial organisation became sufficiently cohesive to control a situation where the demand for ivory outstripped the supply. In contrast to the rising price of ivory, the price of imported manufactured goods either remained steady or was lowered due to mechanisation. The exploitation of the resources of the East African interior by the Omani empire took place in an administrative and political structure which depended largely upon the Sultan personally. This system was given what cohesion it had by the influence and common economic interests of the commercial elite in Zanzibar, and similar elements in the hinterland. The further the commercial empire extended itself into the interior, the more fragile this already weak linkage became. The exploitation which entailed the depletion of human and ivory resources, weakened the links with the hinterland. The fragility of the empire was demonstrated during the period of formal imperialism in Africa, at which time it crumbled in the face of European expansion.

In both political and economic terms the Omani empire was not unifying East African development. It was organising and centralising a commercial empire whose mainstay was slavery, ivory and cloves from the island of Zanzibar, which were major commodities for export. Between 1828 and 1841, Sultan Said was only one of the clove growers, and during the latter part of his reign contributed to Zanzibar's

75. Sheriff: Commercial Empire; since trade was the unifying element imposed by the Omanis, it had an African base with an "oriental embellishment", p.10.
entrepot growth on the broader base of collection and distribution of African commodities. Since, however, clove prices were dominated by overseas markets and Zanzibar was a single crop plantation economy, it was not a stable source of income.

Omani control of the hinterland was directed from the off-shore island of Zanzibar. Since Zanzibar was the capital, it was safe from the disturbances on the mainland, but was also partly responsible for the tenuous Omani links with the interior. In fact, it can be argued that the Omani empire operating from Zanzibar island helped to create the previously discussed patterns of trade and conditions of exploitation on the East African mainland, which were used by the European powers during the "scramble" to base colonial empires there. The creation of the colonial empires reduced Zanzibar's importance at the end of the nineteenth century and allowed European powers to extend their control from the coast to the interior.

Sultan Said, instead of being given credit as the political and economic architect of the Omani empire, is only credited by Sheriff as being a "considerable merchant". He may be better understood as a trader competing with American and European merchants, which undermined his role as ruler. Sultan Said's lack of political foresight limited his own and his successors' sovereign powers through the commercial treaties he signed with the United States, Britain and Germany, since the privileges accorded to these powers

76. ibid., p.294.
by him were not reciprocated,79 either to Said or to his successors. The Zanzibar Empire, like the Ottoman Empire, was weakened because:

the European powers began to regard the capitulations as their irrefutable rights and tried to get them extended to include their local contractors as well. Thanks to the capitulations the traders were exempt from the jurisdiction of the Turkish courts. Their property could not be confiscated.80

Hence the treaties became instruments of continuous encroachment upon the sovereign rights of the Sultans. While the Omanis were establishing greater control over the East African hinterland, and the western powers were gaining influence over the Omani Empire, western imperialism was therefore triumphing over both.

Sultan Said had experienced the effect of British attempts to stop piracy and slave trade in Oman. These operations had reduced Oman to virtually a vassal state. The transfer of the capital of the kingdom to Zanzibar presented him with an opportunity to establish a kingdom freer from restrictions, at least in commercial terms. However, through the implementation of extraterritorial jurisdiction, the foreign merchants were able to compete unfairly against native merchants. Protected by their own laws and subject to a few local restrictions, the westerners easily built up economic monopolies in such foreign states.81

79. Ibid., p.15; C.S. Nicholl: Swahili Coast, p.162, asserts that these treaties "strengthened Said's authority" on the Swahili coast. This study tends to agree with Sheriff's assertion that the treaties really did not show Said's shrewdness because they were a "prelude to British supremacy" at Zanzibar" (p.362).


Hence Sultan Said undermined the position of his own subjects in commercial matters by allowing the western powers privileges under the treaties of commerce.

Imports from the western powers were the products of industrial states at a different qualitative level of development. These products were held at a low or steady price, the western states were capable of consistent production of them and, increasingly, with the opening of the Suez Canal and the use of steamboats, of their systematic distribution. The commerce of the Omani Empire was based mainly on slaves, ivory and cloves. The supply of ivory and slaves was erratic, even though they fetched higher prices, and, further, while this trade might have had a "powerful dynamic motive force" at the local level, it mainly worked to the advantage of metropolitan industrial states. This was a consequence of the qualitative differences based on the advantages accruing from the technology controlled by western powers. Their products swamped the Omani empire, which lacked access to such technology. The western powers benefited more from the "powerful dynamic motive force" because of their expansive facilities in terms of administrative abilities, and naval and military resources. Once the telegraph became available it was considered that African exports and European manufactures should be exchanged directly. This tended to strengthen the vertical relationship between the Zanzibar dominions and Europe, to the advantage of the European trading houses and to the disadvantage of the Indian middlemen.

82. Sheriff: Commercial Empire, p.16.
The basis of the Omani dominions in Zanzibar was a fragile network of influence and commerce, while the European powers, in addition to their commercial interest, began towards the end of the nineteenth century to be interested in developing territorial empires. The Omani empire lacked this outlook and the capacity to establish such an empire:

This system of common interest was not stable or static, and considerable strains were imposed on the structure of the Empire as the "frontier" successfully moved away from the coast. The less systematic political relations with the people of the interior in the form of presents were not a viable prop when challenged by determined European expansionism.\(^\text{84}\)

Steamboats contributed to the eclipse of the Omani commercial empire. In addition, it could not defend its own shipping; its merchant fleet had already suffered heavy losses from the Royal Navy during the abolition campaign. Furthermore, the Indian commercial community

was subverted from within by conversion of the most powerful economic group into an instrument of European influence.\(^\text{85}\)

A more fundamental factor was the inability of the Omani commercial empire under Sultans Said, Majid and Barghash to transform their empire into a political entity. Thus the Imperial British East Africa Company and the German Company\(^\text{86}\) were able to divide the East African interior into their respective areas of influence, over which, subsequently, colonial empires were established in the last decade of the nineteenth century.

84. Sheriff: Commercial Empire, p.17.
85. ibid.
The main flow of Muscat trade was with the west coast of India. It was therefore not surprising that Indian traders from western India became involved in this trade.\footnote{Abraham Parsons: \textit{Travels in Asia and Africa} (London: 1808), p.280. At Mocha there were 200 Banyans from Surat and Gujerat. See James Capper: \textit{Journal} (London: n.d. about 1780) consulted at the R.G.S; John Freyer had travelled a century earlier 1672-81 and had reported the presence of Banyans at Mocha, see W. Cooke (ed.) John Freyer: \textit{New Account of East India and Persia} (London: 1909), Vol.1, p.192.} Sheikh Mansur, a courtier of Sultan Said, mentioned that amongst the trading community there were four thousand Banyan Omani citizens who possessed a capital of a million dollars, and that their "industry was particularly conspicuous".\footnote{Sheikh Mansur: \textit{History of Seyyid Said, Sultan of Muscat} (London: 1819), p.23.}

Despite the increase of English "country" shipping in the last quarter of the eighteenth century, the longstanding Indian trade with the Persian Gulf was in an extremely strong position. \textit{In actual fact the}\footnote{Abdul Amir Amin: \textit{British interests in the Persian Gulf} (London: 1967), p.141 and pp 127-133.} British benefited indirectly from the entire bulk of trade between India and the Gulf; Indian trade constantly drained the Persian reserves of gold and silver to the great benefit of the British who had assumed political and economic control in India.\footnote{\textit{Abraham Parsons: Travels in Asia and Africa} (London: 1808), p.280. At Mocha there were 200 Banyans from Surat and Gujerat. See James Capper: \textit{Journal} (London: n.d. about 1780) consulted at the R.G.S; John Freyer had travelled a century earlier 1672-81 and had reported the presence of Banyans at Mocha, see W. Cooke (ed.) John Freyer: \textit{New Account of East India and Persia} (London: 1909), Vol.1, p.192.}

When Said shifted the capital to Zanzibar, the Indians began to play a significant commercial role in the functioning of his East African empire.

In the early nineteenth century, with the lessening of the importance of France and Portugal in the commercial field, a significant portion of East African exports went to India. It was the Indian mercantile activity on the Swahili
coast which facilitated this increase in trade. The growth of Zanzibar during this period had also depended on trade with Kilwa. The further growth of Zanzibar entailed the extension of its economic base by "more effective exploitation of the region under her direct control".

In the first quarter of the nineteenth century the decline of the French slave trade coincided with the growth in the export of ivory to India. Once the price of ivory in Surat increased and trade shifted from Mozambique to the northern hinterland, the revenues of Zanzibar doubled. As a result of this new trade Indian merchants replaced Arabs as the important "foreign" traders. By 1819 there were about 214 Indians resident in Zanzibar, dealing mainly in ivory and Indian cloth, a staple article of barter.

Sheriff has argued that within a relatively short period these Indians had largely become integrated into Arab society and culture, noting that by 1828 they no longer had to pay irregular duties. There is evidence against this view, since a visitor to Zanzibar as late as 1843 reported that the Indians "may still be looked down upon but nobody molest them".

It seems more likely that the more Sultan Said's empire became secure on the East African coast, the more secure

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91. C.S. Nicholls: Swahili Coast, p.79; Sheriff: Commercial Empire, p.113, is incorrect in saying that Sewji Topan was one of the residents. In fact, Jairam Sewji was a Hindu Gujerati business house while Topan's was a Khoja establishment.
92. Nicholls: ibid., p.78.
became the Indian trading community. Sultan Said was neither a traditional Ibadhi nor an Imam, and was therefore tolerant of the diverse Indian groups in Muscat and Zanzibar. In fact, one of his most fundamental miscalculations, due to his tolerance, was that not enough importance was accorded to the British connection with the Indian trading class. Said allowed the financial infrastructure of his empire to be developed by this minority, which was open to control by the British. Sultan Said must have known that Indian merchants in Muscat had been agents of the East India Company and had continued to retain contacts with the protected states and British India. Once the British Treaty of 1839 had procured privileges for British subjects trading in Zanzibar, the Indians, because of Britain's overwhelming power in the Indian Ocean, had no option but to exercise these privileges. Sultan Said might have envisaged that such privileges would alienate the Indian community from his jurisdiction. The Sultan found the Indians useful in furthering his trade, but because of their British connection they did not possess the freedom to integrate totally into his empire, either before or after the 1839 Treaty.

Said found the Indian traders and their Indian contacts useful and an accommodation was being worked out between the Arab and Indian communities. After Sultan Said's instructions

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94. While Sheriff asserts that Sewji-Topan were local firms, C.S. Nicholls, p.78, asserts that they were agents of firms in Surat and Kutch. Nicholls is more likely to be correct in her assertion about the Sewji firm, while the Topan firm grew up locally. Sheriff further misconstrues Sewji's assertion in 1853 that he had a "house at Bombay" (p.416). The expression house refers to a business house and not a residence.
to his Governor in 1822 to allow the British to keep an agent in Zanzibar. British influence over the Sultanate had increased. This necessitated an accommodating attitude by local Arab officials towards the Indians.

The fact that the Sultan allowed Britain to intervene on behalf of British Indian subjects meant that both the Sultan and the British representatives were competing for the allegiance of the Indian mercantile class, since they were regarded as good navigators and were considered to be imbued with a trade culture. The Sultan tried to do this by preserving special privileges for the Indians at Mirima, while the British tried to extend naval protection to Indian maritime vessels and obtained a privileged status for them in the 1839 Treaty.

The Indian traders sold Indian cottons - "Surat" cloths, sahai kupra, Bafta and kanaki but through the 1830s they were increasingly in competition with the slave-grown American cotton, which was a major export of a more technologically advanced state. Unlike the American, the Indian cotton industry was neither self-sufficient in terms of the yarn nor in terms of the technology it required. As an agricultural society subject to the vicissitudes of famine, Indian did not provide a consistent market for East African ivory. The American and European markets did so

95. See R. Thomas Hughes: Treaties and Engagements (Bombay: 1851), p. 321, letter from Sultan Said to Governor of Zanzibar, September 1822 (h.d.).

96. Sheriff: Commercial Empire, p. 356, is nearer the truth when he asserts that there was a degree of ambivalence in the character of the Indian community, but this is different from his earlier assertion that they were indigenised.

97. Ibid., pp 115-7.


because of their rapid industrial growth and hence could pre-empt Indian cotton manufacturers and traders in the Zanzibar dominions.

In as much as the Sultan was weak in economic terms relative to western powers and had allowed them to intervene politically in his state on behalf of their subjects through extraterritorial clauses in commercial treaties, the Indians were, willy-nilly, made increasingly dependent on whatever naval support Britain could provide. The privileges acquired by the Indians through the Treaty of Commerce made them increasingly dependent on, and successful in, the context of British interest. Their role was also becoming more defined in terms of British interests, as was the content of their trade.

More than one writer contends that the Indians made the most of capital through a low propensity to consume.100 This might be true when comparing Indian traders with those from the metropolis but it cannot be the sole factor in their commercial success. They made profits in selling consumer imports and in exporting ivory because of their intimate knowledge of local conditions. They succeeded because they were able to operate in semi-traditional economic systems on smaller profit margins and because of the privileges they acquired through the Treaty of Commerce.

The main weakness of the Indo-Omani-Zanzibari commercial axis was that it was not a technologically developed economy. Once their contacts with the developed western economies

100. ibid., p.128; Dharam Ghai & Yash Ghai: Portrait of a Minority (Nairobi: 1965), 1st ed., p.103.
became more intense, their ability to control their economic destiny diminished. Zanzibar's reliance on Indian cottons was disrupted by the availability of cheaper American and Manchester cotton, developed at the cost of the Indian cotton industry. Although Indian textiles were a major import into Zanzibar, and the production of them was increasing in India, the Indian merchants were forced to switch to cotton from America and Britain. This change led to a transformation in their role as Indian traders, since they were based in the Indian Ocean and had no knowledge of the West. In as much as they were removed from the traditional money and commodity markets in the Indian Ocean area they were weakened. The purely East African base of trade, once isolated from the Indian Ocean context, had extremely limited exports and functioned at the dictates of the few western trading partners. Thus, the Indian merchant class, rather than acquiring any position of prime importance as a trading group, assumed the limited role of middleman, with an increased share of trade in quantitative terms only, in the context of overall western trade.

The customs collections of the Zanzibar dominions were carried out from Zanzibar Island. They played a fundamental role in centralising the functions of a diffuse commercial empire. The Customs Master, Jairam Sevji (see below for a brief biography), consolidated the commercial facets of Sultan Said's empire in the first half of the nineteenth century.

101. W. Rodney: *Africa Underdeveloped*, p. 113, "India is the classic example where the British used every means at their disposal to kill the cloth industry, so that British cloth could be marketed everywhere, including inside India itself."
century. In the early 1840s he even defied the British Consulate. However, by the time the first consul, Hamerton, had died in 1857, an agent of Jairam Sewji, Ludda Damji, had become the caretaker of the British Consulate. To the extent to which the Zanzibar Sultanate continued to capitulate to British power, the Customs Master was forced to follow suit, especially as he was also subject to British jurisdiction. The more Sewji's firm came under British jurisdiction during the 1870s, the more the Zanzibar Sultanate realised the need to dissociate itself from the officials who had effectively become agents of British interests. Sultan Barghash, being prevented from such a move by Consul General Kirk, tried instead to undermine the strength of the British community by prohibiting the Indians from holding land.

Sultan Said had not realised that the commercial treaties would dramatically change the fortunes of his empire. He had no reciprocal benefits accruing from the treaties, and therefore international trade with the western powers was effectively "the extension of overseas European interests". The Indians, as British subjects, had no option but to operate within the framework of the treaties, and moreover they thereby acquired certain privileges. The Indian merchant class therefore became the effective link between the Omani commercial empire and international commerce. This connection, whose effects Sultan Said did not foresee, was to reduce the options available to him.

The Indians played a role as money-lenders and sources of capital to the Arabs, Swahilis and international markets. They also operated in three other sectors of the economy: entrepot trade, caravan trade, and clove plantations. Consequently they had interests in all the key sectors of the economy. Once the direction of trade changed from the Indian Ocean to the western base, the prices and market requirements of cloves and ivory, and the numbers of slaves, were increasingly determined by Europeans. The Indian middlemen could only collect their share in performing a limited role.

The caravan and slave trades involved not only Indians and Arabs. The major participants in this trade were the European plantation economies of Mauritius, Reunion and the Seychelles, as well as the United States. The clove plantations used slave labour, and cloves were increasingly being bought for the western markets. During the second half of the nineteenth century the Arab, Indian, European and American traders were to a large extent involved in entrepot, caravan and plantation economies. Any trade in ivory, gum, copal, cloves or sesame involved the use of slave labour and therefore a participation by all the groups in the slave trade. However, since the Indians as a commercial class were caught between the Omani-British power struggle they were "pilloried". The Indians suffered heavily because of their participation in the above trade, but they continued to function, and were allowed to do so, without letting the

104. Sheriff: Commercial Empire, pp 345, 350, 357.
economy collapse totally. Hence, while the Indians had squeezed the Omanis out of all entrepot activities, they themselves were only able to function in the economic structure because of British support.

Gregory has asserted that the Arab aristocracy became decadent and impoverished and that the Indians became a fast-growing community. The Arab aristocracy could afford to be "decadent" partly because they were a dominant political group. In contrast, the Indian minority had no recourse to such power and had to strive in the commercial sphere. The Arabs became increasingly impoverished, in part due to their preoccupation with the slave economy. In as much as the Indians broke away from this Omani tradition in an Arab political kingdom and successfully joined "legitimate commerce", they became vigorous and prosperous. In as much as "legitimate commerce" was increasingly a sphere of the economy controlled by Britain, the Indians were playing a minor role and fell between two stools.

These twin results of British jurisdiction over the Indian merchant class made them on the one hand British subjects totally within British control by 1895, and on the other hand economically weak. The position in German East Africa was that with the increase of German power the German traders were overwhelmingly helped, while Britain concentrated on helping the Imperial British East Africa Company to entrench itself.

The origins of the firm of Jairam Sewji are obscure. The firm played an important role in the founding of Sultan Said's Zanzibari empire, in which Sewji held three important offices. He was the chief Customs Master of the Zanzibari dominions, the chief officer of the port of Zanzibar, and the state banker. Sewji's activities as the Customs Master extended beyond the island of Zanzibar to the ports of Lamu, Mombasa, Mogadishu, Kisamayu and Dar es Salaam, which were subordinate to the Zanzibar Customs House. In his capacity as the state banker, he lent large sums of money to the Sultan and to the European, Arab and Indian business houses.

It is reported that when Jairam Sewji's father learnt that a vessel manned by Americans was at Majunga, he went over in baggalas to persuade these traders to visit Zanzibar.

The captain complied with the Banyan's request, and intercourse with American's of a most friendly character, was commenced and has been continued uninterrupted till this day, almost exclusively with the port of Salem.

Subsequently, Jairam Sewji and the American Consul Waters recognised that they were mutually shrewd and established a monopolistic trade relationship which excluded from Zanzibar trade those merchants who did not deal with them. Later, Sewji dissolved this exclusive business arrangement when he realised the advantage of competitive trade.

109. The role of Sewji and Topan in the Customs House will be discussed in Chapter VIII.


The Sewji firm operated in an extremely complex situation. It was brought increasingly under British control and Ludda Damji, the head of the firm, had very close relations with Consul General Kirk. Another partner in the firm, Ebji Sewji, however, was not favourably regarded by the British and suffered business losses during British attempts to abolish the slave trade in the 1850s. The fact that the firm was operating within the politically weak framework\(^{112}\) of the Zanzibar empire and subject to British legal jurisdiction alienated the firm locally. After the death of Ludda Damji, relations between Sultan Barghash and the Sewji firm deteriorated. During the last decades of the nineteenth century this firm was divided between Jairam and Ebji Sewji, and finally disintegrated.

**Tharia Topan**

Topan, the son of a small vegetable seller of Kutch, stowed away to Zanzibar at the age of twelve. His father, who was an Ismaili, had known Jairam Sewji in Kutch. Consequently, Sewji employed Topan as a scribe to work for Ludda Damji because of his neat handwriting. Topan later returned to India, married an Ismaili, and came back to live in Zanzibar.\(^{113}\)

He set up a successful business on his own initiative, using the contacts with American and other traders he had met through the Sewji firm. In the 1860s his relations with the American Consul were described as friendly, because

\(^{112}\) During 1858–1860, for instance, Ramji Pragji, who collected customs at Dar es Salaam for the Sewji firm, also helped strengthen the Sultan’s political control in the area.

of his constant presence at the Consulate. While the Sewji firm had become close to the British Consulate, Tharia Topan increasingly began to control the market for American goods. Sir Bartle Frere described the extremely close connection between Indian firms and foreign interests. He remarked that the Indian:

sometimes stands to the foreign firm in a relation more like that of a partner than a mere broker, agent or go between.

Consul General Kirk remarked that Topan had become probably the most important Indian merchant in Zanzibar, and was "American in all his interests". While the Sewji firm had previously been successful in breaking away from its strong American connections with the firm of Waters, the Topan firm did not appear to succeed so well. The American merchants, in order to retain their independence, played off Indian merchants against one another. In 1879 the American Consul Hathorne was convinced that Tharia Topan might be ruined if he advanced large sums of money. Topan had advanced large amounts of money to the firm of Edward Ropes, who was his attorney in Zanzibar. Ropes' son became the agent for Topan's firm in Mozambique and lost him Rupees 100,000 in the course of 2½ years. Topan was extremely angered by this loss and by Ropes' ungentlemanly behaviour, and wrote to his father:


116. ibid.; an American trader wrote to Topan in 1870.

My friend when you first arrived in Zanzibar your age was of 18 years and I had always perceived in you prudence and farsightedness, becoming to a gentleman. I am sorry that I do not see the same good principles in your son, Mr Ropes.118

Topan's American connections, including the naming of a ship after him in Salem, did not ultimately help his business.

In 1879, Sultan Barghash, in order to make a desperate break from Sewji, the Customs Master, whose company was firmly under the control of the British Consulate, granted to Topan the contract to collect customs.119 As a close associate of Barghash, Topan accompanied him on a visit to England. Sir Bartle Frere was impressed by Tharia Topan, the leader of the Ismaili community and a principal adviser to the Sultan. During this state visit, Topan was described as "a tall, stout, good humoured elderly man whose fair complexion and light blue handsomely embroidered dress stood out in strong contrast against the square, wiry figures, grave expressions and sombre garments of the Sultan's Arab suite".120 His strict business integrity and honesty were praised by Stanley on another occasion. Topan's firm also could not escape British control, especially after he became the Customs Master. His associations with the British became closer and in 1890, the year Zanzibar became a protectorate, he was knighted by Queen Victoria for his services in abolishing the slave trade.

118. Peabody Museum, Edward D. Ropes Papers, Box. Tharia Topan, Acc. 894. Topan to Ropes, 11-5-1884. Tharia Topan spoke Hindustani fluently but only wrote and spoke some English.

119. During his tenure with the Sewji firm, Topan had been the Assistant Customs Master and had come into contact with Sultan Majid and Consul Kirk.

The turn of the century brought about the downfall of the Topan and Sewji firms:

Giants among pioneers like Seth Alladina Visram, Messrs A.A. and T.M. Jeevanjee, Sir Tharia Topan, Seth Jairam Sewji and others have left no visible memorials of their great enterprises, and successes, and have become within only sixty years, mere historical landmarks.\(^\text{121}\)

It has been posited that the downfall of such businessmen was a consequence of their "family based businesses".\(^\text{122}\) Apart from the total position of the Indians being subsumed under British and German\(^\text{123}\) interests, it is possible that their downfall was caused by the deeper transformations they had helped to bring about in the expansionist Omani political empire. In as much as the Omani empire was politically weak, the economic infrastructures, including those of the firms of Sewji and Topan, also collapsed. The imperially based corporate structure began to operate on the commercial base they had helped to establish in East Africa.

2(d) Metropolitan firms before the arrival of the IBEAC

During the first half of the nineteenth century the metropolitan firms in Zanzibar were not in a very strong position. The Portuguese had become far less important in comparison with the Indian merchants, the major trading group, than they had been during the seventeenth and eighteenth centuries, when they carried ivory to India and sold Indian cloth in East and West Africa.\(^\text{124}\) Western firms were,

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\(^{121}\) Shanti Pandit: *Asians in East and Central Africa*, p.33.

\(^{122}\) J.S. Mangat: *Asians in East Africa*, p.21.

\(^{123}\) The Germans had also made attempts to woo Topan away from the Americans; see N.R. Bennett: *EITC, Vol. XCVIII*, June 1962, p.43.

\(^{124}\) W. Rodney: *Africa Underdeveloped*, p.35.
however, to become more important as the nineteenth century progressed, although in the first half of the century English firms did not prosper, despite the treaty of 1839. English trade decreased while that of the Americans increased, even though both countries had similar trading privileges. Between 1848 and 1855 virtually no English vessels visited Zanzibar. This lack of success was partly due to the fact that the Indian firms were fairly well entrenched and were marketing both the Manchester and Indian cottons. The weakness of English firms is reflected in the fates of the firms of Cogan, and Newman, Hunt and Christopher. Despite the influence of the former (who was the most prominent and successful trader, a friend of the Sultan, and the signatory of the 1839 Treaty on behalf of the British) and his dealings in Manchester cotton, the firm could not continue after his death in 1846. The latter firm, represented by their agent, Norsworthy, tried to bypass the local Indian traders but found this practice to be disastrous. The blame for its failure was laid on the trade monopoly between Jairam Sewji and the US Consul Waters. A further cause was the mismanagement and embezzlement by Norsworthy, followed by his disappearance from Zanzibar.  

The monopoly between Sewji and Waters affected the success of Newman, Hunt and Christopher. Norsworthy had complained about the strength of Indian business houses, and this gave added force to the British Consul's efforts to control the British Indian trading community. In as much

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126. Sheriff: Commercial Empire, p.289.
as the Jairam-Waters pact was considered by the British Consul to be inimical to British interests, and since American traders prospered while English firms failed, the Indian traders became the focus of the attention of the British Consul. Despite the low ebb of British influence in 1841 and Captain Hamerton's haughty attitude towards the Arabs, he was able to increase British power by bringing Indians within his jurisdiction. This increase in British authority compensated for the collapse of English firms. The closures of the English firms were largely due to the fact that they were comparatively small and had to compete with larger Indian firms. The American firms were on the other hand involved in a different sort of trade, and did not suffer the same competition. Secondly, the advantages of the 1839 Treaty, whose rules and conditions of trading could benefit the British firms, had not yet begun to be felt. This did not happen until the telegraph, steamships and the Suez Canal began to operate.

American firms started trading after a visit in 1818 by Captain Forbes of the "Titus". Ten years later, a Captain Roberts tried to negotiate more favourable terms for the American traders with the Sultan. A treaty was signed in 1833 which stipulated a tax of only 5% and also set a precedent for other metropolitan firms to follow suit and to demand similar terms of trade.127

127. Between September 1832 and May 1834 trade with Zanzibar was predominantly carried out by American ships. Out of 41 foreign ships visiting Zanzibar, 32 were from Salem, Massachusetts. See David Finnie: Pioneers East (Cambridge, Mass: 1967), pp 245-249.
The number of American firms trading in Zanzibar was small, and Waters wanted to restrict their number. They were generally successful but used unscrupulous methods, such as keeping other firms out or exploiting their ignorance of certain coins. The trading community did not become aware of this until 1847. The American firms and their consul did not respect the Sultan's reservations about disallowing trade in Mirima, especially since this clause did not exist in the Treaty. The Americans imposed a 40% duty on clove exported to the United States by the Sultan, yet they themselves continued to enjoy privileges in Zanzibar and contravened the most favoured trade clause.

Consul Waters, the leading American merchant, had established himself in Zanzibar with the help of Customs Master Sewji. Sewji, however, broke off his relationship with Waters when the latter tried to dictate the conditions of trade to him. Nonetheless, Waters successfully diversified his own trade with other merchants and paved the way for other metropolitan merchants to increase their share of the trade. By 1859 about one quarter of Zanzibar's foreign trade was carried on with America. During the same period Speke reported the existence of German, French and American trading houses and bemoaned the absence of an English trading house. However, by the time of the American Civil War the American firms had lost the impetus in the East African trade.

129. Sheriff: Commercial Empire, p.361.
130. J.H. Speke: "On Commerce of Central Africa", T.B.C.S., VolXV (Bombay: 1860). Speke did not consider the British Indian subjects and their firms to be British despite the fact that they were under British jurisdiction.
The Germans were comparative latecomers to the East African markets. In 1844 the Hamburg firm of Herz came to look for cowrie shells for the West African markets. The firm of Wilhelm Oswald also made enquiries about East Africa's commercial possibilities in the same year, and sent another vessel in 1847. Like the American Firms, the Germans tried to conceal the content of their trade from other western merchants. However, despite their late start they acquired overwhelming interests in East Africa towards the end of the century.

The French had a more extensive interest than the English at the beginning of the nineteenth century. By 1811 they had a broker and a "factory" at Kilwa, and dealt mainly in slaves. However, the preeminent position of the British in the Indian Ocean area limited the options open to the French. Commercial relations were encouraged by a treaty with Said in 1844 (to which Britain objected) and by two exploratory missions in 1838 and 1846-49, headed by Commanders Gullian and Learer. Apprehension at the growing British activity in the Red Sea and on the East African coast was a further spur to trade, and in 1851 the Marseilles firm of Vidal Freres established a factory in Zanzibar. Two more Marseilles firms, Reband Freres and Regis Freres, quickly followed, and by 1856 as many as twenty-two French vessels brought trade goods. French purchases of $503,469 in 1856 were not sustained in 1859, when they dropped to $247,500.132

131. C.S. Nicholls: Swahili Coast, pp 342-3; see pp 344-5 for details of US trade in 1856, which totalled $565,925, France $503,469, Germany $455,701.
132. ibid., pp 339-40.
It is interesting that while the French had increased their trade significantly by 1856, because of the treaty rights of 1844 and the official expeditions of Gullan and Loarer, it only equalled American trade and had not surpassed that of the Indians. However, as the Indians had been trading for a considerable length of time, the firms from the US and France had, comparatively speaking, made considerable progress in thirty years, and surpassed the Indian trade in ivory, cloves, gum, copal and cowries. American cloth had supplanted Indian cottons. The content of Indian trade was changing and increasingly the vacuum left by English traders was filled by Indian traders selling English cottons.

The nature of trade had changed vastly since two Khoja traders from Surat-Saiyam and Musa Mzuri had reached Unyamwezi in about 1824. Increasing imports of western cottons, gums and gunpowder, and the increased demand for ivory (for piano keys), cloves, and copal for the manufacture of varnish, had increased the western share of the trade.133 The export of $320,000 specie to India reflected the insecurity felt by the Indian merchant class despite British protection. Nicholls has asserted that the effect of western competition on Arabs was not very grave because they participated in the slave trade and Indian Ocean trade, neither of which was undertaken by western vessels. Once intensive anti-slave trade measures had been enacted and steam-shipping had been introduced in the


<table>
<thead>
<tr>
<th>Item</th>
<th>India</th>
<th>Europe-US</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ivory</td>
<td>$310,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>Cloves</td>
<td>$100,000</td>
<td>$134,500</td>
</tr>
<tr>
<td>Copal</td>
<td>$12,500</td>
<td>$153,750</td>
</tr>
<tr>
<td>Cowries</td>
<td>$1,500</td>
<td>$230,000</td>
</tr>
</tbody>
</table>
Indian Ocean in the second half of the nineteenth century, Arab trade did suffer. While their share of the trade increased in quantitative terms, it decreased in proportional terms.
PART 3: INDIAN SOCIETY IN NINETEENTH CENTURY
ZANZIBAR

The role of the Indians in the economic history of nineteenth century Zanzibar has been discussed in the previous part. This part will discuss the development of the Indian community and will centre on the reasons for its expansion and the constraints placed upon this growth.

The short discussion on the social change amongst the various Muslim sects and Hindu castes provides the background to the activities of the various groups referred to. This is not a comprehensive analysis of social change but a selection of the salient points pertinent to this study. Among the groups discussed particular attention is given to the Khoja or Ismaili community, as this was a large and significant community in nineteenth century Zanzibar and displayed the most important changes during that period. Less extended treatment is given to other Muslim sects, to Hindu caste communities and to the smaller, but at times important, communities such as the Parsi, Baluchi and Goan groups.

3(a) Growth of the Indian Population

The east coast of Africa, the Persian Gulf and the west coast of India were interlinked as a trading area during the eighteenth and nineteenth centuries. This entailed the movement and residency of Indian traders, amongst others, to the Persian Gulf and to East Africa. The increased commercial contact and control of the island of Zanzibar by the State of Oman strengthened the Indian Ocean network of trade.
This also encouraged increasingly large numbers of traders to migrate and to establish trading houses in Zanzibar.

Despite the evidence of Omani hostility\(^{134}\) the profitability of the East African trade drew a steady stream of Indian traders. By 1829 there were 214 traders resident in Zanzibar. By 1844 the strengthening of Omani control over Zanzibar had led to the settlement there of 500 Hindus and 600 to 700 Muslims. The arrival of a British consul in 1841 consolidated the British-Indian connection with Zanzibar,\(^{135}\) and by 1859, when Sultan Said died and Captain Hamerton had completed his term of office as the British Consul, the Indian population had increased to between 5,000 and 6,000.

The hazards of extortionate taxes, pirates and the lack of a solid political framework did not deter Indian traders from settling in Zanzibar. This was due, firstly, to the commercial prospects and, secondly, to the economic conditions in Western India, which were unfavourable. Despite the heavy odds against them, numerous traders moved to Zanzibar and managed to stay there:

The overcoming of a set of intervening obstacles by the early migrants lessens the difficulty of the passage for later migrants and in fact pathways were created which pass over intervening opportunities as elevated highways pass over the countryside.\(^{136}\)

The Omani Empire provided the overall naval and political cover for the merchant frontiersmen to settle and trade.

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\(^{134}\) Haraprasad Chattopadhaya: *Indians in Africa: A Socio-Economic History* (Calcutta: 1970), p.9. See also Chapter VIII on "The Customs House".

\(^{135}\) C.S. Nicholls: *The Swahili Coast*, p.290, quoting a letter by an English trader, Norsworthy, asserts that British and British Indian traders initiated the move to establish a British Consulate.

Subsequently more groups migrated to trade in Zanzibar.

Cultural factors in Zanzibar differed from those in India and prevented the Indians from feeling wholly secure. The Omanis, and to some extent the Indians, succeeded in orientalising the coastal African culture. However, in as much as the Indians held only limited commercial power and had virtually no military or political capability, theirs was a less significant role.  

The hostility of the Arabs was contained in part by the protection provided to the Indians by Sultan Said. The Omani Sultanate and the British Consulate had divergent interests in Zanzibar. However, since the British Indian subjects had connections with both the groups, the entrenchment of both helped to increase the population of Indian merchants.

There was also some reverse migration to India from Zanzibar. This was small because of the general growth in economic activity. Thus their role, while shrinking at one qualitative level, required increasingly large numbers of participants in this trade. For instance, Indian cotton became scarcer and more expensive than American cloth, which began to be imported in the 1830s. Indian merchants thereby

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138. The "push" and "pull" factors of good economic prospects in East Africa and bad conditions in India can only explain the variations in migration, rather than its presence at all. The Indian migration to East Africa was of a dynamic nature. The obvious myth of the "push" and "pull" model is that society is considered static and that the natural condition of man is sedentary. Neither the pre-industrial European or Indian society was static and migration is not a product of modern industrial societies, but an integral part of all societies. The Indians had traded and migrated because they viewed the Indian Ocean and monsoons as a link rather than as a gulf. They therefore migrated and traded as a matter of course.
became mere middlemen in the cloth trade. Reverse migration to India was also limited because of the troubles in India, especially famines. There, conditions on the one hand led to migration of Indian traders, while on the other hand they contributed to the weakening of the Indian Ocean based commerce between Western India, Zanzibar and the Persian Gulf. Indian commercial control in this area was weakened in as much as the British, European and American commercial influence increased, due to the greater "out-reach" capabilities of the extra-Indian Ocean powers in terms of steamers, capital and markets. By the end of the 1850s the Indian merchants were beginning to realise a few "home truths". Firstly, that the economic infrastructure of the Omani Empire was unreliable; the east coast trade was based on the exploitation of ivory, gum, copal, and clove plantations in Zanzibar, and profits from slave caravans. Their supply was irregular and they fetched high but fluctuating prices. Secondly, the establishment of the British Consulate provided British Indian subjects with a measure of security, but the fact that the abolition of slavery was its main function threatened Indian investments in the caravan trade and plantation economy, and led to bankruptcies and the departure of some traders from Zanzibar. Hence, the British Consulate, by providing protection at one level, was able to negate its advantages at another, because slavery and slave labour were an integral part of the economy. This revaluation of the positive and negative factors of their situation left the merchants with grave doubts about their security. As long as economic conditions were booming in Zanzibar there was no stream of migration back to India. This counter
stream of migration became strong, however, once the traders had acquired wealth, when there was a slump in the economy, or when the abolition of slavery made traders (personally) bankrupt. Demand for ivory, a luxury item, dropped sharply in times of famine and economic uncertainty in India. The traders were, therefore, faced with a difficult situation. Culture and sentiment as well as good commercial practice dictated that they maintain and materially assist their Indian commercial and family connections. Yet, because of uncertain economic conditions in India, they were unwilling to return. The complexity of this position of the Indian traders was not fully understood by travellers to East Africa. They stereotyped the Indians without realising the pressures under which the Indians were operating and how vulnerable they felt:

so great was their passion for money that they seldom return to their native country while they can amass wealth more rapidly elsewhere.

Despite the shift of commercial influence to Europe and America, trade within the Indian Ocean expanded during the mid-nineteenth century. The Indian population, although increasingly restricted to a less determinant economic role, expanded along with trade. Migration, especially by smaller traders, was aided by the growing British naval and commercial control of the Omani Empire and Indian Ocean trade routes. Hence:

The Khojas who had not been very successful in

the China trade had begun to establish themselves in Zanzibar, Mauritius, and elsewhere in the Indian Ocean and they prospered considerably. Consul Kirk estimated that there were 2,558 Khojas by 1870, who were distributed as follows:

<table>
<thead>
<tr>
<th>Place</th>
<th>Individuals</th>
<th>Houses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zanzibar</td>
<td>2,100</td>
<td>535</td>
</tr>
<tr>
<td>Pemba</td>
<td>59</td>
<td>28</td>
</tr>
<tr>
<td>Bagamayo</td>
<td>137</td>
<td>36</td>
</tr>
<tr>
<td>Mirima</td>
<td>25</td>
<td>10</td>
</tr>
<tr>
<td>Dar es Salaam</td>
<td>43</td>
<td>13</td>
</tr>
<tr>
<td>Kilwa</td>
<td>176</td>
<td>77</td>
</tr>
<tr>
<td>Munga</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,558</strong></td>
<td><strong>703</strong></td>
</tr>
</tbody>
</table>

There were about 700 married females amongst the Zanzibar Indian population of 2,100. Of the 535 households in Zanzibar, the great bulk were from Kutch (422) or Jamnagar (100). Thus it is clear that the Khoja community both lived mainly in Zanzibar and came mainly from Kutch. Those resident on the East African coast acted as agents for the Zanzibar concerns by the 1880s. The Bohra community was prominent on the African and Arabian coasts.

In 1887 the Indian population is recorded as 6,344, a low figure compared to the estimate of 5-6,000 thirty years before. However, the latter may have been an overestimate, while the 1887 figure may also reflect the return of the traders to India as a result of economic failure.

The distribution of the 6,344 Indians was as follows:

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142. P.P. Vol.LXII (1871), Kirk to F.O., 14-1-1871, No.11, enc., p.938. In 1875 Holmwood gave the following breakdown of the Indian population: Khojas 2,725, Hindus 814.


144. F.O. 84, 1854, MacDonald to F.O., 18-12-1887. M = Male, F = Female, C = Child.
<table>
<thead>
<tr>
<th>TOWN</th>
<th>KHOJA</th>
<th>HINDU</th>
<th>BOHRA</th>
<th>PARSI</th>
<th>SINDI AND MEHON</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>F</td>
<td>C</td>
<td>Total</td>
<td>M</td>
<td>F</td>
</tr>
<tr>
<td>ZANZIBAR</td>
<td>718</td>
<td>642</td>
<td>540</td>
<td>1900</td>
<td>596</td>
<td>22</td>
</tr>
<tr>
<td>KILWA</td>
<td>105</td>
<td>60</td>
<td>31</td>
<td>196</td>
<td>40</td>
<td>--</td>
</tr>
<tr>
<td>PEMBA</td>
<td>80</td>
<td>60</td>
<td>28</td>
<td>168</td>
<td>15</td>
<td>--</td>
</tr>
<tr>
<td>WANGA</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>3</td>
<td>--</td>
</tr>
<tr>
<td>MOMBASA</td>
<td>20</td>
<td>3</td>
<td>2</td>
<td>25</td>
<td>25</td>
<td>--</td>
</tr>
<tr>
<td>LAMU</td>
<td>30</td>
<td>10</td>
<td>15</td>
<td>55</td>
<td>33</td>
<td>--</td>
</tr>
<tr>
<td>MALINDI</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>10</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>BENADIR</td>
<td>24</td>
<td>11</td>
<td>8</td>
<td>43</td>
<td>5</td>
<td>--</td>
</tr>
<tr>
<td>TAKAGUNGU</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1</td>
<td>8</td>
</tr>
</tbody>
</table>
It is clear from the above table that most of the Hindus lived in Zanzibar and did not bring their women-folk with them, while the Khojas remained the most significant community in numerical terms and the smaller Bhora community was fairly evenly distributed over the coast.

3(b) Social Change

In this sub-section social change amongst the various sub-communities and sects from Gujerat and Kutch will be discussed briefly. In the second part of the section greater emphasis will be laid on the Khoja community.

3(b)(i) Non-Ismaili Groups

The trading community from western India migrated not only to Bombay but also as far as Zanzibar.

By the middle of the century (Bombay) had recaptured its medieval commerce with the Persian Gulf, the Red Sea and the Malabar coast and in the following decades this trade was extended to the east coast of Africa, Malacca and China.¹⁴⁵

In the process of moving from rural western India to urbanised Bombay, the Gujerati community had changed. Bombay became the centre of Indian commerce with the Persian Gulf and the east African coast. While the Bombay Gujerati community - consisting of Hindus and Muslims - became the centre of change in the social structure, the peripheral communities in Zanzibar embodied some of these changes. The Gujeratis dominated the Bombay of the early nineteenth century and Gujerati was the lingua franca. The Kutchis were the other main group which had migrated to Bombay and Zanzibar. As

a protected state of Britain, the state of Kutch was not
totally integrated into British India. The Parsis, early
in the nineteenth century, were the most ubiquitous community.
They accumulated wealth as agents of European contractors
to the government for supplying troops as importers of
provisions and wines and as traders on their own account. The two other Gujarati communities were the Hindu and Jain
Banyan communities who were bankers, traders and shop-
keepers.

The Bohras, who converted from Hinduism to Islam in
the eleventh century, came to Bombay from the Surat Broach
districts in the eighteenth century. They were generally
small businessmen. The Daudi Bohras, who were numerically
the largest in Bombay, and Sulamani Bohras separated in the
sixteenth century over the issue of the Dai, or the rightful
head of the community.

The Parsis, Banyans and Bohras dominated the trade of
Bombay in the eighteenth and the beginning of the nineteenth
century. Early in this period various other communities
began to rival the older groups and by the middle of the
nineteenth century the Bhatias, Khojas and Nemons became
fairly prominent. The Bhatias were a trading caste of
Kathiavar and Kutch who, after their conversion to Vaisnavism
and vegetarianism, rose to a high place in the caste
hierarchy. The influence of the Gujarati class of merchants
in Bombay was constantly being felt by the fragments of
Gujerati communities in the Zanzibar dominions. This was

146. ibid., p.3.
147. Shanti Pandit: Asians in East and Central Africa, pp 68-9,
mentions a Bohra who arrived in Mozambique in the 1820s,
and in Zanzibar in 1857, called Datoo Hirji.
the case because they were either the agents of Bombay firms or had business connections with them. Akin to the Bhatias were the Bhansalis and Lohanas, who held a subordinate position in Kutch and Kathiawar but were considerably successful in Bombay. A similar change in status occurred when these communities migrated to Zanzibar.

The Khojas, Memons and Bohras had converted to Islam. By the 1840s so many Khojas had migrated to Bombay from Kutch and Kathiawar that it became their headquarters. Since the Zanzibari Parsi community was an offshoot of the Bombay Parsis, a large number were from an urban environment. They were a prosperous mercantile community which was exclusive, self-reliant and self-contained. In Zanzibar they were adaptable in manners and dress, but this was in no way a departure from the principles of their faith.

Of the Hindu communities the Bhatias and the Banyans were the most numerous and came from Kutch, Gujerat and Konkan. The Bhatias was the largest Hindu group which had a strong commercial culture and was involved in money lending. Other castes such as the Vanias and Lohanas were also to be found; Frere observed that most of the Hindus lived in Zanzibar. The Lohanas and Patidars from Gujerat abandoned land holding for trade and commerce in East Africa. The Lohanas came from Gujerati speaking districts in India.


149. Godfrey Dale: *Peoples*, pp 77-8. Dale also noticed that Parsi weddings took place in the evenings after Hindu custom and that Hindu Brahmin was called upon in absence of a Parsi to cast a horoscope of their children.

150. They had names like Patel, Amin and Desai.
and were slightly more lax about marriage than Patidars. 151

Much of the domestic religion connected with rural and traditional groups fell into disuse except for the Bhatias in Zanzibar, who

became progressively stricter Hindus during their stay abroad and over a period were able to raise their standing in India. 152

The Bhatias in Zanzibar who traded on a large scale were also bankers and speculators. Some were literate in English. They abstained from drinking alcohol, were aloof from other Hindus and did not help non-Bhatia destitute. Amongst the Bhatia community in Zanzibar Jairam Sewji and Ludda Damji were respected leaders of their traditional community, primarily because they formed a successful and powerful firm. However, these leaders could not demand religious sanction because their main preoccupation was business.

The Hindus clung together and probably more so because they did not have their families with them. This factor helped them retain their native languages and a semblance of religious customs. However, since many of them cohabited with local women there was probably a large element of hypocrisy in their conservative and traditional attitudes.

The Hindus who cohabited with local women in Zanzibar were not prone to become Muslims because, apart from Muslim women, there were many slave women and non-Muslim local women with whom they could have liaisons. While there might have been some indigenisation of Hindus, there was probably more "orientalisation" of local women because of the prevailing attitudes of male dominance. In general terms the

continuance of endogamy reinforced the traditional behaviour patterns even though many customs and traditions were dropped and no traditional caste systems were set up in East Africa.

The traditional caste system in India and the relationship of dependence between one caste and another had disappeared but caste exclusiveness still remained.  

The caste system did not prevail in Zanzibar because selective migration did not allow the caste structure to be replicated in Zanzibar. Commercial prosperity further fragmented the caste structure. Wherever caste communities existed they functioned more on a competitive basis than on a hierarchical basis. However, since the caste system was operative on a selective basis and continued to exist as a sub-community or a jati, the Hindus continued to draw on it as a jati and not on a basis of sectarian differences.

There were two sects in Muslim society — the Sunnis and the Shias. The shariat or religious law amongst the Sunnis was different but it was a mainly orthodox interpretation of the Koran. In Zanzibar this Shiaite sect was observed to contain some rich merchants and some craftsmen.

Their wives were kept very strictly veiled. They are quiet reticent folk and far less afflicted by European influences than the Khojas. A small community of Memons from Sind also lived in

153. ibid., p.27. See also Dale, Peoples, p.98: "The old caste distinctions have less effect and importance under foreign rule in a foreign country."

155. ibid., p.21.
Zanzibar and they took part in shipping and fishing. There was also a small community of 200 Baluchis who were soldiers used by Sultan Said. They were a Sunni community and subject to Hanafi laws. The main function of the Baluchis was to assist the Sultan's walis at the coast. They were accused of committing robberies which they were employed to prevent. Their jamadar (commander) lived lavishly compared to the soldiers because of bribery and private trade. They remained the only group of the Sultan's soldiers and police in the Zanzibar dominions until the end of the nineteenth century. The use of Baluchi soldiers by the Sultan rather than Omani Arabs probably isolated the Zanzibar Sultan even further from his Arab elites.

A small Goan Catholic community also existed in Zanzibar and "enjoyed full benefit of British protection in 1879". They were the only Christian Indians in Zanzibar.

3(b)(ii) The Changes in the Khoja Community

The Ismailis or Khoja community in Zanzibar was the most interesting and pivotal community. They demonstrated the peculiar predicament of a religious minority suffering from fear of persecution by the dominant traditional society

156. This endogamous Gujerati Sunni group was converted from Hindu Lohana jati. As Muslims they followed the Hanafi school of law, while adhering to Hindu customs, such as allowing daughters and widows to inherit property. Despite the Abdurahim Haji vs Halimbhai decision, they did not change like the Khoja community. See Chapter IX, last part, on Custom and Usage.


158. Ibid., p.36, although after the establishment of the Portuguese Consulate they began to receive protection from the Portuguese Consul. The former Portuguese presence was probably responsible for the presence of Goans in Zanzibar. See Charles Eliot: The East African Protectorate (London: 1905), p.20.

while being equally vulnerable to constitutional and structural change when it came into contact with the British imperial network. The identity of the Khoja community was defined with the help of British courts in Bombay and it became a highly organised and cohesive group. Since the community was shaped in the context of the British High Court it became highly "functional" while operating in the imperial context. The Hindu community, however, was never quite reformed in this sense. It remained "disfunctional" in terms of the west because it was socially conservative and traditional. This was partially because the British were more open to the leader of the Ismaili community, the Aga Khan. 160

In spite of the fact that the various Hindu castes and Muslim sects operated in a foreign environment and had business links with one another, they remained separate as a group. The differences were increased when the identity of the Khoja community was defined in strict constitutional terms by the Bombay High Court. The various court cases between the leaders and their communities strengthened the vertical links between the British authority and each community separately but prevented any horizontal intermixture amongst the Hindus, Bohras, Memons and Khojas.

The Khojas were basically a Shia community but because they lived in predominantly Sunni context they outwardly adopted Sunni customs. This created a conflict in their

160. V.G. Kiernan: The Lords of Human Kind (London: 1969), p.49. The Aga Khan was admired for his understanding of race horses and the same British hearts were incapable of understanding "Tagore and his verses". Chap. 2, pp32-70, also contains information in British attitudes towards Indians in the nineteenth century.
identity, a crisis which the Khoja community only gained authenticity through the Bombay High Court. This meant that the identity was not resolved organically by the community through internal conciliation but through external intervention. One of the impacts of the British Court's decisions was to purge the religion of its Hindu context and abort the symbiotic and syncretic process which had hitherto taken place between the Sufi and the Hindu elements of the Khoja religion.

The Erskine Parry decision (1851), Sir Joseph Arnould's decision (1866), and Justice Russell's decision (1908)\(^{161}\) played a role in determining the constitutional framework of the Khoja community and the powers of the Aga Khan as a traditional leader. The identity of the Khojas, as Shia Ismaili Ismailis, was not established until the Aga Khan case of 1866. Some of the prominent merchants who became Sunnis did so because of the considerable personal advantage for richer members of the community in declaring their allegiance to the Sunni form of Islam.\(^{162}\) Hence, even the reformers wanted to change the nature of the community not necessarily for the benefit of the whole community but because of their personal interests.

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161. A.A. Esmail: "Satpanth Ismailism and Modern Changes with special reference to East Africa" (University of Edinburgh, PhD thesis 1972), p.118. While discussing the Perry decision this study only considers Arnould's and Russell's decisions as important in constitution and formal terms. Christine Dobbin: Urban Leadership, p.116, discusses the Perry decision of 1851 which provided the Khoja community with a Declaration of Rights which gave peace to the Khojas for ten years. For further discussion of the Arnould decision, see Chap.IX, section on Custom and Usage, of this study.

The above group of reformers in Bombay challenged the authority of the Aga Khan and filed a suit in the Bombay Supreme Court. This case was heard before Sir Erskine Perry in 1851 and he ruled that the Jamat was part of the Khoja community and that the Aga Khan had no right to interfere in its use.

The conciliatory Perry judgment had two effects. On the one hand it reconciled the two opposing factions and brought them back within the fold, and on the other hand it set a precedent for future dissenters and reformers to turn to the courts to solve internal differences.

Following the Perry decision there was peace for ten years. In 1861 the Sunni reformers, using the force of the outward Sunni usages, wanted to abandon the Shia professions of the Khoja because it estranged the Khojas from the other Muslim communities of Bombay and increased the hold of the Shia Imam over them. The reformers rested their case on the argument that the Aga Khan was a Shia interfering in the charitable trust intended for Sunnis. By putting their case in such a manner they were forced into the untenable position of trying to prove that the Khoja community had been converted by a Sunni Imam and that the Khojas followed the Sunni form of Islam.

Moreover they were virtually asking a British court of law to issue a binding statement of what constituted the legal conditions of membership of their community.163

During 1866 about 600 Khojas in Bombay adhered to the reform group and about 3,000 to the Aga Khan. The Khoja community in the Indian Ocean area were mainly strong followers of the

163. ibid., p. 118.
Aga Khan and, barring five persons, included the entire Zanzibar Khoja community.

The reformers lost their case and placed the Khoja community in the predicament that Judge Arnould's decision defined what constituted a Khoja and made it difficult for the community to change in the future.

The beliefs and the tenets of the Ismailis were now embedded in a pronouncement by an institution of no less prestige than the British High Court whose legal authority carried the utmost weight and on whose decisions the community could fall back in case of similar challenges in the future. While this might be true, the importance of Judge Arnould's decision was that it upheld the traditional authority and the liberal Sunni reformers had failed in their bid to overthrow the traditional leader of the Ismailis. The Aga Khan in turn tried to westernise the Khojas and to discard much of the Hindu heritage. There was in the East African context a "modification in outlook and social structure of the community especially in the wake of the impact of western culture." The same modifications cannot be said to have been adopted by the Shia Khoja community residing in dominantly Sunni Zanzibar.

The westernisation of the Khojas seems to have been misconstrued as the modernisation of the Khojas, whereas it would seem that westernisation was the result of an attempt by the traditional leader to maintain his authority and keep the Sunni reformers at bay. This was especially true because the Aga Khan was extremely loyal to the British Crown. He had connections with the British Royal family and was a

165. *ibid.*, Preface, p.iii.
supporter of the imperial rule.\textsuperscript{167} Hence with increased western control the Khoja community as a whole was able to define itself to suit the new conditions of western rule which the Bohras and the Hindus could not do to the same extent.

The use of British courts by various sections of the Ismaili or Khoja community had virtually become a method of solving their internal differences.\textsuperscript{168} Since conciliation by resolving conflict within the community had been supplanted by court decisions, the Aga Khan continued to assert his legitimacy derived from the Arnould decision. During his visit to Zanzibar in 1899, the Agan Khan further westernised his community and separated them from other Indian communities.

Whatever the constitutional position of the head of the community the major control on their behalf was exercised by the seths over their castes. However, since the leadership over the castes was temporal, it was considered to be arbitrary by many members of the caste. In Zanzibar, Jairam Sewji could only muster a few signatures from members of his caste to reject British citizenship during the 1840s.

The prominent ethos both in Bombay and Zanzibar was the commercial culture and not agrarian culture. The Khojas,

\textsuperscript{167} A.A. Esmail: \textit{Satpanth}, p.137.

\textsuperscript{168} D. Rothschild: \textit{Racial Bargaining}, p.43. The Ithnasheri, a dissenting Khoja sect, believed that the Imam was hidden and would reappear to guide them. At the turn of the century, the Ithnasheri were excommunicated by the Aga Khan from the Khoja community. They lacked a centralised organisation for their sect, remained spiritually orthodox and less able to accept social change, even though they lived in a western context. It would seem that as a result of the Arnould decision the identity of the community had been so rigidly formulated that the Aga Khan could excommunicate this dissenting sect using Ithnasheri dogma.
for instance, were involved in foreign commerce in Zanzibar and in ironmongery, cutlery, china, cloth and retail trade in cotton goods. Since the traditional caste leadership had a feudal agricultural base there was no unequivocal recognition of the new emergent leaders in cities or new migrant communities. There was no unqualified recognition of certain families and castes from Kutch or Gujerat because neither mofussil villages nor mofussil families were replicated in Zanzibar. The consular court in Zanzibar and the civil courts in Bombay gave confidence to all who wanted to appeal against traditional disobedience. This interference of the courts eliminated the sanctions of the seths especially when they were authoritarian. Unfortunately in Zanzibar there was no educated class which could rationalise or reinforce these breakages in the community as was the case in Bombay.

The recourse to civil litigation by the various communities by using codified law negated the role of reformers and of changes which were historically authenticated from within the communities.

The Zanzibar fragment of the Indian society lacked a class of educated people and a vernacular press so that willy nilly the seths did retain some traditional authority. While the role of the seths and their respective communities had transformed in Zanzibar, the seths remained the only class who could lead in the absence of alternative leadership.

169. R. Gregory: India, pp 33, 41. The Khojas were settled both in Zanzibar and on the coast.
170. Mofussil is an Anglo-Indian word for rural localities.
CHAPTER II

INDIANS AND EUROPEAN POLITICAL INTERVENTION

The distance between the west coast of Indian and Zanzibar across the Arabian Sea is 2,000 miles, and there is long-standing intercourse between these two countries. Merchants from the west coast of Indian had settled on the Zanzibar coast, even before the advent of the rule of the Sultan of Muscat. The establishment of the Sultan of Muscat in his Zanzibar dominions brought in its wake the British presence in Zanzibar. The fundamental concern of the British was the abolition of the so-called Arab slave trade on the east coast. The emotion associated with the British anti-slave trade campaign clouded the real nature of this trade. This was illustrated in Zanzibar during 1861-2 by W.C. Deveraux of the ship "Gorgon", who said that even if the Sultan claimed that slavery was an institution of his country, sanctioned by Islamic custom and religion, and that slavery was their mainstay, without which they would perish, the British answer ought to be: "Better you should be snuffed out of existence, and make room for a better race than to live on an infamous traffic".

1. F.O. 84.1391, Frere's "Memorandum on Natives of India", 31-3-1873, points out that the slave trade was carried on by "Arabs or Arab half-castes and Swahilis or Coastmen", but later in the same memorandum he makes the error of saying that Indian capital was exclusively given to Arabs for slave trade purposes. For European complicity in the slave trade, see W. Rodney, Underdeveloped Africa, p.105. See also K.M. Panniker: Strategic Problems of the Indian Ocean (Allahabad: 1944), who states that all through the nineteenth century till recently "the Indian Ocean was no more than a British lake", p.3.

Despite the various treaties signed after 1822 to abolish the slave trade it continued unabated. These treaties, however, laid the Omani-ZanzibARI economies open to British intervention.

The first section of this chapter will discuss the pertinence of the abolition of the slave trade to the Indian community in Zanzibar. While the Indians and the English were both British subjects, there were instances where there was a disparity in the way in which they were treated. As a result of this the Indians were particularly alienated from the ZanzibARi economic system.

The second part of the chapter will refer to the political implications of the Imperial British East Africa Company's control. In the last section the political implications of the entry of the European powers, especially Germany, into the East African area, and the effect of British control over the Indians will be discussed.

1) The implications of Slave Trade Abolition over Indians

The major findings on the problem of the slave trade on the East African coast were made during the Frere Mission's visit in 1873. At this time the Indians presented Sir Bartle Frere with an address, saying that:

Most of the Indians residing here are merchants and traders carrying on business under the protection of the British flag...We hope that the business on which Her Majesty has deputed

you may attend with success, and thereby the cruelties and hardships inflicted on human beings may be put to an end.  

The idea of a mission for a new treaty ending the slave trade seems to have been suggested by Brigadier N.M. Coglan. Sir Bartle Frere was chosen to lead the mission because of his knowledge of the Indian Ocean area. Soon after his arrival the "ingenious divine" Rev. Badger, Bishop of Aden, who was also a member of the mission, saw the Sultan, who asked him for "small doses of the poison", rather than a total ban on the slave trade: "You import coolies from India and Mauritius; what would be the consequences to those islands if such supplies were stopped at once?" Badger’s reply was that the coolies left India of their own volition.

The Frere Mission did not promise any direct assistance to the Sultan to ease the labour problems, but it was intimated that the British Government would help to locate labour for him.

On the eve of the Frere Mission’s visit to the coast, Frere observed that the Indians and Arabs "work together in maintaining the existing state of affairs", but that the coastal Arabs "in a financial sense are entirely in the hands of natives of India". He saw that, based on this economic situation, the "interests of India and of the

7. P.P. Vol.ixi, No.36, enc. 16-1-1873.
8. ibid., No.36, enc.23, pp 67-8.
Imperial government are...closely allied...", and therefore there was a need not only to maintain the existence of this commerce but also to develop it.

Sir Bartle Frere and Colonel Pelly visited Kilwa Kivinje and found that the British Indians, consisting of 80 Khoja families, 25 Bhattia and 3 Memon houses, were reluctant to cooperate with him. The conflict between the Indian traders' legal obligation to the British and to the head of the local political authority, Salim bin Syud bin Omar, was apparent. In writing to the Sultan, Salim bin Omar spoke of the violence of the Englishmen who kicked his sepoys, entered the premises by force, and insisted that Salim go to see Frere. His reaction was:

I do not consent by one who has no authority, and (I) refused to go, because it (would be) an insult to our king if I followed him like a goat.

Frere could not expect the British Indians to cooperate until he had provided protection for them. The British legal jurisdiction was not accompanied by that political authority which was still vested in the Sultan's officials. Through the Consul, Frere put great pressure on the Customs House not to collect taxes on slaves.

Since the Frere Mission was going to study the role of the Indians, and in particular that of the Kutchis, in the slave trade activities on the East African coast, Pelly, a former Consul in Zanzibar, recommended that two Indians be

9. F.O. 84.1389, Frere to Granville, 10-3-1873.
11. ibid., No.37, enc., p.73, copy of Salim bin Syud's letter to Barghash in F.O. 84.1390.
appointed to the Mission: Muthoridass, a Zanzibar and Bombay merchant, and Kazi Shahubuddin, the Prime Minister of the Rao of Kutch's government and a learned Kutchi of great influence. On his appointment to the Mission the Kazi tried to demonstrate the vagueness and inconsistencies in the evidence of the Mission, particularly in its acceptance of the opinions of people such as David Livingstone. As his main concern was to sift the evidence against the Indians, he tried to point out that freed slaves, knowing that Indians could not legally hold slaves, would be prepared to report any infractions to the Consul. He therefore submitted that "it requires strong prejudice" to believe that only Indians held slaves.

Sir Bartle Frere, however, held pro-consular attitudes not only towards the Sultan but also towards the Indians. He ignored repeated proposals, submitted by Lallubhai, an Indian merchant, through his Manchester agent Bradshaw, to end the slave trade among the Indian merchants. He neglected these proposals despite the fact that Lallubhai's friends knew the country better than Livingstone or Stanley.

13. F.O. 84.1389, No.4, 10-1-1872. See also Sorabji Jehangir: Representative Men of India (London:1889), pp 109-12. During his period of attachment to the Frere Mission, Kazi Shahubuddin acted as special correspondent for the Daily Telegraph, contributing interesting letters on the question of slavery. On his return to India, he resumed his duties as Dewan of Kutch.

14. F.O. 84.1388, No.11, F.O. to Frere, 12-3-1873.

15. Ibid.


17. F.O. 84.1387, Bradshaw to F.O., 26-11-1872; Lallubhai to Viceroy of India, 26-10-1872.
Frere off-handedly rejected the scheme after completing his East African Mission.\textsuperscript{18}

In view of Frere's total opposition to the opinions of Lallubhai and Kazi Shahubuddin, and his neglect of those of Consul Kirk, it is worth examining the records of two notorious English slave holders since it exemplifies the different treatment accorded to British Indian and English subjects. A number of British officials, including Frere, Pelly, Livingstone and Stanley, approved of the labour used on Fraser's plantations in Zanzibar and on Sunley's estates on the Comoro Islands. In the opinion of the Rev. Horace Waller:\textsuperscript{19}

Captain Fraser employing slaves led to the everlasting murmuring on the part of the natives. One morning they would see us burning the dhows which were engaged in slave trade, and the next morning they would see an Englishman working factories and plantations with those slaves safely landed; it was a question which puzzled far more acute people than they were. The same thing existed at Comoro Islands, it was a mere sham and delusion, the poor slaves were hired in gangs from their Arab master.\textsuperscript{20}

Stanley went as far as to give a testimonial to Fraser, and Frere said that he received "hearty co-operation" from him. Consul Seward had pointed out that Fraser, an ex-Indian

\begin{footnotesize}
\textsuperscript{18} F.O. 84.1391, Frere to F.O., undated.
\textsuperscript{19} His brother, Gerald Waller, was associated with the IBEAC and made initial negotiations for IBEAC's operations in Zanzibar.
\textsuperscript{20} P.P. Vol.xii (1871) Q.965, p.68; F.O. 54.23, Playfair to F.O., p.15, 22-10-1866. Playfair mentions that in the contract the word "labourers" really meant "slave". The position of Sunley and Fraser is also discussed by Captain Colomb: Slave catching in the Indian Ocean (London: 1873), pp 490-494. Colomb felt that both cases illustrated that legitimate commerce could not end the slave trade, and that the solution lay in the missionary (ibid., p.498).
\end{footnotesize}
slave trade suppressor, had a "rare and crafty intelligence upon the question of legality".\textsuperscript{21} He also affirmed Playfair's and Waller's opinion that their contracts under the most transparent veil actually fostered and engaged in the trade of slaves. They have advanced large sums of money to enable certain Arabs to purchase slaves for their especial use, they actually bind themselves to purchase the freedom of those slaves after a certain period, for the sum of twenty-four dollars.\textsuperscript{22}

This was styled as "one year's pay", but was in reality the ordinary market value of a slave in Zanzibar. Fraser made counter-accusations against certain Kutchis, but the Foreign Office instructed Seward that they would not adopt any proceedings against Kutchis if they refrained from indulging in such activities in the future.\textsuperscript{23} Seward liberated the 700-odd slaves who worked for Fraser. Fraser later absconded from Zanzibar as a bankrupt, having fraudulently "dealt with his creditors".\textsuperscript{24}

Sunley was not only a British subject, but also a

\textsuperscript{21} F.O. 84.1279, Seward to F.O., 6-3-1867. In 1830 Commander J.C. Hawkins of EIC's sloop "Clive", while trying to recruit volunteers for the Indian Navy, had in fact recruited slaves. He was charged with piracy by the Bombay Supreme Court and transported to New South Wales (G.S. Graham: \textit{Britain in the Indian Ocean} (London: 1967), p.145, n.1).

\textsuperscript{22} F.O. 84.1279, Seward to Government of Bombay, 14-7-1866; Seward to F.O., 20-2-1867. Also enclosed is a copy of a slave contract between Fraser and Sultan Majid.


\textsuperscript{24} F.O. 84.1400, Prideaux to F.O., No.100, 23-11-1874; F.O. 83.1344, Kirk to Secretary of Bombay Government, 24-11-1871. Fraser had been involved in a 100,000 dollar deal with Sewji, given for slaughtering cattle for the Royal Navy. Sewji, as a vegetarian and the unofficial head of the Hindu community because of his wealth, was extremely embarrassed about this business deal, on more than one count.
British Consul. The Foreign Office, acting on information received in a letter from Consul Pelly, wrote to Sunley at Comoro Islands stating that the British Government would lay themselves open to the charges of tolerating the employment of slave labour by British officers, while they at the same time denounced the employment of slaves by the planters of other countries.25

He was also informed that he was violating regulations for consular officers. After a lengthy correspondence, the Foreign Office reluctantly decided, in 1865, to withdraw his commission because it is impossible that Her Majesty's Government can tolerate the employment of slaves by an officer holding Her Majesty's Consular Commission.26

Both the Foreign Office and Frere had praised Sunley for his employment of slaves, and Frere was particularly impressed that Sunley had set a good example "of what might be done by Europeans and natives in the successful cultivation of sugar...", and he refused to believe that they were slaves.27

Much less attention was paid to the complexity of the status of British Indians, both in Zanzibar and on the mainland. They had to follow British laws while residing in a foreign sovereign state with its own political system. For the partial protection given to them it seemed that total allegiance was being demanded from them. However, it was not fundamentally a question of the protection of the subject but of his coercion.28 Since the protection granted did not

25. F.O. 84.1176, F.O. to Sunley, 14-6-1862.
27. F.O. 84.1389, No.27, Frere to F.O., 12-3-1873. In F.O. 84.647, F.O. to Hamerton, 11-11-1846, No.1, the consul had been warned against owning slave property. See also NAI, Foreign Dept (Secret) No.210/248 (June 1873) Sir Bartle Frere's Mission for the suppression of the slave trade.
co-exist with or correspond to the obligations, the position of the Indians was weakened and became more fragile as British control increased. This was illustrated during the visit of Elton, the First Assistant at the Zanzibar Consulate, to the southern mainland dominions of the Sultan, where he attempted to stop slave trading among the British subjects. The British Indians working in the dominions of the Sultan were caught between the dual jurisdictions to which they were subject. Elton observed that the increased British control over these Indian merchants threw them "more completely under our protection, their only link with the Arab world being broken".  

Kirk's directive had similar implications when he told the Indians administering the Sultan's Customs House that they would be brought to trial if they were implicated in the slave trade issue, even though they were "acting under the Sultan's orders". In the Haji Omar case Consul Kirk reaffirmed that British subjects residing in Zanzibar could not exempt themselves from British law by taking service with the Sultan. As a result of this the Indians were treated like foreigners by the Sultan and suffered serious losses because they could not own land either directly or through mortgage. However, the process whereby the ownership of land was transferred to Indians by the foreclosure of mortgages did not stop. After visiting Zanzibar, Captain Colomb remarked:

29. P.P. Vol.lxii (1874), No.18, enc.1, 13-5-1873, p.22.
30. ibid., No.34, p.48, 3-7-1873.
31. F.O. 84.1376, Kirk to F.O., No.113, sub.enc. 2, 4-10-1872.
I understand also that the Arabs were themselves conscious that in consequence of this process, and of the general incidence of British policy, Zanzibar island was in the course of absorption by England.  

In this precarious situation the Indians sought consular assistance to protect their interests, which further alienated them from the Sultan’s authority. Captain Colomb was worried that since the Indians could not adopt Zanzibar nationality, but were gradually acquiring land, which necessarily required labour, "the Indian will find some legal subterfuges". Hence he advocated a clear labour policy and even annexation, because he felt that basically Britain ought to encourage the settlement of British Indians in Zanzibar, since they would "smooth the path of future slave trade suppressive efforts". The discouragement of Indian settlement would create barriers to the abolition of the slave trade, and "the uncertainty in which the labour question now rests at Zanzibar must act as a direct blow to Indian immigration". Without labour the value of land dropped quite considerably. This added to an already difficult situation in which the competition from Manchester cotton had led to increased immigration, which had "an extraordinary bearing on our connection with the territory".

Since the major purpose of British protection was to entrench British metropolitan interests, the Indian residents received minimal help, particularly as the Foreign Office did not want to entangle itself further in the protection of

33. P.P. Vol. 74 (1885), No. 76, 13-3-1884, p. 50.
34. ibid., p. 380.
35. ibid., p. 382.
36. ibid.
37. ibid., p. 367.
their specific interests. At the same time the Sultan's power was waning. In the heart of his domains the Indians made representation for a police force to protect their property. The Sultan agreed to Kirk's suggestion to organise a force of thirty men, to be paid for by the Indians and "under the direct control and direction of the Agent". The force was to have powers of arrest with warrant. The Sultan was to retain the police nominally on his books, as having powers of arrest in Zanzibar. However, the Sultan changed his mind about having a foreign-controlled police force and the scheme fell through. His one concession was an increase in patrols by his own soldiers at night on the Zanzibar streets. The Sultan was able to forestall foreign intervention in Zanzibar, but his authority on the coastal domains did not show that he had an equally effective control there.

With the implementation of the slave trade treaty, the Sultan's power on the coast diminished considerably. Only the British, through their arbitrary use of force, preserved the incumbent interests of the British Indians, as is shown in a series of incidents in the reign of Barghash. Captain Prideaux, from the British Consulate, despatched the HMS "Rifleman" in 1875 to Mombasa to defend the largest settlement of British Indians on the coast, and 200 Baluchi soldiers from Takaungu were also sent to defend the British Indians threatened by rebels. Apparently the Sultan had requested that the HMS "Nassau" be used to protect his power in Mombasa against the rebel, Aluda. The British fired on

38. F.O. 84.1376, No. 144, Kirk to F.O., 2-12-1873.
the town but only after they had removed their own subjects. The loss to Memon businessmen was estimated at over 3,000 dollars. However, the British did not destroy the rebels because they "did not consider that the views of the Sultan deserved much consideration". This action received the approval of the Foreign Office.

The excessive damage to Indian property at Mombasa was a reason given by the British for the establishment of a coastal consul in the town. This marked the formal introduction of British coastal interests. The Sultan's position was at this time so weakened that he had to rely on British assistance in the form of British trained troops and of a retired British naval officer, Mathews, who took control of the Sultan's force under the title of "General". The raids continued and as late as 1882 the Swahili rebel, Mbaruk, attacked the town of Vanga and killed several Arabs and Swahilis, while the British Indians suffered damage to the value of 12,000 dollars. The British Consuls at Zanzibar, especially Kirk, while providing protection for the Indians on the coast, used them to gather pertinent news, only some of which was passed on to the Sultan.

Kirk felt strongly that "forcible measures be called for on our part for the protection of the great British Indian stake we hold in the country". He also believed

40. F.O. 84.1415, No.21, Prideaux to F.O., 23-1-1875.
41. F.O. 84.1414, F.O. to Prideaux, 19-3-1875.
42. F.O. 84.1417, No.108, Euan-Smith to F.O., 16-7-1875.
43. See R.N. Lyne: An Apostle of the Empire (London: 1936), being the life of Sir William Mathews KCMG.
44. Coupland: Exploitation, p.254.
46. Ibid., Kirk to F.O., No.158, 11-11-1875.
that the Indians ought to be protected because they had suffered materially from the humanitarian measures imposed by Britain:

The Indian traders have been compelled by us to follow our Slave Trade Policy at a loss to themselves, without obtaining or even asking for compensation. The Indian community can surely ask us to uphold their just rights, guaranteed to them as British subjects under treaty, by the same title as that by which we freed their slaves and placed them under British law.47

Apart from these reasons, Kirk felt that if no assistance was rendered to defend the Sultan, he might "naturally look elsewhere" for assistance in warding off the Egyptians from the coast.48 Therefore Kirk took control of the Sultan's governors on the coast during the Egyptian threat, and the Egyptians were deterred by the British show of force.49

This threat to British subjects at Barawa dislodged the Indians. Having no means of defending themselves, they began to embark their goods on dhows to sail for Zanzibar.50 Kirk encountered the invaders when he attempted to visit the traders, and he was not allowed to deliver the mail which he had brought from Zanzibar for certain Indians.51 It was only when Kirk threatened to bombard the town from the HMS "Thetis" that he and Captain Ward were allowed to disembark. Having proceeded to the house of an Indian merchant, where the others were assembled, Kirk then arranged for all of them to visit the "Thetis" in order to demonstrate their

47. *ibid.*, Kirk to F.O., No.177, 10-12-1875, enc. Memorandum from Indians in Northern coastal towns; also Kirk to F.O., No.173, enc. "Memorandum on Brawa by Egyptians and Position of British subjects there".


49. F.O. 84.1452, No.22, Kirk to F.O., 2-2-1876.


status as British subjects to the invaders. However, the Foreign Office had asked Kirk not to intervene except as a last resort, and not without authority from home.

The fifty or so coastal Indians at Lamu seemed to welcome British assistance, as they were in a situation similar to that faced by the Barava Indians, and appealed to Kirk for help. Kirk wrote: "...they now asked me to assist them and protect them from oppression and ruin in their legitimate business."

Kirk told the governor of Lamu that if he were attacked Kirk would look upon British interests at Lamu of such importance as to justify me, without awaiting orders from home, in attacking the Egyptians should they seize the place and protecting the lives and property of British subjects.

This overzealous undertaking by Kirk was disapproved by Lord Derby at the Foreign Office, particularly with respect to the protection of Indian interests and lives. The main contention of the Foreign Office was that the warning amounted to an act of war.

The slave trade campaign effectively alienated the Indian community from the local regime. British consular control allowed only the limited expression of any political matters. Furthermore, the arbitrary protection of Indian economic interests did not necessarily enhance their interests in the Zanzibari Empire.

52. F.O. 84.1417, Kirk to F.O., 2-12-1875.
53. ibid., F.O. to Kirk, 11-1-1876.
54. ibid., No.174, Kirk to F.O., 8-12-1875.
55. ibid., No.176, Kirk to F.O., 10-12-1875.
56. F.O. 84.1451, No.4 & 6, F.O. to Kirk, 14-1-1876.
2) The Imperial British East Africa Company and the Political Control of Indians

The IBEAC, as part of a generation of chartered companies, was "an effect of a fresh outburst of colonial enterprise; and it was a cause of moving further along the path of annexation". Hence the IBEAC's operations in a smaller and modified form was a re-enactment of the East India Company's semi-private agencies of colonial annexation.

During the period of the Sultan's diminishing control over his coastal dominions, Consul Kirk became the intermediary between "certain gentlemen" and the Sultan to take over farm taxes and administer the coast for 70 years. Sir William MacKinnon, owner of the British India Steam Navigation Company, Sir Thomas Buxton of the Anti-Slavery Society, and Edward Young of Livingstone's Zanzibari expedition purported to put down the slave trade and by so doing make Zanzibar a prosperous and powerful kingdom. However, the granting of such exclusive privileges would have led to a "clash with the rights and immunities already given to subjects and citizens of Great Britain". Lord Derby, in his comment on the above despatch, wondered if the Sultan really knew that he was "signing away nearly all his powers and for no corresponding advantage".

58. It is therefore incorrect to suggest that although the "British Government was always directly involved in Zanzibar, it permitted a trading company to administer its mainland possessions", R.C. Gregory, India, p.31.
59. F.O. 84.1485, No.62, Kirk to F.O., 10-4-1877.
60. J.S. Galbraith: MacKinnon and East Africa, p.59, tries to underplay the nature of Lord Derby's important observations by trying to point out that the Sultan expected guaranteed financial returns and no responsibility of government. There is little evidence to support this contention.
It was not until 1888, however, that the IBEAC finally started its operations on the mainland. During the intervening period Kirk felt that neither the IBEAC nor the Sultan was in a position to delegate jurisdiction over foreigners since such powers were already vested in various accredited consular authorities. One of the problems the Company would have to face was that it would be able neither to impose taxation on foreigners to support an army, nor to submit their houses or property to interference by such a force. These authorities were already vested in the Consuls, and the citizens of a "Christian nation" were answerable to their own criminal law. Moreover, the company would have to operate under the Sultan's flag and would have to grant exemptions to him. Finally, in taking over the customs collections, the IBEAC would have to purchase the existing customs contract. The failures of the IBEAC in 1877 are attributed by Robinson and Gallagher to the fact that in Britain "no deep urges existed to expand there", although this may not have been the only factor. Lord Salisbury's deliberate policy for the abandonment of these negotiations has been claimed as a factor by another writer. A third reason was that Tharia Topan, who controlled the Customs House, might have been unwilling to relinquish his control over it before the expiry of his term of contract.

63. Some support for this assertion comes from J.S. Galbraith: *Mackinnon and East Africa*, p.66, who suggests that the IBEAC could not have made substantial profits in competition with the Indians (p.41).
Once established in 1888, the IBEAC used Indian troops to enforce its presence on the mainland. The company of troops was composed of units of Indian police and of these 150 were used to crush Fumo Bakari and other rebels at Witu.64 This was not done without misgivings on the part of the Consulate, which felt that the IBEAC would demand Witu as a price for their assistance to the Sultan's 300 troops.65 A British admiral also remarked secretly that the Indian troops of the IBEAC were showing a marked disinclination to face the enemy and could not be entrusted with the occupation of Witu.66 Two Indians were killed at Witu by the Sultan. Witu was consequently destroyed and its Sultanate abolished.67

During the signing of the Lamu concession to the IBEAC by the Sultan, the company found that they would have to counteract German commercial influence in Lamu, particularly as the Germans were exerting pressure on the Indians. The latter felt that only the direct intervention of the Foreign Office could save Lamu from the Germans.68 The British Government finally obtained assurances from the Germans that if British subjects were put under the jurisdiction of the Germans, then German subjects would also be placed under British jurisdiction.69

64. F.O. 84.2066, No.438, Euan-Smith to F.O., 2-11-1890.
65. F.O. 84.2070, Telegram No.283, Euan-Smith to F.O., 18-10-1890.
66. ibid., No.292, Euan-Smith to F.O., 3-10-1890.
67. ibid., No.331, Euan-Smith to F.O., 31-12-1890.
68. F.O. 84.2012, MacKinnon to F.O., 4-3-1889, enc. Mackenzie to MacKinnon, 3-2-1889.
69. F.O. 84.2151, No.17, F.O. to Euan-Smith, Feb.1891.
Another problem created by the arrival of companies like the IBEAC in the last quarter of the century was the increased need for skilled labour. Consul-General Euan-Smith tried to enquire about the possibility of recruiting such labour, particularly for European companies such as the IBEAC.\textsuperscript{70} This enquiry, made in China about Chinese labour, had no result, as the Chinese allowed only free migration and none at contract level. This necessity arose because Euan-Smith had issued a proclamation, based on the Indian Penal Code \textsuperscript{370}, barring British Indians from entering into any contract with owners of slave labour. With the arrival of the English firm of Smith, MacKenzie and Company, the lack of labour for the British community became acute. Smith, MacKenzie and Company and the British Indian merchants signed a petition protesting against the Euan-Smith proclamation, since labour could be hired only through agents, while at the same time the Sultan's right and that of his subjects to hold slaves had been guaranteed. The British petitioners argued that if the slave trade were not abolished for the Sultan's subjects, then the British subjects would be at a disadvantage since they would not be able to recruit any labour.\textsuperscript{71} This request demonstrated the problems and disadvantages from which the whole British community suffered because of the punitive nature of the Consulate's anti-slave trade measures. However, the problems of labour shortage only began to be articulated when the English companies began to feel the lack acutely. The IBEAC had

\textsuperscript{70} F.O. 84.1908, No.183, Euan-Smith to F.O., 24-7-1888.
\textsuperscript{71} F.O. 84.1910, No.346, Euan-Smith to F.O., 26-11-1888.
been pledged to the abolition of the slave trade and was contemplating the purchase of the freedom of 1,400 slaves at $25 each "to conciliate Arab feeling and influence English opinion". However, William MacKinnon, who had interests in both IBEAC and Smith MacKenzie, was interested in holding on to labour hired from slave owners.\(^7^2\)

The Foreign Office expressed annoyance at Euan-Smith's proclamation. It got in touch with the India Office, which deputed Sir Arthur MacPherson to confer with Euan-Smith on the subject of coolie labour migration from India to Zanzibar in the event of the abolition of the slave trade.\(^7^3\) Euan-Smith pointed out that the British Government should help in providing Zanzibar with "free labour" from India.\(^7^4\) Sir Gerald Portal, Consul-General in Zanzibar, took this further and suggested that with protectorate status there would be no slave labour, hence an extension of the Indian Emigration Act of 1883 was in order, especially since more European supervision was available. He thought that European administration should be responsible for the coolies and their service with British subjects.\(^7^5\)

Portal wanted the IBEAC to establish a stronger government at Mombasa rather than to resort to the Consul since:

> the just position of the penniless Banyan acquires as much importance from diplomatic insistence as the dictatorial demands of a chartered company.\(^7^6\)

\(^7^2\). F.O. 84.1913, Telegram No.161, Euan-Smith to F.O., 17-11-1888.

\(^7^3\). F.O. 84.1974, F.O. to Euan-Smith, 20-9-1889.

\(^7^4\). F.O. 84.1980, Memorandum by Euan-Smith, 27-9-1889 (printed 4-10-1889).

\(^7^5\). F.O. 84.2149, No.350, Portal to Secretary of Government of India, 8-9-1891.

\(^7^6\). F.O. 84.1980, No.327, Portal to F.O., 11-9-1889.
The establishment of the IBEAC necessitated, among other things, the addition of two Parsee clerks to the Consular staff in 1890, in order to cope with the increased workload. The Consul would have preferred that the IBEAC strengthen its own administration and only request consular intervention in significant matters with political implications.

The IBEAC relied on Indians settled on the mainland to strengthen its own rather tenuous position. Sir Francis de Winton, the IBEAC agent, pointed out that the interests of the Indians and the IBEAC were identical, and he wanted them to act as "eyes and ears" by gathering information on Arab discontent at Mombasa. While the IBEAC chose a policy of cooperation rather than competition to consolidate its own interests, that policy was not necessarily in the best interests of the Indian community on the mainland. The Indians, for one thing, had to compete with the IBEAC for labour. Moreover, because the company used Indians in the police, military and administration, the interests of even those Indian merchants who were working independently of it tended to become identified with those of the IBEAC.

From these humble beginnings the influence of the IBEAC mounted steadily. On the pretext of bringing the Sultan

77. F.O. 84.2063, No. 335, Euan-Smith to F.O., 15-8-1889, and F.O. 84.2065, No. 412, Euan-Smith to F.O., 10-10-1890.

78. F.O. 84.2063, No. 340, enc. 1, Euan-Smith to F.O.; Memorandum of interview with the agents of Sir Tharia Topan at Mombasa, 13-8-1890. The IBEAC steamer "Kenya" could not break through the Juba ivory trade because the Somalis only allowed Arab, Swahili and Indian traders as middlemen at Kisamayu, Galbraith: MacKinnon in East Africa, p. 190.
closer to the Arab elite, Consul Euan-Smith ousted Peera Dewji, the Indian adviser to Sultan Khalifa, but this did not improve relations between the Sultan and the Arabs.
The British continued to help their favourite courtiers, like Seyyid Ali, to gain the Sultan's confidence. On the death of Sultan Khalifa in 1890 Euan-Smith proposed Seyyid Ali as the new Sultan, and George Mackenzie of the IBEAC confidentially offered the new Sultan the use of £100,000 should the need arise. The new Sultan was asked to protect British interests, i.e. lives and property, by the Consul.

The IBEAC was considered an "instrument of British policy and representative of British interests", to prevent the mainland from falling into foreign hands and leave the field free for British enterprise and trade.

However, the Foreign Office increasingly believed that contrary to the claims of the IBEAC, "protection and administration obligations under the charter have been totally inadequate", especially towards the British Indians. This view was eventually accepted even by the IBEAC, which stated that the establishment of Protectorate status over Uganda had restored confidence in the European and Indian communities.

With the arrival of the IBEAC and its operations on the mainland dominions of East Africa, the Indian community began

79. F.O. 84,2059, No.54, Euan-Smith to F.O., 11-9-1890. Dr Nariman, Parsi, and the only doctor present on the death of Sultan Khalifa in 1890, was not allowed to fetch Dr Charlesworth.
80. Ibid., No.59, and enc. Euan-Smith to F.O., 14-2-1890.
81. Scotsman, 24-5-1893.
82. F.O. 2.73, F.O. Note of 27-1-1894 of IBEAC Chairman to F.O., 22-1-1894.
83. Ibid., IBEAC report to shareholders, 19-7-1894.
to be used to serve its interests. This was done through the merchant community as well as through the subordinate staff that it employed. Paradoxically, the IBEAC's operations led to a period of differentiation within the Indian community. Firstly, the Zanzibari and mainland communities began to be subject to different influences and authorities. Secondly, the older settler community developed different political interests from the newly recruited police, military and administrative staff of the company.

3) European Powers and British Control over Indians

Holmwood, writing a memorandum in 1884 on the question of succession in Zanzibar, was able to say that the country "was independent through our action", and had continued to exist as such due to British support. He stated that "every penny invested in the soil is British capital, and two-thirds of the land is virtually, if not actually, British property". He referred to the British financing of the great caravans sent to the interior, to the leaders who were merely agents of British subjects, and to the British firms who entirely held the trade in their hands and provided capital to support the British mail and telegraphic services. Therefore, Holmwood felt that there was a "distinct duty to maintain our influence at Zanzibar against all rivals".

When Germany started making inroads into Zanzibar and the mainland, this expansion of German interest created new problems for the Indians, even more than during the time of

84. F.O. 84.1680, Holmwood's Memorandum: "Zanzibar Succession", 9-12-1884.

85. ibid.
Consul Rigby. While this was happening the Foreign Office received a declaration from the Sultan stating that no part of his dominions would be ceded without consulting the British Government. The Sultan, already overwhelmed by the British, tried to forbid the Indian traders from selling any necessities to the Germans. However, Consul Kirk and his assistant, Consul Smith, based at Mombasa, felt that this was an illegal order. Their grounds for disagreement were that the British subjects were free to trade with whoever they pleased and that their right to do so would be protected. It is important to remember that if the Indian traders had been independent of foreign control they would have withstood some foreign pressure; since, however, they had been made totally subservient to British interests and were now (in 1880) to be sacrificed on the front line of German advance, Kirk's "confidence in the ability of the British, in particular Indian, traders to discourage foreign competitors" was misplaced. Even in 1885 the Foreign Office considered the Indians able to withstand German competition. The assumption was that the Germans would not continue to stay on and support unprofitable commercial activity. For the benefit of their own trade the Germans debarred themselves from imposing differential duties against British subjects.

The suddenness with which the Germans annexed coastal territories in treaties with chiefs made Sultan Barghash

86. F.O. 84/1723, No.126, F.O. to Kirk, No.15, 28-1-1885.
87. F.O. 84/1725, No.128, Kirk to F.O., 30-5-1885.
89. ibid., pp 98-9.
90. F.O. 84/1723, No.126, F.O. to Kirk, 15-8-1885.
extremely angry. However, British support for the German claims induced the Sultan to acquiesce. Further, Sultan Ahmed of Simba (Witu) on the coast, assured his people and Sultan Barghash that the English were their friends, as were the Indians and Banyans who were subjects of the British.

The Germans proceeded to acquire Dar es Salaam. At this point the Earl of Salisbury wondered if the port of Mombasa ought to be acquired by the British Government to protect British interests in Zanzibar. This was suggested by the Foreign Office after Kitchener had broached the subject. Kirk telegraphed his agreement with the idea since "British interests there were paramount". He followed this with a letter explaining that the missionaries and Indians had paramount interests at Mombasa. Kitchener contradicted the opinion of the Admiralty that Mombasa was not defensible, and was adamant on the acquisition of Mombasa as a port to defend British interests in Zanzibar waters, and Indian interests in Mombasa itself.

Kitchener thought that the Sultan was a very good ruler since, under his rule, there was perfect freedom for anyone to settle in his towns or ports for colonisation or trade and receive his protection - "...the numerous British Indian subjects established all along the coast are proof of this".

92. F.O. 84,1726, No.159 & enc. Kirk to F.O., 23-6-1885; and enc. 3 to the Sultan. He stated that he would not trust any other Europeans, unless she carried a letter from Kirk.
93. F.O. 84,1771, No.27; F.O. to Kirk, 11-2-1886.
94. F.O. 84,1772, No.50, Kirk to F.O., 19-2-1886.
95. F.O. 84,1773, No.69, Kirk to F.O., 14-3-1886.
97. F.O. 84,1798, No.12, Kitchener to F.O., 30-4-1886.
Churchill corroborated this contention that the Governor of Mombasa had always settled the claims and grievances of Indians and that they were satisfied. However, Kitchener felt that as the "conquering race was becoming yearly more degenerate and effete", the conditions of the ruling power should be altered and the Indian Government be consulted on the position of the Indians. Later, on a visit to Lamu and points north, he stated that the increased litigation resulting from a greater volume of financial transactions was being efficiently dealt with by the Sultan, and that justice was being provided. While he was extremely satisfied with the Sultan's government on the coast and praised it highly, he advocated Britain's intervention in certain parts of the coast to promote its imperial interests.

Kitchener and the Delimitation Commission in June 1886, agreed to the Sultan's control over the coast line, and its report paved the way for Germany and Britain to sign a treaty in November 1886 recognising the Sultan's right to the island of Zanzibar, Pemba, Mafia and a coastal strip of ten miles; the vast hinterland was divided into two "spheres of influence". The Sultan, protesting, signed the Delimitation Treaty on the 7 December 1886. Kirk had left his post in July 1886 and did not return. Euan-Smith was his successor.

The British Indian subjects in the Sultan's southern dominions were to be passed to the German administration, with the approval of the Foreign Office. A notice informed
the Indians that

the status and position of all British subjects will remain unaltered. Their treaty rights will not be interfered with in any way. There is nothing to cause them to fear. All British subjects are empowered to assist by every legitimate means in their power, the officials of the German company in rightly and justly administering the country. 102

However, the position of the Indians in German East Africa was peculiar. As British subjects they were aliens, while since their customs did not permit them to be subject to German private law, they were legally natives. This status was their personal grievance throughout the German rule. 103

Therefore this accommodation between the British and the Germans put the British Indians in a very ambiguous position. 104

The Indians, for their part, petitioned against being placed under the Germans, but the new British Consul General, Euan-Smith, preferred not to render the German's position on the coast untenable. He also felt sure that British Indian trade would gravitate towards Mombasa, and that the German company would not be able to make profits, while the IBEAC would commence its operations favourably. 105

Archdeacon Farler also complained of the ruin of British subjects and

102. F.O. 84.1907, No.147, Euan-Smith to F.O., 23-6-1888.
103. John Iliffe: Tanganyika Under German Rule, 1905-1912 (Nairobi: 1969), p.94. The Germans considered the Indians dangerous because they were British subjects, and for having assisted the Maji Maji rebellion of 1905. Others were believed to have practised unscrupulous business methods and, as commercial competitors with near monopoly of the retail trade in consumer goods, they were doubly vulnerable. The Indian agitation was described as Africa's version of anti-semitism.
104. See F.O. 84.1908, No.1, enc.2, Euan-Smith to F.O., 30-7-1888. Euan-Smith's statement about accepting the German company was probably put to the test when the Germans appointed British Indians to Courts of Justice under Ordnance II of the German East Africa Association.
he protested against Germany planting herself on the ruins of British interests. However, these East African interests were of no overriding concern of the British Government, which needed Germany's good will. 106

The problem of jurisdiction was not as simple as Euan-Smith had envisaged. A case in point was that of Cursonjee, a British subject in Zanzibar who was employed by the German East Africa Company and was forbidden by them to visit the British Consulate. It was only when Euan-Smith complained to Dr Michahelles that Baron St Paul, of the German company, was informed that he had no such rights over British employees. 107 The British Indian subjects who had been brought under British control from the Sultan's regime were now to be relinquished to the German-controlled sphere. Lord Salisbury, in an attempt to solve the claims in Africa in a "bloodless" manner, in view of Britain's wider interests, chose to sacrifice the British Indians' interests as they did not figure greatly in the wider international context. 108

After the 1886 negotiations between Salisbury and Bismarck on their respective spheres of influence, the territory between Kenya and Tanganyika was agreed upon. In the process of control by these two powers, the Sultan had become not only redundant but dispensable. Euan-Smith suggested that the "entire fabric of the Sultan's rule and prestige has now been shaken to its foundations", and that the Sultan could be displaced without any further public disturbance.

107. F. O. 84.1910, No. 325, Euan-Smith to F. O., 13-11-1888; and enc. Michahelles to Euan-Smith, 30-10-1888.
Furthermore, he was opposed to dividing Zanzibar between England and Germany and favoured the abolition of the Sultanate so that he would no longer be even a "puppet".

The interests of the British Indian subjects in the town and island are so very great and complicated, and their foundations laid so deep, that it would be practically impossible to hand Zanzibar over to the Germans. 109

All the arable land, and "almost the entire town of Zanzibar", was supposedly controlled by Indians. Euan-Smith felt that the very long connection with Zanzibar and the far-reaching interests binding India and the East coast, made it impossible for the Germans to have any claims on Zanzibar. He also over-ruled the joint Anglo-German control of Zanzibar because of the different ways in which orientals were treated by the English. Indians dislodged from the coast wanted Britain to alleviate their difficulties while they were in Zanzibar. 110 Euan-Smith also deemed it impossible that natives of Kutch, who had jobs with the Germans, should assume German protection. He opposed this on the grounds that natives returning to the Kutch would claim German nationality against the jurisdiction of the Rao of Kutch. 111 Furthermore, the granting of German protection to the natives of the Kutch would be inconsistent with the Rao's Proclamation of April 1869. 112

The distinction between German jurisdiction on the ten mile coastal strip and the control of the interior presented another problem. Sultan Khalifa's delegation of power for

110. ibid., No. 114, Euan-Smith to F.O., 28-2-1889.
111. F.O. 84, 2051, No. 205, Euan-Smith to F.O., 15-5-1890; and F.O. 84, 2067, F.O. to Euan-Smith, 25-5-1890; and NAI, Foreign Dept (Secret), Nos 1-14, Sept. 1890.
112. n. 82, Chapter V.
the ten-mile coastal strip could not have involved a transfer of any power or privilege which he did not possess, i.e. the jurisdiction over British subjects in Zanzibar or on the coast line, since Article XVI of the 30-4-1886 Treaty remained in force. On the question of the hinterland, the British Consul could not claim any extraterritorial rights over British Indians. These were under exclusive German influence, and only those legal rights recognised by the Germans could be claimed. In the British area of control, the Consular Court exercised Indian legal codes over the ten-mile coastal strip; they were to be subject to the British tribunal of the IBEAC in the interior. In recognition of these problems, the Foreign Office wanted to bring in a Consolidation Bill that would bring together all the Foreign Jurisdiction Acts. The legal opinion of the Foreign Office was that British Indians were fundamentally full subjects of the Queen, born on British soil, even though there were legal differences in different parts of the Empire. The Germans could not put forward a similar claim for British Indians resident in German territory.

113. R. Oliver & A. Atmore: Africa since 1800 (Cambridge: 1967), pp 120-121, mention that while the Germans bought the coastal strip adjoining their treaty areas for a lump sum, the British leased the Kenya coastal strip for an annual payment and through the colonial period the red flag of the Sultan continued to fly over Mombasa, Malindi and Lamu. The delimitation also affected British control over the Africans in the interior, who claimed German subjecthood and to commit slave trade offences outside the Protectorate of Uganda. See Ratanlal Ranchoddas: Unreported criminal cases of the High Court of Bombay (Bombay: 1901), pp 880-90. The case of Queen Empress vs Juma.

114. F.O. 84.2062, No. 238, Euan-Smith to F.O., 2-6-1890.

secondary opinion by Francis Bertie stated that, despite differences between British Indians and other British subjects in their internal treatment, they were all British subjects. Despite the existence of doubts at the Foreign Office, they began to pursue a similar policy in their part of the mainland at the end of the century.

German intervention in the southern dominions of the Sultan meant that the Indians had effectively lost their base in the Sultan's regime. The British Government did not wish to oppose German ambitions in East Africa. Hence the Foreign Office and the Consulate adopted an ambivalent stand towards the Indians. They remained British subjects in German territory, thus curtailing their influence in the German sphere, while not offering any positive protection to them. Consul General Kirk's careful network of control over Indians on the mainland and his strengthening of British influence in general was also negated.

With the establishment of a Portuguese Consulate at Zanzibar in August 1884, another European power, albeit weaker than Germany, became involved. Before this date the British Consulate exercised control over the Goan community. The British Consul General planned to hand over jurisdiction of the Goan community to the Portuguese consul, Pinto. The Goan community was predominantly Catholic, being divided into British subjects from Goa and Portuguese subjects. Much to the dismay of the British Consul General, Portal, who was aware of the acute problems which had arisen

117. F.O. 84/1683, No. 106, Kirk to F.O., 10-7-1884.
at the time of instituting jurisdiction over Goans in Bombay, the Portuguese Consul tried to control the Catholic religious societies of St Joseph and St Xavier. The Portuguese caused damage and hardship to the Indians on the part of the coast where they wanted to establish themselves. The bombardment of the town of Menangani by the Portuguese caused considerable loss to 23 Indians. Those Indians made refugees by the Portuguese were given small subsistence allowances by Consul Holmwood, but they received extremely vague assurances concerning compensation for their losses. He was also reluctant to send them back to India, fearing that the Indian journals would make their plight "a permanent subject of discussion".

The Zanzibar Indians not only supported the cause of the refugees, while commending the support they had previously received from Consular officials, but also bemoaned the fact that:

"British interests in these parts do not receive the same attention from the Government as they have hitherto received, and that the influence and prestige acquired through the importance of trade carried on by thousands of Indian subjects of Her Majesty settled in Zanzibar, is allowed to be lessened by the greater political activity of other nations."

Holmwood was concerned by the Indians' perception of the "indifference of the government", and said that the Portuguese Government had been approached regarding the losses of the Menangani Indians. He proceeded to reassure the

118. F.O. 84.223$, No.240, Portal to F.O., 2-11-1892.
119. F.O. 84.1852, No.96, Telegram, Holmwood to F.O., 12-3-1887.
120. ibid., Holmwood to F.O., No.55, 31-3-1887.
121. ibid., No.55, enc.2, Memorandum of British Indian community of Zanzibar, 28-3-1887.
Zanzibar Indians that the Anglo-German Treaty was complex and that while it might seem that Indian interests were not secured he felt that Indian subjects had not been let down. The Foreign Office felt that under international law the British Government could not get any compensation, but said they would make friendly representation to Lisbon. British interest in the welfare of the British Indian population was circumscribed within and by British interests towards their agencies of expansion on the East African mainland, that is, the IBEAC - their greatest concern being the consolidation of British interests in East Africa. Hence, neither the accommodation with the Germans, nor the policy concerning the IBEAC took any regard of the Indians' interests. While the Portuguese never regained their pre-eminence on the East African coast, the Germans and the British had claimed all the mainland territories of Sultan Barghash, with the exception of the ten-mile coastal strip, by the end of his reign.

122. ibid., No.55, enc.3, Holmwood to Zanzibar Indians, 31-3-1889.

123. F.O. 84.1904, No.53, F.O. to Euan-Smith, 11-6-1888. The French in their campaign were using Salim Qamira, clerk in the Sultan of Zanzibar's service, who after conversion to Christianity in Aden, was taken by the French to Paris in 1902 as editor of "Fath-al-Bazair", but was committed to a lunatic asylum in Paris, from which the British missionaries from Aden rescued him. Lorimer: Gazetteer, Vol.1, pp 343-4.
CHAPTER III

CONSULS AND CONSULAR ACTIVITY

The British Consuls held office in Zanzibar as salaried officials of the Crown. This extraterritorial jurisdiction was exercised mainly over British subjects and protected persons because an ambiguous relationship of dependence between Britain and Zanzibar existed, even though Zanzibar remained nominally independent. While British Indian subjects became increasingly dependent on British power in Zanzibar, the principal positive aspect of this jurisdiction was the reassertion of the legal personality that they acquired as British nationals of the Crown.

The ambiguity and lack of uniformity in the application of this consular control was particularly interesting because the consuls were salaried and therefore totally subject to the control of the British Government. The first part of this chapter will concentrate on the general issues relating to British consular control.

The application of this extraterritorial jurisdiction raised the issue of the desirability of oriental education and of the "orientalisation" of consuls. The appointment of Indian consuls and judges in Zanzibar could have alleviated some of the problems raised, but they were never used. This was partly because Indian legal officials were not allowed to exercise fully their legal powers in India, and, to a certain extent, because the impact of extraterritorial jurisdiction on the Indian community in Zanzibar was not seriously considered.
The salaried consuls were, however, certainly preferable to the trading consuls because they had no private commercial interests. The American trading consuls were not as successful as their British colleagues in Zanzibar, partly because of their dependence on their economic enterprises, which prevented them from wielding the same disinterested influence as salaried British consuls. However, since these consuls were generally not well paid, because of the economies made in the Consular Service during the nineteenth century, the second part of the chapter will examine the relations between the consuls and the officials of metropolitan firms which led to a sharing of certain mutual interests.

1(a) Salaried officials and the Reorganisation of the Consular Service

In 1825, when the Consular Service was reformed by Canning, it was separated from the Diplomatic Service and Mr John Bird was placed in charge of it. Until this time all British consuls were merchants and their remuneration consisted entirely of fees. By the first Consular Act (6 Geo.iv.c.67) the Consular Service became a formally organised branch of the Civil Service.

The initial reform, which forbade the salaried officials to trade, began to eliminate the consul’s bias towards assessing British interests in purely commercial terms. Instead, it encouraged a comprehensive evaluation of these interests, encompassing political, economic, legal and

strategic factors. These attempted measures did not, however, alter the recruitment pattern. Further, the policies of 1825 received additional setbacks because they were generally reversed in the interests of the national economy.

Despite the recommendations of the 1835 Select Committee on Consular Establishment, the Consular Service did not become totally salaried. Clarendon and Palmerston nevertheless felt that the performance of the consuls was equal to that of the consuls of any other power. In 1858 further recommendations to improve the service were made, including a proposal for student interpreters. This had been recently instituted in the much-commended China and Japan Consular Service.

The Select Committee of 1870-72 on Diplomatic and Consular Service adopted the principal recommendation of dividing the service into "salaried" and "unsalaried" classes. However, the Report on Consular Service of 1872 called for another wave of administrative economy with the express object of economising on the costs of the administration of consular establishment. The Consular Service therefore once again "fell victim to the Victorian obsession with economy in Government expenditure". The Consular Service was in need of increased funds, yet the House of Commons examined it for the purpose of limiting their finances.

3. Tilley & Gaselee, Foreign Office, p.90. Lord Palmerston had consented to the inquiries of 1861, 1870, 1871 and 1890 Royal Commission of Civil Service.
Nothing had been done to institute a regular system of consular training, and the abuse of patronage had in many instances led to many conscientious and able men being overlooked. Hence, while the Consular Service grew, "largely unperceived or at least little perceived", a high authority stated that only as recently as 1903 did it become "a service". In the General Consular Service patronage, not unmixed with jobbery, continued, unlike the Levant and Far Eastern Services, which had been thrown open to competition.

Consular salaries were generally low and the consular establishments therefore failed to attract superior applicants whose qualifications were commensurate with the wide ranging duties involved. Consul Alcock, whose jurisdiction in Canton extended over 150 Parsis, described the functions of a consul as being quite diverse, ranging from "Lord Chancellor to a Sheriff officer's duties".

In places where extraterritorial jurisdiction was exercised, it was particularly true that "private interests and commercial business easily acquired the importance of political affairs", and these affairs became exceedingly complex. Furthermore, because of the low pay of the salaried consuls they became vulnerable to the pressures of commercial enterprise, despite the fact that personally they were not traders.

Another paradox concerning postings in situations like Zanzibar was that while the responsibility exercised by the consuls was of "the gravest kind", it was the European consular posts which drew the higher calibre staff. This "paradise of lucky fellows in Europe", apart from the difficulties already mentioned, was much more popular than bases in Africa, Asia and Latin America, since there was no possibility of transfer between one division of the consular service and another. Consul H.S. Cowper of Brazil mentions that consuls in the divisions other than the General Consular Division were "condemned to the inferno of Africa".

Captain Hamerton was appointed the Political Agent and Consul for Muscat on a paid basis from 9 December 1841 by the East India Company. The Zanzibar Consul was paid as from 9 December 1858 by the India Office. Consuls Hamerton and H.C. Rawlinson, Consul in the Persian Gulf, were not allowed to trade, and were the only two officers of the East India Company who served it as both Political Agent for the East India Company and Consul for the Foreign Office. Rawlinson considered that the trading consul at Mousal did not execute his duties as ably as the non-trading consul. By pointing this out he was attempting to strengthen the case for the payment of consuls.

J.W. Kaye, the Secretary of the Political and Secret Department of the India Office, dealt with the external

10. Ibid., p. 413, Q. 4807.
11. Ibid.
14. See section 2 of this Chapter, Relations between Metropolitan Firms and the Consuls.
relations of India after 1858, when the Crown took over from the East India Company. The dual control of the Zanzibar Consulate by the Foreign Office and the India Office continued. Persons appointed held commissions as consuls from the Foreign Office and simultaneously acted as Political Agents for the Bombay Government from 1841-73 and for the Indian Government from 1873-83. Thereafter the control over the consul was "partly under the Indian Government and partly under the Foreign Office".15

The Government of India was particularly unhappy about this arrangement and their attitude caused considerable problems between the Foreign Office and the India Office. Since the Indian Government paid entirely for the Zanzibar establishment the financial strain also contributed to the problems with the Foreign Office.16

Kaye felt that one advantage of sending an official from India, rather than from the European Service, was that it would avoid "offending Mohammedan prejudices". Therefore, so long as the problems were considered to be of an Asian character the Indian Government and the India Office continued to be responsible for the Agency. However, Kaye was of the opinion that either the Foreign Office or the India Office should take over control of the Consulate, but not share it, and eventually in 1883 the Foreign Office assumed complete control over the establishment in Zanzibar. One of the problems of dual responsibility by India and Foreign Office, related to consular correspondence. Kaye

16. ibid., p.450, Q.2183.
pointed out that "they are Her Majesty's Consuls as well as being agents of the Indian Government; and the consequence is that as Consuls they are allowed to correspond with the Foreign Office... The Zanzibar correspondence goes direct to both offices, as political agent the officer there writes direct to the India Office and as consul to the Foreign Office".  
  
This double correspondence created problems because of the different expectations of the Indian Government and the Foreign Office. There were also different approaches to diplomacy. Under Foreign Office regulations officials had to obey its rules and traditions, while under the India Office an officer received his general instructions and was left free to exercise his individual initiative.  

In addition, since the Foreign Office rules and regulations were really meant for European diplomacy, they were different from India Office instructions, which involved the liberal giving and granting of presents as a means of facilitating public business in Eastern countries. The Foreign Office was adverse to this practice. Rawlinson felt that in the Eastern countries the correct diplomatic procedure was to deal with the Sovereign, while in the European context it was established through ministerial channels. Since the same person was obliged to report to, and was responsible to both the India and Foreign Office, there was a clash both as regards approach and as regards instruction. These types of differences had led to the separation of the General  

17. Ibid., p.449, Q.2163-65.  
18. Ibid., p.456, Q.2190.  
19. C.S. Nicholls: Swahili Coast, p.159. Said presented Queen Victoria with a ship called "Liverpool", which was renamed "Ismail". Said received a yacht named "Prince Regent".
Consular Service from the Levant and China Service. In the case of Zanzibar it was ultimately the Foreign Office which established total control over the Consulate after 1883.

Since the consuls were not professional or career diplomats there was a dichotomy between their earlier occupations and their official work as consuls working with the Foreign Office. In the case of Zanzibar the consuls were often not familiar with the law and transgressed it on numerous occasions. The non-commercial experience of many of the consuls, especially Hamerton in Zanzibar, not only led to a neglect of commercial matters, but included decisions which were contrary to the commercial interests of British subjects. Consuls like John Kirk, on the other hand, made excessive political interventions, especially in the affairs of the Customs House, in order to enhance British interests. John Kirk was the "man on the spot" who exercised considerable influence and determined Imperial policy. He was considered by Sir Reginald Coupland to be an imperial factor in East Africa. 20

Kirk was the bulwark of Barghash's authority and also the means of weakening it. Kirk respected Barghash's intelligence but could not tolerate his right to exercise it contrary to British policy. 21

B. Campbell, Consul in Lagos, described the duties of a consul in Africa as those of "a political agent among the chiefs and potentates of countries (being) far more arduous than the duties of a Consulate in a civilised country where regular and established Government exists". 22

21. ibid., p.25.
The Consulate in Zanzibar also needed to have clerks and interpreters, who were nearly always Indians. They were paid by the Indian Government even when the Consulate had passed to the control of the Foreign Office. They were trusted because they were British subjects and it was assumed that they were not prone to corruption and intrigue. The same assumptions were not made about the Zanzibari citizens.

Thus the Consulate in Zanzibar suffered the problems of most non-European consulates in the nineteenth century. The consuls were especially burdened because they had to deal with both the Foreign Office and the Indian Government until 1883. The one relative advantage was that the Consul could deal directly with the Foreign Office, not indirectly through an Embassy, as in the Levant.

The attempts at reform and reorganisation had minimal effect mainly because of administrative economies. Although salaried consuls were restricted from trading, no standardised procedures on salaries, ranking, promotion and recruitment materialised during most of the nineteenth century.

1(b) "Orientalisation" and Jurisdiction

One disadvantage that the consuls in Zanzibar had in dealing with British Indian subjects and protected persons was their lack of oriental training, for which their experience in India was no substitute. For instance, Consul Kirk, who had no Indian experience, made a better consul than men who had, such as Hamerton and Euan-Smith. The establishment of Haileybury College as a centre of oriental training only for civil servants had no impact on the consuls sent to
Zanzibar. Since very few personnel went to serve as Political Agents or Consuls outside India, there was no provision for their training.

There are two different opinions about the problem of the "orientalisation" of consuls. One writer felt that a Consul-General:

with a life's experience behind him of the language and customs of an oriental or uncivilised state, must always possess an immense advantage over a Diplomatist, dominated by western culture and distracted by constantly shifting spheres of activity.23

Platt, a recent historian of the consular service, has criticised the same qualities:

It can hardly be denied that the official British outlook in the East was influenced by the restricted educational background of our consuls, by the emphasis exclusively on language proficiency at the expense of administrative, commercial and judicial expertise, by the orientalising of British consular officers, by their divorce from the local British communities, and by the parochialism implied by a career structure limited entirely to one area of the world.24

Platt further states that the value of consuls as policymakers was reduced because of their police and judicial functions, and that British influence generally was "tarnished by the corruption so often associated with consular courts and jurisdiction in the East".25 Hence, while Cecil condones the "orientalisation" of consuls, Platt decries it.

In Zanzibar any orientalisation of the consuls would have been welcomed by the British subjects, who were of predominantly Indian descent. The fact that Euan-Smith spoke Hindustani was commended by them even though his policies

25. ibid.
were disliked. Writers like Platt seem to ignore the fact that a significant number of British subjects in extraterritorial situations were "oriental". The oriental education or "orientalisation" of consuls would not have divorced them from the British Indian communities, as was the case in Zanzibar. However, it is possible that their "orientalisation" might have detracted from the exercise of their authority, thus reducing their capacity to represent British national interests, which it was their duty to do.

Rawlinson, one of the two consuls appointed by the East India Company in the Eastern countries, felt that the native consular agents in Muscat (presumably including British Indian subjects), who acted as agents of the East India Company, were considered to do "more harm than good". Moral influences were considered important because the consul, apart from his legal and official duties, exercised an officious jurisdiction, which meant that a consul "has no right to protect the natives"; he did so "through his influence with all classes". The interesting paradox that this phenomenon posed for British Indian subjects in Zanzibar was that while their interests, protected by English consuls, were not supposed to suffer, the converse situation was not held to be true. It was extremely unfortunate that Indians were not engaged for this post.

"intermediate between those of an official guardian and an

27. ibid., p.236, Q.2357.
However, since most of the British subjects resident there were from India, it is understandable that Indians uneducated in western ways were not acceptable in the consular service. Unfortunately the problem was deeper, because even when they became "civilised", through western education and Anglicisation, they were still rejected, not only at the higher levels of officialdom but also at the lower ones. Kazi Shahubuddin was appointed to the Frere Mission to Zanzibar to represent the viewpoint of the Indians in East Africa. The Kazi, who had been the Professor of Oriental Languages at University College, London, and was the Prime Minister in the Rö of Kutch's Government, was badly treated by Sir Bartle Frere, leader of the Mission, who had Indian experience as Governor of the Bombay Presidency. Therefore, while Frere was heading towards the southern coast to investigate the extent of Indian involvement in the slave trade, "the Kazi had gone back to (K)utch from Zanzibar". It was not surprising that the Frere Mission was received with "rudeness and insult. The Banyan who kept the Customs House refused to answer any questions".

28. D.C.M. Platt: Cinderella Service, p.131. Colin Cross: The Fall of the British Empire 1918-1968 (London: 1968), pp 38-9. There were financial impediments for Indians trying to join the Indian Civil Service. There were Indians in the Judiciary but the Chief Justices of High Courts were always British. See also G.N. Singh: Landmarks in Indian Constitutional and National Development 1660-1912 (Benares: 1933), p.96, and discussion on the lack of equality in Indian administrative services, pp 132-6.


30. ibid., p.96.
The visit was, however, an eye-opener, revealing the extent of Indian economic control of the coast. Frere discovered that the assets and liabilities of one Indian business house "which came judiciously before the consul... showed a capital of £430,000 invested in the country... and that everything connected with Africa trade is at least as much an Indian as an English question". This, however, was not considered to be a situation involving equals or equal partnerships. The real function of India was that "England, through India, has a practical hold on East Africa". Since the prime interests were considered to be English and not Indian, when Frere made his recommendations to Lord Granville on 3 May 1873 concerning the strengthening of the consular establishment these did not include reference to the recruitment of any senior Indian consular staff. Any recommendations from Frere suggesting the use of English educated judges and magistrates of Indian origin would have enhanced consular and legal work, and especially the interests of British Indian subjects. However, in this connection Frere neither viewed Indians nor their interests as British.

The inequity of this position is brought more into focus when it is realised that Frere opposed the introduction of the Ilbert Bill in India, which would have submitted Englishmen to the legal jurisdiction of Indian covenanted officers. Frere joined the British India Committee and wrote:

to extend the power of native tribunals in cases where Europeans were accused would be

31. ibid.
32. ibid.
However, Frere felt no such invidiousness at placing Indians under English legal control in India. Although Frere had been critical of the misuse of Greek and French extraterritorial control in Egypt, he nevertheless failed to acknowledge that British Indian subjects would face similar problems by being submitted to consular control administered by English officers. Frere’s dismissal of the submissions made by Kazi Shahubuddin and the proposals of the Bombay merchant Lallubhai to abolish the slave trade were also accompanied by a total lack of understanding of the impact of extraterritorial jurisdiction over Indians. This point, concerning privileged consular jurisdiction, is further defended when viewed in conjunction with the opinion of a critic of the consular service, who wrote:

nor can it be reasonably expected that, when the interests of British subjects come into conflict with those of their own countrymen, the interference of a native-born consul in favour of the former can be very enthusiastic or energetic.34

Therefore, if the same point were to be made in Zanzibar, an English consul who sat as a judge in a case involving an Englishman and a British Indian subject could not possibly do justice to the case of the Indian. It is, however, interesting to note that the British Indian subjects never consistently articulated a position on this basis, although


there were occasions, especially during the time of Consul Rigby and the IBEAC, when they made strong representations.

In view of the fact that English consuls who were "orientalised" were not viewed favourably, the possibility of engagement of Indian consuls and magistrates should have been closely examined as an alternative. The fact that it was never really considered can only be appreciated when the position of Indian magistrates in the nineteenth century Indian Empire is considered. While Indians had been subject to the British consul's legal control in Zanzibar since the early 1840s, persons of Indian descent who held office at a district magistrate level could not sit in judgment on an Englishman. This had not been clarified even by 1883.

In 1857 the Indian Law Commissioners recommended an act which, after asserting the equality of Indians and Europeans in the eyes of the law, "laid down a still more invidious distinction between non-official and official Europeans. It proposed to subject all 'non-official' Europeans to the jurisdiction of Asiatic magistrates, but to exempt from such jurisdiction all members of the Indian civil service, or officers of the army or navy". In view of both the protest of "non-official" Europeans and the disruption during the 1858 rebellion in India, this recommendation was withdrawn.

In 1883 a Code of Criminal Procedure was to be devised, under which authority all Indian district magistrates or session judges were to be allowed jurisdiction over European,

as well as Indian criminals. The issues arising from the exercise of this jurisdiction were raised by the case of Mr Gupta, a magistrate in the Presidency of Bengal:

On his removal to a more responsible appointment in the interior he had ceased to be qualified to deal with even the most trivial cases affecting Europeans.

Sir Charles Aitchison wanted to go even further, and "made the powers and jurisdiction of judicial officers entirely dependent upon personal fitness". The Home Department wanted to remove "from the statute book, at once and completely every judicial qualification which (was) based merely on race distinctions and the supposed personal privileges of a dominant caste". Mr Gupta stated "that if you entrust us with the responsible office of a district magistrate or session judge, do not cripple us in our powers".

The immense pressure from Englishmen in India and Britain induced the Government not to implement this legislation.

36. P.P. LI (1883), c.3512. The Home Dept to Marquis Harrington, Sec. of State of India, 9-9-1883. It was proposed that the new Code of Criminal Procedure come into force on 1-1-1884.

37. ibid., p.650. The implications of Rippon's failure, and Aitchison's larger proposal to give jurisdiction to all first class magistrates are succinctly described by Anil Seal: The Emergence of Indian Nationalism (Cambridge: 1968), pp 163-70 and n.6 on p.164.

38. P.P. LI (1883), p.650. Sir Courtney Ilbert, the Law Member of the Council drafted a bill to remove this discrimination against Indian covenanted officers. However, discrimination had continued in the Civil and Judicial Service from 1833, when the Indians had no opportunity of being employed in the government offices. The Charter Act of 1853, the Queen's Proclamation of 1858, Act of 1870 remained "blank cheques" and "the less straight forward course of cheating rather than prohibiting them had been chosen". See J.K. Mittal: "Right to Equality in the Indian Constitution", Public Law, Vol.36, Spring 1970, pp 59-62.


40. ibid., Enc. Bengal Govt to Home Dept, 20-3-1882, sub. enc. Note by Mr Gupta, 30-1-1882.
The Bombay Government, which had powers to try cases of British Indian subjects from Zanzibar, wrote:

The natives are content to be tried by Europeans in spite of the difference of race, which becomes, in fact, a positive advantage...as it is desirable that an adjudicator should be cut off from all the social connections through which influences might reach his mind. The Europeans, on the other hand, unaffected by any compensatory considerations dislike, as they have always and everywhere disliked, the idea of being tried by persons not of their own race.  

It was also held that the trial of European women by a "native" magistrate was unacceptable, while the converse was not held to be objectionable to Indian women. The Chief Justice of the Bombay High Court was especially opposed to a "native judge or magistrate in the Mofussil, whether a covenanted civil servant or not", being "fit to try a European British subject".

The feeling amongst even the conservative and Anglicised Indian community ran high. They were especially irked because the English considered themselves "as a caste infinitely above all the rest", and because they were treated as no more than "drugs". Badrudin Tyabji, a member of Bombay Council, was opposed to the idea that it was inimical to Englishmen to be tried by persons of a foreign race, no matter in which part of the globe they settled, and pointed out that in the Christian states Englishmen were tried by local courts. To side-track from this main issue, Justice Gonne, who controlled Bombay's legal

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41. P.P. Vol.LX (1884), No.5, Chief Secretary of Judicial Dept (Bombay) to Govt of India (Judicial Dept), 14-5-1883, p.173.
42. ibid., Minute by Chief Justice Bayley, 5-5-1883.
institutions, including the consular court in Zanzibar, stressed the application of extraterritorial jurisdiction over Europeans in Turkey, Egypt, China and Japan. One of the errors made by Gonne in comparing the situation in India, which was part of the British Empire, with foreign countries where British Indian subjects also enjoyed extraterritorial jurisdiction, was to cast doubt on the actual advantages of such jurisdiction for British Indian subjects. Badrudin Tyabji argued that the factors of race had nothing to do with extraterritorial jurisdiction and stressed that the reason for its exercise was that there was variance in the quality of justice:

It is the quality of justice administered in these countries that had compelled Her Majesty's Government to secure special treaty rights, not merely for British-born subjects but all subjects of Her Majesty, whether natives of India or England. Moreover, there is nothing to prevent the consular courts from being presided over by Asiatic subjects of Her Majesty, provided they were fit for the post. 44

Tyabji argued from the logical basis of a British subject who saw consular jurisdiction as being necessary because of the difference in quality of justice. Tyabji's assumption of Indian magistrates for the consular courts did not materialise in Zanzibar, since it was officials like Gonne who ultimately controlled the judicial system.

The British were firmly established in India and their attitudes were not being fundamentally questioned, although

44. P.P. Vol. LX (1884), Badrudin Tyabji to C. Gonne, 4-5-1883. Tyabji also spoke on this issue with Sir Pherozesah Mehta, another supporter of the Rippon and the Ilbert Bill, see H.P. Modi: Sir Pherozesah Mehta (Bombay: 1921), pp 122-142; see also R.P. Nasani: Dadabhai Naoroji, the Grand Old Man of India (London: 1939), pp 217-8. Naoroji also made common cause on this issue with Tyabji and Mehta.
the foundations of this jurisdiction rested on specious grounds. The pretence of protecting the interests of British Indian subjects in Zanzibar and Muscat could have been challenged. The Chairman of the Bombay Law Society admitted that the Europeans were a privileged class in India and that "the foundations of British power in India rested upon racial prejudice". However, he could not refrain from asserting that in extraterritorial terms:

the natives of India themselves have not been slow to recognise the advantage of such exclusive rights in the dominions of His Highness the Imam of Muscat.45

Hence the lack of consistent challenge to the inequities of the consular system by British Indian subjects in Muscat and Zanzibar gave credence to the belief that this jurisdiction was to their advantage.

The Indian legal profession mounted an offensive and Justice Nanabhai Haridas, who had translated the Indian Criminal Penal Codes and Civil Procedure into Gujerati,46 stressed that Indian magistrates or judges had powers to try Frenchmen, Germans, Italians, Greeks and Russians, but not European British subjects.47 Since both the Indian and English (or European) British were governed by the same substantive law, this was an invidious distinction. Justice Haridas pleaded that "any invidious race distinctions ought

47. P.P. Vol.LX (1884), No.8, Gonne to Secretary of Govt of India, 11-6-1883, enc., Minute by Justice Nanabhai Haridas, Bombay High Court, p.217.
not to be allowed to disfigure the statute book a day longer than may be absolutely necessary".  

Indian magistrates and judges who had lived and studied in England were not considered competent to sit in judgment over English British subjects because of their "ignorance of European manner, customs and habits of thought". Justice Haridas asked:

Now can it be truly predicted of the European judges and magistrates whether in the Mofussil or in the Presidency towns that they are acquainted with the "manners, customs and habits of thought" of every prisoner whom they have to try?  

He added that Indians had been tried in courts by English judges quite fresh from England and by others who had only been resident a short while and had no knowledge of the language of the "natives": "and yet who had ever thought of denying them such jurisdiction on that ground".  

In the Zanzibar consular court English consuls and judges constantly sat judgment over British Indian subjects and protected persons. Not only were they normally unfamiliar with the "manners, customs and habits of thought" of Indians, but the Indians had no recourse to authoritative opinion concerning their constitutional rights, the safeguard of their customs or the validity of extraterritorial control over them. Since the British Indian subjects were to accept in good faith the jurisdiction of the consular courts without the British-born subjects showing the same good faith in Indian judges and magistrates, the credibility of Indian judges trying Indians in India was put into question.

48. ibid.  
49. ibid., p. 218.  
50. ibid.
Sessions Judge S. Tagore, from Karna, near Bombay, wrote that if outstanding Indian judges and magistrates:

are too incompetent to be invested with powers to sentence a European fellow-subject to a few months' imprisonment, it would certainly be the height of folly to entrust into their hands the life and liberty of millions of our fellow subjects, who dark-skinned though they may be, are as much entitled to claim the protection of law and justice as the best born European British subject.\[51\]

However, once the argument of Indians educated in England and Anglicised enough to be able to participate in public life had gone far enough, the English magistrates adopted different tactics. W.R. Hamilton, a magistrate at Ahmadnagar, said:

education is not everything, and in fact, is but a small factor in a very great social and political problem. The peculiar temper and habits of the two races are of much more moment, and deserve far more consideration than the mere fact of how much education an officer possesses.\[52\]

Another district magistrate, however, admitted that the core of the problem was that "British rule in India is full of anomalies, without the existence of which that rule could not last for a single day".\[53\]

Since such was the condition of the judicial process in the Bombay Presidency, the extension of that legal control to Zanzibar in extraterritorial terms could not have granted

51. ibid., Judge Tagore to Chief Secretary, Bombay Govt, 1-5-1883, p.224.


53. ibid., Dist. Magistrate, A.H. Sprey, to the Secretary of Bombay Govt, 24-4-1883. Ultimately a compromise was arranged, which came to be called "The Concordat" which was embodied in Act III of 1884. The Indian District Judges and Sessions Judges were allowed the power to try European subjects on the condition that the European offenders even in the most trivial cases could claim a trial by jury of which at least half must be European or American. See G.N. Singh: Indian Constitution, p.150.
the Indians a position of full equality, leaving aside the assertion that they had achieved a position of privilege. In fact, they lost any rights they had as residents in the kingdom of the Sultan of Zanzibar. Furthermore, extraterritorial jurisdiction had laid a foundation of legal control over them which was gradually extended towards the end of the century. Despite the assertion that British Indians were subjects of the Crown, the legal officials of the Bombay Government were not willing to grant equal status to British Indian subjects either in India or abroad.

The attitudes towards Indian judges and magistrates held by the high legal officials in Bombay raised grave doubts about their ability to dispense justice and to enhance and protect the interests of British Indian subjects. On the contrary, they gave credibility to the proposition that British Indian subjects were only safeguarded in as much as they served the interests of British power in both India and East Africa. Despite the nebulous advantages the Indians acquired as British subjects, they had become a community whose political, commercial and legal importance had been reduced and who were virtually a group of pawns to be used to enhance British power in East Africa.

1(c) Legal and Administrative Skills

The Consular Service in the East had diplomatic and legal functions, although until "the turn of the century the consular service had been to a great extent a home for lost dogs". They were "ex-this" and "ex-that", and the earlier

55. Ibid.
consuls in Zanzibar in particular were drawn from the Indian army or other services.  

None of the consuls in Zanzibar achieved the eminence of persons like Sir Ernest Satow in China. There was no system of young recruits who came to Zanzibar as student-interpreters and trained as consuls on the spot. Each consul brought with him a totally different experience, ranging from army to medicine, although they did not have legal training. However, the lack of legally qualified personnel seems to have been widespread. In China:

the consuls themselves were for more part legally uneducated and attempted to ride rough shod through legal principles, and they added to the difficulties of their position in the early days by refusing to admit lawyers to their courts, with the result that they had frequently only themselves to blame when their decisions reversed on appeal. The lack of legal consuls in Zanzibar was not due to the consuls' refusal to admit lawyers but to the lack of funds available. The following tables, for the years 1887 and 1890 (before and after the start of IBEAC's operations) show the strength of consular staff in relation to despatches and legal deeds registered.

56. The defects in the Consular Service were corrected by a Departmental Committee in 1903 and the Civil Service Commission in 1914. See A. Cecili, Foreign Office, pp 622-66.

57. For the wide and special powers of Consuls in China, see the evidence of A. Alcock, Consul at Canton, PP Vol.VIII (1857-8), Q.1442-1533.


59. F.O. 84.2063, No.335, Euan-Smith to F.O., 15-8-1890; F.O. 84.2067, No.112 (Tele.), F.O. to Euan-Smith, 3-10-1890, informing Euan-Smith that the Treasury had approved to the appointment of 2 Parsi clerks at Rs.130 per month on a trial of 1 year. Hence, Indians were used as cheap routine clerical class.
Thus, while the staff had decreased, the actual volume of legal work and political despatches had increased.

The anonymous critic of the Consular Service stated that the special duties of the Consuls in the Ottoman Empire, China, Siam, Korea and Japan, which depended on the extraterritorial provisions granted by treaties, deprived the respective governments of their sovereign rights over aliens resident within their dominions. In those countries, therefore, consuls discharge in addition, very important magisterial and judicial functions, the exercise of which requires a high degree of legal skill and practical and theoretical knowledge of the laws of England.

Since qualified British legal practitioners existed in these countries, "no slipshod administration of justice can therefore, be indulged in with impunity by easy-going or incompetent consuls". While the above writer does not mention Zanzibar, it was one of the places where extraterritorial jurisdiction was exercised and where the consuls not only had to cope with English-authorised legislation (Foreign Jurisdiction Acts and Orders in Council) but, in addition, with Indian legislation. Many abstruse legal points were raised and it was not until after 1878, when

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61. ibid., p.610.
Foster and Cracknell had joined as consular judges, that any legal expertise was available.\(^{62}\) However, even when legal expertise was available there was no police force attached to the consulate to make the work of the court effective, and reliance on the Sultan's police was not always satisfactory.

The Select Committees examining the peculiar consular jurisdiction in the East were sceptical of this authority. To a limited extent the Foreign Office officials gave the impression that they shared some of this scepticism. The consuls who exercised it normally saw nothing unusual about it, and normally felt that Eastern sovereigns happily granted these powers and privileges:

when their ideas and civilisation have made considerable progress it may be time to think of the abolition of the capitulations.\(^{63}\)

1(d) Diplomats as Administrators

With Euan-Smith's departure from Zanzibar in 1890, the influence of the "Cinderella" consular service decreased and the influence of the diplomatic ugly sister became more prominent. The quartet of Portal, Rodd, Hardinge and Eliot, representing a higher degree of academic training,\(^{64}\)

\(^{62}\) Since there was no single Consular Service issued with identical instructions in the 19th century, the demand for legal skills was restricted to the Consular Services in the Levant and China where coercive jurisdiction was applicable. See D.C.M. Platt: The Role of the British Consular Service in overseas trade 1825-1914, Economic History Review, s.s., Vol.XV, No.3, April 1968, p.495.

\(^{63}\) P.P. Vol.VIII, Evidence of F.W. Calvert, Q.4479, p.393.

\(^{64}\) For a general discussion of this subject, see Robert Nightingale: The Personnel of the British Foreign Office and Diplomatic Service 1851-1929, Fabian Tract, No.232, (London: 1930).
consolidated British control in East Africa. Sir Gerald Portal became the first agent and Consul General of the Diplomatic Service and he brought about major administrative changes.  

As far as the Indians were concerned, the new officials had come at a time when the old traders and merchants had been brought under British control by the British consuls and the IBEAC. With direct British intervention another class of Indians, who came to open up the country directly under British auspices, was emerging. The Uganda Railway was considered the Foreign Office's crowning glory in East Africa. It was constructed by Indian coolies using Indian methods, and was used to enhance British rule in the area. At the same time metropolitan attitudes towards Indians became even more negative, a tendency furthered by the new class of diplomats turned administrators.

Portal, in his book, hardly mentions Indians, either in Zanzibar or on the mainland, being mostly preoccupied with the IBEAC. His only mention of India relates to the prospect of regulating freight on the railways so "as to enable Kavirondo grain to undersell the produce of India at the coast, in Zanzibar and even in Europe". He urged Europeans to settle in the interior, since at the coast the Indians and the Portuguese seemed at home in the

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66. Tilley & Gaselee: Foreign Office, p.225. However, these authors are incorrect when they point out that East Africa was taken over directly from East India Company in 1895. It was in fact taken over from IBEAC.
68. ibid.
69. ibid., pp 155-61.
"orchid-house atmosphere". Since the emphasis was on consolidating the IBEAC's base on the mainland, and moving the capital of the East African Protectorate there, the Indians in Zanzibar were cut off from their source of wealth, control and power, which were previously based on the collection of customs duties. The Indians therefore began to assume a minor role.

Sir Rennell Rodd replaced Sir Gerald Portal. Rodd had been a friend at Balliol of Sir Arthur Hardinge. Hardinge was to succeed Rodd in Zanzibar. Rodd wrote a short treatise in which he dealt with the problem of capitulations and the "servitude" suffered by Eastern states, which have been brought into continuously closer and more intimate relations with the western peoples, whose institutions and forms of administration they have to a great extent assimilated.

Rodd was familiar with the consular jurisdiction resulting from the capitulations and the peculiar powers these consuls enjoyed in the East, as distinct from consuls in the West. He acknowledged that the system of capitulations had led to grave abuses, including the removal of non-citizens from their local sovereign's jurisdiction, but stressed that:

the capitulations were necessary in their day and they served a valuable purpose in opening up to penetration and commerce, regions whose exclusive laws and customs had long kept them segregated and recalcitrant to progress.

In 1893, when Rodd mentioned the IBEAC, he felt that it had filled:

70. ibid., p. 156.
73. ibid.
74. ibid.
an important transition stage in our colonial history, and carried out imperial duties the importance of which public opinion at home was not then sufficiently ripe and enlightened to appreciate.\(^7\)

Rodd described the Zanzibar Indians and those on the coast. His descriptions of the two groups reflected the imminent change in the composition of the Indian population. In Zanzibar he mentioned a large number of wealthy Indian litigants in the court where Judge Cracknell presided, supported by Saumarez as the assistant Judge. He recollected that "perjury seemed to be not all in disrepute", but he found the Parsi lawyers most trying since each question of the opponent was regarded as a "leading" question.

Cracknell, however, had great experience in these and although I did my best to re-examine every case on its merits, I always ended upholding his decision.\(^7\)

When Rodd visited Kisamayu he issued "a proclamation, without too minute an inquiry into legalities, ordering every able bodied man in Kisamayu to cooperate for a number of hours a day in building a stockade under the superintendence of the naval officers".\(^7\) He condescendingly mentioned that the general response to his proclamation was satisfactory, "but a number of Indian traders established there came in a deputation and showed me their soft little hands, which were, they pleaded, and with justification, incapable of manual labour".\(^7\) These traders therefore were excused from work but had to pay a monetary contribution to defray the cost

\(^7\) ibid., p.290.
\(^7\) ibid., p.300.
\(^7\) ibid., p.300.
of extra labour.

During his term of office the Indians had become dependent upon his protection, and when Hamed Thuwain became the Sultan, gratitude was expressed to Rodd for his preservation of peace and order. The Chamber of Commerce also expressed their gratitude and Lord Roseberry was "entirely approving" of this satisfaction in his work. When Portal returned from Uganda and Rodd was to leave Zanzibar, the Khojas, Parsis and Hindus came separately to pay their respects. It seems clear that while Rodd had inherited a situation in which the Indians had thoroughly become part of British interests, he was blithely able to consider and refer to them in disparaging terms. The Indians, for their part, realised their weakness and had no recourse but to ingratiate themselves with Rodd and other British officials in the hope of receiving favourable treatment. They had no power in political terms to bargain for their rights.

When Sir Arthur Hardinge took office, a German official said that the Germans envied the British because of:

Your subordinate staff of Indian baboo clerks, whether customs officers or tax collectors, who never get drunk, rarely lose their tempers and have enough experience of oriental prejudices and habits to avoid incurring the distrust which so many of our men inspire.

Hardinge, however, felt that the "baboos" were not above corruption and was convinced that as long as officials were not overtly corrupt, they were usually popular in the East. He later also agreed with the assertion of this German that

79. Ibid., p.307.
80. Ibid., p.340.
so long as the "baboos" used methods "quite legitimate and fair" they remained popular.  

However, Hardinge's opinion of Indians was not generally improved by the Germans' defence of his officials. Hardinge had a stereotype idea of the Indians as usurers and money lenders, prone to corruption. The fact that some of the Indians were still in the Sultan's Government which "consisted largely of Englishmen and Indians" did not help their image.

1(e) Salaried and Trading Consuls

The contention of this section is that the British consular officials in Zanzibar were effective primarily because they were salaried. Since they exercised coercive jurisdiction over Indians, who were basically a trading community, the success of their control was partially based on the fact that they had no interest in any particular business. Since the jurisdiction had commercial implications, the connection of the consuls with any particular commercial house would have jeopardised their official consular work. The consuls, however, were in constant contact with business houses, but because they were salaried officials the risk of exposing them to the use of their official position for blatant personal gain was lessened. Since their salaries were low, they were, however, in an exposed position.

82. ibid.
83. ibid., pp 237-8. Hardinge was afraid that the passengers of the British India Steam Navigation Co's ships, on which plague had broken out, would bribe soldiers and trade with them, if they were allowed to land.
84. ibid., p.187.
85. See part 2 of this chapter.
One of the advantages of British consuls was that they did not side with any of the small British firms. For instance, Consul Hamerton was criticised by the small English firm, Newman Hunt & Co., for not assisting it. However, the consuls generally did take sides in relation to firms controlling the Customs House, though their perspective was based on larger British interests in the area and not on any personal grounds.

The exercise of political, commercial and legal control allowed the consuls to have a wider view of the situation in Zanzibar. This dispassionate interest made it possible for them to prosecute firms involved in the slave trade without favouritism. While damaging to businesses, this criminal jurisdiction brought a large number of firms within the scope of consular jurisdiction. The cumulative effect of consular activity was to create favourable conditions for British enterprise generally. They had therefore succeeded in closing certain commercial channels and opening new areas of commercial growth.

The consuls were often "victims of discord", because their general activities were of particular interest to the Foreign Office, while their own commercial work was of interest to the Board of Trade. The consuls in Zanzibar were particularly vulnerable to this conflict because until 22 January 1873 they were also responsible to the Bombay

86. S.T. Bindoff, E.F.M. Smith & C.K. Webster: British Diplomatic Representatives 1789-1852, Vol. L (London: 1934), p. 78, mention that the 1839 Convention of Commerce was signed by Captain Cogan, but not the fact that Captain A. Hamerton was the Consul.


88. Anon: "Consular Service", Q.R., p. 604. The Consuls were not, however, officials of the Board of Trade.
Government and, until 1 September 1883, to the Indian Government. The Government of India was particularly adamant that their political agents could not trade. To a certain degree the overwhelming political and legal nature of their work inhibited the more detailed, precise and accurate statistical information needed for new commercial activity. While the British Indian subjects were a particular case, the exercise of extraterritorial jurisdiction generally assisted the extension of British trade in foreign countries because of the nature of the commercial protection provided by this jurisdiction. The expansion of British trade in Zanzibar resulted from the application of consular jurisdiction and, subsequent to the abolition of the slave trade, British Indian interests in particular suffered in as much as they were involved in this trade. However, those businesses which were unconnected with the slave trade or sufficiently wealthy and established to function in, and increase the scope of, the "legitimate" commerce prospered. Hence the decline in the strength of the Sultan's slave-based economy also weakened the Indian merchant class.

In the field of economic intelligence the British consuls were also more effective than the American consuls because they were salaried. E. Hammond, the Under-Secretary at the Foreign Office, said that the trading consul is not so useful in obtaining commercial information as the non-trading consul.

89. P.P. Vol.LIII (1873), Evidence on Rawlinson, p.231, Q.2844.
90. ibid., p.288, Q.2866-88. See the instance of spread of trade in the interior of Turkey, where the substantial functions of the consuls were political.
The consul was trusted if he himself was not a trader and was thus likely to get more information from merchants.

A merchant might scruple to give a rival in trade information as to his own commercial proceedings, which he would only be too glad to give to a consul who was not his rival in trade.92

The consuls were overburdened by the scope and variety of their work and hence all their time was devoted to the diverse political, commercial and legal functions of the consulate. The fact that they had no specialised knowledge of one or other subjects led to errors. However, in the last analysis British consuls could always rely on their political influence with the Sultan. The British consuls and their work carried more weight with the Sultan than the opinions of consuls with commercial interests.

A British Consular Manual had stressed the necessity of non-merchant consuls to ensure impartiality, especially in cases involving a consul simultaneously acting as a party to the case and sitting judgment on it.93 This view was supported by the case in Zanzibar when the performance of the salaried British consuls, compared favourably with that of the American consuls.94 Consul Waters, who was a trader in his own right and also the United States consul in Zanzibar, did not carry much influence with the Sultan, despite the fact that American trade with Zanzibar was in an extremely

92. ibid.
strong position. Consul Hamerton was generally disliked by the Sultan, but since he was aloof from the petty commercial wrangles of the Zanzibar market he was successful in imposing jurisdiction over British Indian subjects. Consul Waters was involved in restrictive trade practices in conjunction with the Customs Master which earned the American consul rebukes from both the trading classes in Zanzibar and the Sultan's Court. His vulnerability was increased when the Custom's Master changed his tactics and traded with all the ships visiting Zanzibar, thus increasing his trade immeasurably while isolating Consul Waters.

The American consuls were personally vulnerable to private commercial dealings which impinged on their official consular work right up to 1890, when an Indian pleader, Camrudin, submitted a case before the US consul and also appealed to the Department of State in Washington. Euan-Smith stressed that the US consul had sat in judgment on the case where he, the consul, was the defendant, having signed a promissory note which was being appealed. The US consul took no evidence and, while he acknowledged the justice of the claim, decided to postpone judgment on it. The Foreign Office felt that the plaintiff seemed to have made a perpetual loan with an interest of 9%, and that the decision was "unreasonable and startling". The Foreign Office sent the

95. Contrast is provided by the case of the US Consul in Zanzibar who applied extraterritorial jurisdiction over his personal business affairs, with the case of US Consul Colvin at Demerara, who filed a petition of insolvency in Feb, 1860. The State Dept laid down that debtors and creditors would have to seek local remedies. See J.B. Moore: International Law, p.92, sec.711.

96. F.O. 84.2059, No.52, Euan-Smith to F.O., 11-2-1890.
papers to Washington "to bring the matter informally to the attention of the Secretary of State". So although it claimed to protect the interests of the British Indians and acknowledged the "unreasonable" decision, the Foreign Office was prepared to make only informal representations to the Secretary of State in Washington.

Hence the British Consuls were not as vulnerable in their consular capacities as were the trading US consuls in Zanzibar. There also do not seem to be instances of British consuls involving extraterritorial jurisdiction for their personal ends as did the US consuls. However, although the British consuls were generally not expected to become involved in "concession mongering", this did happen in Zanzibar, where Euan-Smith and John Kirk were involved with this in their official capacity. Thomas Mitchell, Her Majesty's Consul General in Norway, felt that:

there may be exceptional circumstances in respect of semi-civilised or barbarous states, such as Turkey, Persia, China, Japan, Africa, etc., in which political and national considerations may require the artificial establishment or maintenance of British financial and commercial supremacy or at all events equality.

The importance of the consular establishment to British commerce and the general interest in West and East Africa was illustrated by a Resolution passed at a conference at the home of Lord Brougham in 1861. The 7th clause of this Resolution, which was to be presented to Lord Palmerston and

97. ibid., F.O.'s Note: 11-3-1890. The F.O. was also aware of another example of a US Consul in St Petersburg using diplomatic privilege for personal gain; F.O. 83. 932, G. Wedgewood to F.O., 18-3-1886. This was a private note to C. Kennedy at the F.O.

the Duke of Newcastle, stated, in part, that any reduction in consular establishments on the East and West African coasts would:

discourage the efforts which have been persistently made for many years to promote and protect legitimate commerce...99

The consular establishments were also performing the role of bringing chiefs and people under the influence of Christianity, and any reduction in them would lead to a derogation of British power and the permanent benefits which accrued from such establishments.100

2) Relations between the Metropolitan Firms and the Consuls

The American consuls in Zanzibar were either owners or agents of American businesses. These consuls therefore played the dual role of consuls and businessmen.101 This section of the chapter, however, is concerned with the relations of salaried British consuls and businesses based in London.

The focal point of this metropolitan activity in Zanzibar was Sir William MacKinnon.102 MacKinnon's wealth was made in India on the basis of developing steam shipping,


100. Ibid., Clause 8.

101. See Richard P. Waters Consular and Business Papers at Peabody Museum Manuscript Collection, Acc.12,376: Contracts 1840-1845; Business Records 1842-1844, Box No.4; Consular Reports and Correspondence 1832-44, Box No.7.

and his major commercial interest was the British India Steam Navigation Company. Smith Mackenzie and Company, which was founded in Zanzibar during 1877, had strong connections with the B.I.S.N., through Archibald Smith, who was drawn from the staff of William MacKinnon and Co. of Glasgow. MacKinnon was also an imperialist and the IBEA Company was his major undertaking to further imperial interests in Eastern Africa. MacKinnon took advantage of his contacts with British Government officials and British consuls in Zanzibar to further not only his commercial interests through the B.I.S.N., but also his imperial interests by promoting the cause of the IBEAC. To develop these imperial interests MacKinnon also relied on Smith Mackenzie and Company. When the IBEAC took over the coastal operations in 1888, Smith Mackenzie and Company closed down and handed over all their properties at cost price to the IBEAC.

Sir William MacKinnon was constantly kept informed of developments on the East African coast by the consuls in Zanzibar. Most of the officials in contact with MacKinnon became his personal friends, accepted his hospitality at his home in Balinakell, his help in investing their savings, and sought financial assistance from him.

2(a) Steam Navigation

During the visit of the Frere Mission to Zanzibar, Fraser (an English plantation owner) was accused of using

103. British India Centenary (London: 1956) published by B.I.S.N.
slave labour, but was exonerated of this charge. Sir Bartle Frere also had an opportunity of meeting Fraser in another capacity — as the first agent of the B.I.S.N. in Zanzibar, Fraser addressed Sir Bartle on the privileges which the B.I.S.N. should receive in Zanzibar. Euan-Smith, as a member of the Frere Mission, privately wrote to MacKinnon informing him that Consuls John Kirk and Fraser were not on good terms because Fraser had a "pugilistic disposition", and advised MacKinnon that:

It is very advisable to secure Captain Fraser's influence with the mercantile classes at Zanzibar in the interests of the company.

Kirk added, in a separate letter to MacKinnon, that Fraser was not on good terms with the Customs Master and that they were deadly enemies. Euan-Smith praised Kirk as being an excellent man, since he had induced the Customs Master, despite his bad relations with Fraser, to grant "indulgence with regard to the Company, stowing their goods in their own warehouses, landing their coal free, and charging no duty for goods in transit".

Euan-Smith also mentioned to MacKinnon that the coastal trade in East Africa was entirely in the hands of "our Indian subjects", who were "indispensable go-betweens for seller


110. M.P. File No.10, Euan-Smith to MacKinnon, 3-4-1873.
and purchaser – Banyans and Bhattias abound in the neighbour¬
bourhood of Zanzibar" while in the South, Memons, Bohras
and Khojas carried on the slave trade.111 Euan-Smith was,
however, of the opinion that the respectable and leading
Indian traders would gladly give up the slave trade and
practise "legitimate" commerce.112 Sir Bartle Frere was
concerned about this monopoly of trade. In order to get
more English traders on the coast:

Sir Bartle Frere advised (them) to send a
Borah or a native agent to do dealing at the
port.113

While Euan-Smith was on the Frere Mission (1872-3), he felt
that another way of breaking the monopoly of Indian trade
was through the introduction of steam navigation. Since
large numbers of Indians travelled up and down the coast,
Euan-Smith recommended to MacKinnon a way of attracting
Hindus who adhered to strictures of the caste system to travel
by steam boat. He suggested that separate water tanks and
cooking facilities be provided as a concession to Hindus
who "would be glad to pay highly for their passage...and
this privilege would soon make the steamers popular with
this constantly travelling caste".114 The recommendation
by Euan-Smith about special concessions to the Hindus on the
coast did not materialise immediately. However, steam
communication in general had the greater effect of re-
directing Indian trade to London, especially as envisaged
by Sir Bartle Frere, and a few years later Euan-Smith was
able to report that Indian traders had taken to trading

111. *ibid.*, Euan-Smith to MacKinnon, 8-3-1873.
112. *ibid.*, Euan-Smith to MacKinnon, 3-4-1873.
114. *ibid.*, Euan-Smith to MacKinnon, 8-3-1873.
with London. MacKinnon did not let the question of shipping rest with Euan-Smith or on the opinions of Bartle Frere, as he had contacts with J.W. Kaye, the Secretary of Political and Secret Department at the India Office. Kaye initially declined MacKinnon's invitation for a holiday but accepted a box of grouse from MacKinnon's Scottish estate. Later the same year at Christmas, Kaye received "a mysterious chest of tea at my Peneg bungalow", and confessed "good tea is a great luxury. Bad grocer's tea has driven me to drink claret at breakfast". Kaye also visited MacKinnon at his home in Balinakell in Argyllshire, and asked him to act as a co-security on a loan he had taken out because of financial difficulties. These favours became the basis of the relationship between Kaye and MacKinnon. Kaye in turn advised MacKinnon that he ought to apply for a shipping contract and send a copy of the letter to the India Office, and said that he would support his application as far "as an old scribe can afford, in giving force to your proposal". However, he advised him to "lose no time about it - as I have a notion that others are in the field".

MacKinnon's friendship in official circles was valued, especially because he was hospitable and in a position to

115. File No. 11, Euan-Smith to MacKinnon, 1-7-1875.
116. File 249, Gerald Waller to MacKinnon, 2-12-1881. 1,000 acres of land at $1.25 were bought by MacKinnon's Florida Land Colonisation Company for Sir Bartle Frere.
118. ibid., Kaye to MacKinnon, 3-9-1870.
119. ibid., Kaye to MacKinnon, 24-12-1870.
120. ibid.
121. ibid., Kaye to MacKinnon, 21-10-1871.
122. ibid., Kaye to MacKinnon, 10-12-1870.
123. ibid., Kaye to MacKinnon, 27-10-1871.
render financial assistance and advice. As an official of the Crown who did not receive a very high salary, Kaye valued this help and spoke of MacKinnon's "private friendship to which I am so indebted". The nature of this "private friendship" was that Kaye needed money but did "not know the precise sum that I may require". Kaye was especially in need of financial assistance because he had foregone his literary income which had exceeded his official income. "I should therefore be very glad to receive what you call the 'little things' but which are great things to me."

The sort of relationship that existed between MacKinnon and Kaye did not exist for the top Indian merchants like Topan and Sewji in Zanzibar, either with consuls or officials in London. This was partly because Topan and Sewji could not comprehend the types of things that British officials considered important on a personal basis. Further, with the growth of telegraph and steamship communications, the consuls increased their contacts with metropolitan companies, whose interests became their main raison d'être.

Euan-Smith's frequent correspondence with MacKinnon at the time of the Frere Mission made repeated reference to personal matters. He had been nicknamed 'Tea Party' Smith as a testament to his social activity while posted as an Assistant Resident in Hyderabad. In 1874 he had accumulated

124. ibid., Kaye to MacKinnon, 21-3-1872.
125. ibid., Gray Dawes & Co., which loaned money to Kaye was also the Company which loaned money to Euan-Smith; File 46, 8-1-1892. Gray was MacKinnon's nephew. See Smith Mackenzie & Co. Ltd., pp 3-11.
126. ibid., Kaye to MacKinnon, 8-7-1873. Kaye's financial affairs became so well-known by MacKinnon that on 29-1-1876 Kaye requested MacKinnon to insert his name on Kaye's will.
a debt of £10,000 which was paid off by MacKinnon in 1881, as was another debt of £2,922. In 1889, £2,500 was advanced to him by MacKinnon.\(^{128}\) Writing personally to MacKinnon on India Office notepaper,\(^{129}\) Euan-Smith thanked his benefactor profusely and stressed that some day he wanted to prove his gratitude. This offer was repeated again in 1875.\(^{130}\) While poor consular salaries were partly responsible for this dependence of a salaried consul on MacKinnon, Euan-Smith was quite extravagant. Compared to Kaye, Euan-Smith was exceptionally dependent upon MacKinnon and this dependency can only have compromised his objectivity as a consul.\(^{131}\)

It has been asserted\(^{132}\) that, despite his indebtedness to MacKinnon, Euan-Smith had not committed any indiscretions. As an employee of the Foreign Office, Euan-Smith did favours for MacKinnon, e.g. he sent a telegram to MacKinnon about Stanley's safety six hours before he sent it to anyone else.\(^{133}\) Despite Euan-Smith's frequent assertions to MacKinnon that he was doing his level best for the IBEAC, there is not enough evidence to support the charge of grave misdemeanour.

The point that can be made is that none of the British consuls in Zanzibar had as close a relationship on an unofficial basis with the powerful Indian merchants as they did with MacKinnon.

\(^{128}\) ibid., pp 36-8.
\(^{129}\) File 11, Euan-Smith to MacKinnon, 15th, 1874, n.d.
\(^{130}\) ibid., 21-5-1875, as it was on innumerable other occasions.
\(^{131}\) ibid., Euan-Smith to MacKinnon, 20-12-1878; 28-4-1881; 8-5-1888.
\(^{133}\) M.P. File No.13, Euan-Smith to MacKinnon, 1-1-1889.
2(b) Consuls and the IBEAC

The abolition of the slave trade had convinced Kirk that because of the blow struck to this trade, no Indians would advance any money directly or indirectly to it. To replace this slave-based economy, and the Indian involvement in it, with "legitimate" trade Kirk offered MacKinnon a foothold to develop his trade: "you may rely on my help and support." Horace Waller, a partner of MacKinnon, felt that Kirk was genuine about helping MacKinnon in his enterprise: "we are quite sure of Dr Kirk's cooperation and cordial help. Indeed he has been preparing the way for us." Waller further referred to Colonel Gordon's offer to mount an East India Company-type operation for East Africa. Therefore Waller tried to convince MacKinnon that "the spirit of Clive" was present in General Gordon. Hence British consular jurisdiction, while bringing British Indian subjects and protected persons under its control through coercion was at the same time encouraging a British charter company to take over East African commerce from them.

Once the IBEAC was established, Euan-Smith, in his capacity as Consul-General, defended its interests against those of the Germans,

I do not think you need have any apprehension as to the Germans getting the northern ports. I may tell you confidentially that some months previously I made all safe for the company in that quarter.

With the interests of the IBEAC at stake against those of the Germans the interests of British Indian subjects, whose

134. File No. 36, Euan-Smith to MacKinnon, 17-10-1876.
136. ibid. However, the Khedive of Egypt refused to release Gordon.
137. M.P. File 13, Euan-Smith to MacKinnon, 1-1-1889.
commercial interests Euan-Smith was also supposed to protect, received questionable protection. In the struggle between the IBEAC and the Germans, George Mackenzie, of the IBEAC, was able to assert "we have everything to take away from them by drawing away the trade and the native Indian traders, while they cannot hurt us in that way". Hence the Indian traders and merchants became pawns in the struggle to allow the IBEAC to flourish. The Germans also recognised this weak position of the Indians and made certain attempts to conciliate their loss by granting them moderate compensations. Kirk also feared the loss to Indians who, after having paid a price to be placed under British jurisdiction, would have to succumb to arbitrary German control. Kirk alleged that, during Euan-Smith's term of office and the advance of the Germans, the Indians were thoroughly afraid and had left for good, while the wealthy ones did only a little business.

However, the problems which the IBEAC faced were quite acute, and the lack of Foreign Office support did not help officials like Euan-Smith in protecting it. Partly to compensate for this lack of Foreign Office support, and partly because of his own dependence on MacKinnon, Euan-Smith tried unofficially to protect the Company's interests as best he could. "I have ceaselessly striven to do and say everything I possibly could to advance the best interests of the Company." He also asserted that his actions were

138. ibid., George Mackenzie to MacKinnon, 22-7-1889.
140. ibid., Euan-Smith to MacKinnon, 23-5-1890; File 98, Kirk to MacKinnon, 20-3-1899.
"prompted by loyalty to yourself". Since the IBEAC was not doing well, he went as far as to suggest to MacKinnon that:

it might be worthwhile for you to turn your attention again to the question of farming the Zanzibar customs. The present Sultan is a real good fellow and will do everything to meet your wishes. 

Euan-Smith also wrote a personal and confidential letter to Lord Salisbury, requesting that the Foreign Office grant the IBEAC the concession in perpetuity. Since the letter did not have the desired effect, he tried to explain it to George Mackenzie of the IBEAC:

The proposal was put forward as coming from me. I said nothing about your own or other schemes. I made it as clear as day that the proposal did not come from the directors.

This misunderstanding, created by his over-zealous defence of the IBEAC, did not, in the face of Foreign Office opposition, produce any tangible result. He despondently wrote that his initiation of "a brilliant stroke of policy for the Company" had been misconstrued.

The consequence is that I have been the mark for an amount of mistrust and misrepresentations as at times I have found very hard to bear.

It was unfortunate for Euan-Smith that both MacKinnon and George Mackenzie did not believe him, despite his sincere attempts to help them:

I have striven in season and out of season for the promotion of the Company's best interests. At no time, under no circumstances, I have ever spared myself or my staff in order to attain the object.

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141. Euan-Smith's indebtedness to the firm of Gray and Dawes was £1626.4.6d in 1890 and was increased after his visit to Tangiers to £1835.12.6d, ibid. See File 14, Euan-Smith to MacKinnon (Private) 25-2-1890 and 18-7-1890. Euan-Smith even asked MacKinnon to send him "some grouse and partridge on ice", 12-9-1890.

142. ibid.; Euan-Smith to MacKinnon, 20-7-1890.

143. File No.15, Euan-Smith to George Mackenzie, 3-2-1891.

144. ibid.

145. ibid.
Euan-Smith, however, could not claim the same for the British Indian subjects, despite his attempts to ingratiate MacKinnon by informing him that he had induced the Indian merchants to open a school for their children. Tharia Topan had not only stressed the need for a school and put pressure on the consuls for its establishment, but had also contributed Rupees 200,000 to John Kirk in 1883 for this purpose. Hence, despite the fact that the school was called in his honour, the Euan-Smith Madrassa, the Indian merchants had not needed any inducement to open a school.

Euan-Smith especially had not made the transition from member of the Indian Civil Service to that of Consul General. Unlike John Kirk, he neither realised nor understood the particular problems related to the extraterritorial jurisdiction of Indians in Zanzibar. Euan-Smith tried to exact signs of respect, especially from the British Indian subjects in his jurisdiction. Upon his arrival in Zanzibar two Khojas failed to salute him because they did not know that he was the new Consul General. Euan-Smith "ordered them to call upon him once daily for the space of a month, by which time, he was reported to have said, they would be able to know who he was". The Bombay newspaper pointed out that this was one of the numerous incidents illustrating Euan-Smith's "petty mindedness" and asserted that this type of "Zoolum" (cruelty) was unwarranted.

146. Euan-Smith to MacKinnon, 3-1-1891.
147. See F.O. 84, 1644, Kirk to F.O., 5-6-1883. Topan had also discussed the possibility of a multi-racial hospital. See F.O. 84, 1853, No. 103, Holmwood to F.O., 5-7-1887, No. 117, enc. 2, 10-7-1887.
148. Rast Gaftar (Bombay), 10-6-1888.
Of the places where different European interests are in conflict at the present moment, Zanzibar is one place where the representative of British Government and the subjects whose interests he is supposed to protect and promote should deem most to be on terms of cordiality and union.\(^{149}\)

John Kirk held particularly strong views on this subject and also on Euan-Smith’s attitudes:

He seems to be the regular second rate Indian official exacting the outward sign of deference from the Indian as a mark of an inferior race and class of being that will never go down well where the Indian has been taught to respect himself and act independently, looking to the consul as his best friend.\(^{150}\)

Hence, Euan-Smith was more able to further the interests of European British subjects, while his attitudes towards British Indian subjects were not conducive to furthering their interests. When Portal took over office from Euan-Smith, John Kirk, who was not well disposed towards Euan-Smith because of his "petty minded jealousy",\(^ {151}\) wrote:

Mr Portal is very popular with the Sultan and the Indians and in this way a perfect contrast to Col. Euan-Smith who was hated and mistrusted by all.\(^ {152}\)

The case of Peera Dewji, a courtier of the Sultan, involved both Kirk and Euan-Smith at different times. Peera Dewji had been involved in a dispute with Archibald Smith of Smith Mackenzie and Company. Kirk accused him of being ready to fight any white man because Dewji held influence with the Sultan. He was a "clever, vulgar, unscrupulous pushing fellow" although he was also the "most useful and good servant of the Sultan".\(^ {153}\) Since he was a good friend of the Sultan he was found "objectionable" by everyone else. The

\(^{149}\) Ibid.
\(^{150}\) M.P. File No.97, Kirk to MacKinnon, 25-9-1888.
\(^{151}\) See f.n.112.
\(^{152}\) M.P. File No.99, Kirk to MacKinnon, 23-7-1889.
consular court punished Peera Dewji sharply for insulting Archibald Smith, although Kirk suspected that the Sultan paid his fine. As a result of this punishment Peera Dewji "found means...to get a good deal of business transferred from Smith Mackenzie to his own hands."\(^\text{154}\) As friends of MacKinnon, both Kirk and Euan-Smith found Peera Dewji's interests opposed to imperial enterprise. While Kirk had punished Peera Dewji, a decade later Euan-Smith deported him from Zanzibar\(^\text{155}\) on charges which included that of being opposed to the IBEAC.\(^\text{156}\) Euan-Smith's comments, written to MacKinnon after Peera Dewji's return from deportation, are interesting: "Peera Dewji is here, quiet and well behaved...but he has received a lesson which I do not think he will forget."\(^\text{157}\) Not only was Peera Dewji deported to protect MacKinnon's Company, but also to prove to MacKinnon that Euan-Smith would not allow anyone to jeopardise his interests.

While Kirk and Euan-Smith had both sown seeds of anti-Indianism in MacKinnon through Peera Dewji's case, MacKinnon was also probably quite rankled that Tharia Topan's control of the Customs House was a contributory factor to the IBEAC's failure to acquire control over the mainland in 1877. Unlike Euan-Smith, however, Kirk tried to convince MacKinnon that Indian trade was in fact British trade and served British interests. He informed MacKinnon that Indian trade had advanced at an astonishing rate and that, since the "trade is Indian and therefore British, it is an interest we cannot throw away."\(^\text{158}\)

\(^\text{154}\) ibid. \\
\(^\text{155}\) See the Chapter "Late Victorian Jurisdiction", Chapter VI for the legal aspects of Peera Dewji's deportation. \\
\(^\text{156}\) F.O. 84.1976, No.49, Euan-Smith to F.O., 1-2-1889. \\
\(^\text{157}\) M.P. File No.13, Euan-Smith to MacKinnon, 30-3-1887. \\
\(^\text{158}\) M.P. File 93, Kirk to MacKinnon, 13-9-1886.
It has been under me that the whole trade has fallen into the hands of our Indian subjects and that the community has been made thoroughly loyal. When I first went, the Indians were far from being with us, and I had to gain them and then gain for them all advantages they now have.\footnote{159}

Despite Kirk's involvement in Indian affairs in the Zanzibar dominions, his main impact was to assist the interests of metropolitan companies. Kirk's recommendation for a mail service from Suez and Natal to help introduce legitimate trade in minor ports\footnote{160} strengthened the UK trade. The impending change in the direction of trade\footnote{161} certainly could not help Indian trade, which had no metropolitan base. Kirk's conviction that the Madagascar trade would fall into Indian hands was equally misplaced. He had discouraged the French firm of Reux Fraissant from controlling some of the Sultan's Zanzibar trade, and had hoped that the French declaration of a protectorate over Madagascar\footnote{162} would help Indian trade. In fact, both in Madagascar and German East Africa trade failed to fall into Indian hands.

After his retirement from the service of the Foreign Office on 30-6-1887, Kirk became a director of the IBEAC. Prior to his retirement, Kirk had advised MacKinnon that the IBEAC Customs House should have a perfect system of customs collection and eliminate any loopholes. The "Sultan fully and clearly abandons all claims to levy any extra dues on his own account as he has done hitherto when Jairam and Taria had the farming of the customs".\footnote{163} Once Kirk joined the IBEAC, he gave the company the benefit of his experience as a consul general.

\footnote{159}{M.P. File 94, Kirk to MacKinnon, 11-10-1886.}
\footnote{160}{M.P. File 92, Memorandum from Kirk to MacKinnon, 15-1-1883.}
\footnote{161}{ibid., Kirk to MacKinnon, 2-9-1883.}
\footnote{162}{ibid., Kirk to MacKinnon, 13-3-1884.}
\footnote{163}{M.P. File No.95, Kirk to MacKinnon, 30-3-1887.}
As a director of the IBEAC, Kirk was to visit Zanzibar. He informed MacKinnon that Sultan Khalifa was in need of money and therefore would try to "buy his rights about Mombasa either right out (which will be difficult) or as security for a loan". Hence he could, as far as the company was concerned, use the information he had acquired previously to further its interests. He was also in contact with Tharia Topan in Bombay and asked him to try to collaborate more fully with the IBEAC by moving his business to Mombasa.

Tharia is desirous of coming from Bombay to meet me at Zanzibar, he has already opened a house at Mombasa, but he has so much money invested in houses in Zanzibar that he is pledged to it as a centre for some time.

The commitment of businessmen like Tharia Topan to business houses in Zanzibar did not make them good collaborators of the IBEAC Company. This dilemma, however, escaped Kirk because he failed to realise that, with increasing imperial control, British Indian businesses had remained rooted in Zanzibar and could neither transfer nor transform easily.

Kirk, however, while realising that the Sultan was totally dispensable, retained a measure of sensitivity towards him. With increasing British control over the Sultan's dominions and the decrease of British respect for him, Kirk did not want the Sultan to visit Britain on the eve of the signing of the IBEAC Company's charter unless he was to be treated extremely well and without damage to his self-esteem. Kirk's ability to empathise with both the

165. ibid.
166. File 95, 14-5-1887, Kirk to MacKinnon.
Sultan and the Indians, while increasing his control over them, was responsible for the success of his work.

Kirk received favours from MacKinnon while he was a Consul General in Zanzibar. However, the nature of this assistance was different from Euan-Smith’s. When the Kirk family received a chest of tea from MacKinnon in Zanzibar it was Mrs Helen Kirk who discreetly thanked him for it. Mrs Kirk, however, was also quite aware of John Kirk’s official work. She advised MacKinnon that Bradshaw, a Manchester businessman, did not wield much influence with the Sultan, and therefore was not a threat to MacKinnon’s interests. By 1885, the Kirks and the MacKinnons had become family friends and again Mrs Kirk discreetly requested MacKinnon’s assistance in investing £500 in his Florida Bonds. Kirk only wrote about personal financial matters once he had retired from the Foreign Office and this was routine correspondence about withdrawing his funds in 1892 from the IBEAC, which was not doing well. Kirk’s family, however, seemed to be modest in comparison to Euan-Smith, and did not live beyond their means.

Another ex-consul with experience in Zanzibar who tried to assist the IBEAC was Lewis Pelly, who had kept in touch with MacKinnon since 1866, with reference to shipping

167. Bradshaw was an agent of Lallubhai of Bombay who had submitted proposals to Frere about assisting the slave trade abolition, but these were rejected by Frere.
169. File No.93, Helen Kirk to MacKinnon, 30-9-1885.
171. M.P. File 175, Lewis Pelly to MacKinnon, 18-1-1866.
matters in the Persian Gulf area. Once Pelly became a Conservative Member of Parliament, and MacKinnon desired a subsidy for a direct line from Bombay to Mombasa, Pelly contacted Jackson, the Secretary of the Treasury, who was "favourably inclined". 172 Pelly retained an interest in East African matters and especially the German penetration. "In the long run we shall, I think, beat the Germans, because we have an old trade in the hands of British Indian subjects". 173 The general opinion amongst the officials seems not to have been that Indian interests would win, but that they would provide the groundwork for the IBEC's success. Hence the main objective was not the preservation of Indian trade but the use thereof for metropolitan interests.

The Consuls appointed by Her Majesty's Government and their roles and relations with the Foreign Office have been discussed in the previous chapter. This chapter will dwell on the "peculiar privileges" which the consuls of Christian states (especially Britain) had acquired in the Muslim and Eastern countries (especially Zanzibar). The exercise of these extraterritorial powers had not only legal but also political and economic implications.

The powers acquired under the various legal measures increased the control of metropolitan Britain and reduced the Indian, Arabian and African interests of the Sultans of Zanzibar and the British Indian subjects.

The main international instrument of acquiring these powers was the treaty. Once powers had been acquired through treaties, the Crown exercised these powers through Foreign Jurisdiction Acts and Orders in Council. The Foreign Jurisdiction Act of 1843 was enacted because there had been doubts about the exercise of consular jurisdiction in the East. The Foreign Jurisdiction Act of 1890 consolidated the extraterritorial powers of the Crown to enable increased powers to be exercised in Zanzibar Protectorate.

The Orders in Council were the warrants for the proceedings of the Consul. They were the rules under which the consuls exercised these powers. The Consul in Zanzibar, under the authority of the Order in Council of 1866, enacted rules using the Indian Penal Code in 1867. Since
the Consul had no authority to issue this Regulation, it was illegally applied and retrospectively validated by the Order in Council of 1882.

The powers acquired under each successive Order in Council were increased. With the acquisition of the Charter by the IBEAC, the Foreign Office constructed Africa Orders in Council of 1889 and 1892. The Orders distinctly applied to the mainland while separate Orders applied to Zanzibar and the coastal strip. However, while the consular system in the Levant and India emerged from its exercise by chartered companies, it was subsequently acquired by the British Government. In the case of Zanzibar it was British consular control which helped to establish the work of the IBEAC. It is possible that, unlike the Levant Company and the East India Company, the IBEAC did not succeed because it had no legal experience (amongst other problems) for developing this jurisdiction.

The Anglo-Indian Codes were used in Zanzibar because of the presence of Indians in these dominions. However, as metropolitan interests increased and Britain's hold over the mainland was secured, Indian interests and legal enactments lost their thrust and pure English legislation was increasingly used. The decline of the influence and involvement of Bombay and the India Government during the nineteenth century was also responsible for a decline in the assertion of Indian interests and law in Zanzibar and East Africa.

1) Extraterritoriality in general

Before the growth of European nation states, the origins of foreign jurisdiction lay with the English merchant
adventurers. The rights which these merchant adventurers acquired were later exercised by the Crown on their behalf "through the Charter of 1564 (which was) intent on preserving the English citizenship of Englishmen in foreign parts". ¹

Concurrently, extraterritorial jurisdiction was exercised over the emerging European nation states. Lorenzo Strozzi, a merchant of Florence, was appointed by Richard III in 1485, as the first consul of English merchants in Pisa, and like most of the early consuls, Strozzi was a native of the country where the consular duties were to be performed. ²

The growth of the European nation states in the sixteenth century led, in the seventeenth century, to an elaboration of a new international law which was to govern the relations between these states. Increasing nationalism in European nation states was the cause of a decrease in territorial rights of one state in the jurisdiction of another. In the Ottoman Empire these rights were being increased through the consuls, and in 1640 King Charles I appointed a consul general at Alicant. Articles of Peace between the King of England and the Sultan of the Ottoman Empire stipulated (in article 16) that "the Turks were not to intermeddle in differences between the English", since these differences were to be settled by English ambassadors and consuls. ³ This practice, once established, was used

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as a model and the British Consul General in Egypt demanded similar powers. 4

The main changes in consular authority in the nineteenth century arose from the nationalisation of the Levant Company in 1825, and the East India Company's monopoly of trade with China in 1834. There emerged two auxiliary consular organisations, the one operating originally in the Turkish Empire, Persia, Greece and Morocco, and the other in China, Japan, and Siam. 5

1(a) "Peculiar Privileges" 6

The basic principle of extraterritoriality was that "the defendant's nationality (was) in all cases to determine the law to be applied to the case and the judge who (was) to apply it". 7 In other words, it meant that all the crimes committed by British subjects were to be tried, and all the civil actions against British subjects were to be adjudicated upon, by British authorities. Conversely, all the crimes committed by nationals against British subjects and all civil actions by British subjects against the nationals, remained within the jurisdiction of national courts.

The important dimension of extraterritoriality was that it impinged upon the political sovereignty of the nation state. The Under Secretary at the Foreign Office, E. Hammond, 4

4. ibid., enc.11, Col.Campbell, Consul-General in Egypt, 9-8-1834.


7. Piggott: Extraterritoriality, p.82.
told the Parliamentary Select Committee of 1857-58 studying the consular service, that the exercise of civil and criminal jurisdiction in Turkey "was offensive to (its) sovereign rights", and that the Turkish Government "decidedly objects to it and would be very glad to get rid of it". In political terms there was extremely little possibility of reciprocity by Britain and Europe, because the theory of territorial sovereignty had hardened to such a degree that "a concession of consular jurisdiction to oriental merchants was never seriously considered". In the particular case of countries like Zanzibar and China, the essential inequitable political aspect of extraterritoriality was that it was exclusive of the political and legal systems native to these countries. G.W. Keeton maintains that "properly understood, extraterritoriality is in no way anomalous, but a necessary though temporary phase of international development". However, the outcome of this "temporary phase" was that the exercise of this jurisdiction by stronger Christian nations over weaker Eastern countries had long term repercussions, not only of a legal nature but also in political and economic terms. Thus the American scholar, F.S. Dunn, commenting on the Calvo Doctrine, which opposed the intervention by great powers in Latin America, argued that such intervention

It is precisely the threat of the use of force which was inequitable, especially since weaker states like Zanzibar or the Latin American states did not deny Europeans access to their court system. Another American writer pointed out that as a result of the extraterritorial powers exercised by Christian states in Muslim or Eastern countries, these countries were "not admitted to a full community of international law by the nations of Christendom".

The exercise of extraordinary powers by the Christian states in the Muslim and Eastern countries led to a differentiation in the type of consular jurisdiction exercised there, from the jurisdiction exercised in those "civilised" countries which accepted the concomitant principles of state territory and state sovereignty. The principles of coercive and contentious jurisdiction exercised by the Christian states were incongruent and inconsistent with

11. F.S. Dunn: The Protection of Nationals (Baltimore: 1932) p.58. Without allowing for reciprocity, Dunn proposed the necessity of diplomatic protection of citizens of powerful states in weaker states to exploit their economic resources (pp 34-5). He also mentioned the threat of the use of force (i.e. US Navy) if not the actual use of it (p.13, n.1).


14. Piggott: Extraterritoriality, refers to the criticisms made by the Privy Council of extraterritorial jurisdiction in the cases of Attorney General of Hong Kong vs Kwoh a Sing, and Macleod vs the Attorney General for New South Wales, pp 47-51.
national rights. The concept of personal laws, unrestricted by territorial considerations, had died away in Christian countries, but these countries not only retained the same rights and prerogatives but even enhanced them by treaties (or capitulations) in Muslim and Eastern states. While the Christian states had rejected the concept of personal laws as being inapplicable to their own countries by usage, practice and treaty stipulations, they had acquired, through their consuls, a different status in Muslim and Eastern countries.

The status acquired by Christian countries in Muslim and Eastern countries can generally be contrasted to the powers held by one Eastern country in another. For instance, in the Treaty of Erzeroum, Persia never obtained the rights of extraterritorial consular jurisdiction in Turkey during 1849, despite the fact that there was maltreatment of Persian subjects in Turkey.

The jurisdiction exercised by the Christian countries in the Muslim and Eastern countries was extremely complex. On occasions consuls like Vice Consul Bryant, while totally inexperienced in the exercise of criminal jurisdiction, opined that no criminal jurisdiction should be surrendered to Turkey, especially if the aggrieved party was a Turk and the offender was a British subject. Hence the consuls in the Levant, in addition to exercising the duties which the consuls

17. P. P. Vol. VI (1835), Appendix 15, enc. 16, Vice Consul Bryant’s remarks on British jurisdiction in the Levant, 23-3-1835.
exercised in Christian countries had judicial and political "responsibilities of the graveness kind" which necessitated the treatment of the Levant and Asian branches of the consular establishment as a special service. 18

The fact that the Muslim and Eastern countries were not accepted as equal members of the international community, has already been mentioned. The other important result was that these states with their diminished sovereignty became dependent on Britain. 20

In the Muslim and Eastern countries, while there were differences in the method and degree of power acquired, the fact remained that it was the country which demanded or took over such powers from a position of strength which determined the nature of the jurisdiction acquired.

Where the Government of the locality is a Mohammedan or other non-Christian government, where social organisation and views of justice differ widely from those of European or Christian government, or where the territory is under a barbarous government, it is impossible to submit British subjects to non-Christian law or to trust to the justice of local courts, and therefore either crimes committed by British subjects must be left unpunished or power must be taken for the British Government to punish them. Hence arose what was known as capitulations, and consular jurisdiction. 21

19. Ian Brownlie: Principles of Public International Law (Oxford: 1966) pp 72-3. A state "which has granted extensive extraterritorial rights to another state, is not sovereign".
Therefore the sovereigns of Muslim and Eastern countries had no options as to the possibility or otherwise of deciding if their laws or courts were capable of adjudicating matters concerning British subjects. The exercise of extraterritorial jurisdiction over a long period led to dependence, and in the case of Muscat, Britain exercised this jurisdiction until 1967, although it diminished in 1951. After 1967 the Sultan of Muscat exercised full jurisdiction over the foreigners in his country, although in political and military terms it is still dependent on Britain.

In contrast to the above situation, in the Christian countries consuls merely performed ministerial acts or exercised voluntary jurisdiction. The power of arbitration was limited to matters and disputes relating to commerce, and no criminal powers were allowed to foreign consuls.

However, in the Muslim and Eastern countries the exercise of this privileged consular jurisdiction was intended to protect the European against "the dangers of a barbarous criminal and civilian tribunal" and yet...

...the advantages of an exemption from the natural system of territorial jurisdiction can only be

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purchased at the price of much countervailing evil. All foreign criminal jurisdiction, even when exercised by a civilized country on the soil of an uncivilized nation, is a feeble and defective instrument.\textsuperscript{24}

Despite the fact that the jurisdiction resulted in the impunity of the European criminal, G.C. Lewis justified the consular jurisdiction on the special grounds that the Christian residents were reluctant to submit to "the administration of justice by those tribunals and the defective system of laws they administer".\textsuperscript{25} Even though the Muslim and Eastern countries did not disallow the use of their courts to adjudicate in matters concerning Christians, they had to consent to part with a segment of their sovereignty to a powerful government. While justice would have been obtained locally, the foreigners from Christian countries chose to be subjected to their own criminal jurisdiction even at the cost of much "countervailing evil".

A Chinese student of extraterritoriality rejected the fact that local penal laws were too severe.\textsuperscript{26} He cited the fact that as late as 1827 an Act of Parliament re-enacted the punishment of death for such crimes as sacrilege, burglary, housebreaking and stealing or putting in fear any person in the house, stealing to the value of £5 in a dwelling


\textsuperscript{25} ibid., pp 28-9

house, and stealing horses, sheep and other cattle. It is probable that there were instances in Muslim and Eastern countries, including China, where irregular practices in the courts did exist, but this is a far cry from the claim that justice was unobtainable and that extraterritoriality was therefore necessary. Lack of familiarity with, and contempt for local legal institutions constituted a major barrier to accepting justice from local courts.

While the extraterritorial jurisdiction was mainly exercised in legal terms and pertained to judicial matters, the consuls were also involved in political and commercial spheres. Since the consuls were appointed generally by the "exercise of patronage in favour of ex-military or naval officers, or the younger sons of political friends" commercial critics resented these appointments and "demanded that commercial qualifications should be obligatory for a post so predominantly commercial in its function". However, the claim that in the Eastern and Levant consular service "the judicial functions of both services, led to a neglect of commercial interests", can only be true in a limited sense. The exercise of these judicial functions entailed hearing a number of suits concerning civil and commercial matters relating to the British subjects. While it is possible that in the short term the smaller commercial enterprises did not receive special attention, in the long term, however, the

27. For description of 7 & 8 Geo. iv, c.29, see J.F. Stephen: Criminal Law, Vol.1, p.473. See sec.10,11,12 and 25 respectively.
29. Ibid., p.496.
cumulative effect of the exercise of judicial, political and commercial jurisdictions by the consulates furthered general British interests in the area and benefited the large scale British commercial enterprises. The consular officials generally did not see their function as one of benefiting individual businesses, but as one of creating the conditions which favoured British enterprise generally. It was therefore "small traders and publicists who had heard tales of the indifference of diplomats to commercial matters. By big businesses the Foreign Office has generally been strongly supported."30 The nature of treaties, Foreign Jurisdiction Acts and Orders in Council, successively acquired in Zanzibar, increased jurisdiction in civil and commercial matters. The coercive aspect of jurisdiction had the effect of insulating and defining British interests, thus making them more amenable to protection.

The success of the application of extraterritorial jurisdiction in some of the Eastern and Muslim countries depended upon Britain's strategic interests in the area and access to naval and other enforcements, if the need arose. The failure of the US Consulate to achieve pre-eminence in Zanzibar was partly due to the fact that it neither had a territorial base31 nor was it a naval power in the Indian Ocean, as was Britain. Britain benefited immensely from its territorial base in India, with its concomitant area of political influence in the Persian Gulf, and the consular establishments which could be assisted by the Navy.

The legal writer, Tuson, felt that the more "barbarous" a country, the greater were the powers assumed, "the highest and most responsible functions...the sheet anchor in a gale". In such cases the powers assumed were not based on treaty stipulations, usage or sufferance, but were won on a hostile soil from the local sovereign by the use of "British oak and iron".

The division of the Eastern states into the categories of "semi-civilized" and "barbarous" for legal purposes was based on certain assumptions. The former were considered able to bring their conduct in harmony with the western ideas and permanent diplomatic intercourse could be maintained with them. The latter consisted of "barbarous communities" and laws applicable to them were articulated in the last two decades of the nineteenth century. The powers acquired by the Christian countries in these were far more extensive than the ones that had been acquired in the "semi-civilised" Muslim and other Eastern states. Treaties were concluded with these states exclusively for specific objects, because it was felt that diplomatic relations in the western sense could not be conducted.

32. E.W.A. Tuson: Consular Duties, p.20. An interesting analysis of this basis of jurisdiction can be seen in James Bryce: The Relations of the Advanced and Backward Races of Mankind, Romanes Lecture (Oxford: 1902), especially the legal and political implications, pp 37-46.
35. See n.21 and 24 for references to these states by H. Jenkyns and G.C. Lewis.
The effects of the treaties made with Eastern states were enunciated by Lord Palmerston in 1890:

all persons born in British India, of whatever parents, are entitled to be regarded as British subjects, so far as concerns any privileges and advantages which attach to that character within the British dominions, it would be fair and right to extend to such persons, even in Persia, the benefits of being placed under British protection.  

It was considered consistent with the sovereignty of Eastern states and with British law to bring such persons under British protection. Authors like Hall felt that jurisdiction over them was consistent with the sovereignty of Eastern states, because, while the western states had begun to assert territorial law, the Eastern states continued to administer personal laws which worked to the advantage of western states. Authors like Piggott recognised that this perpetuation of personal laws was designed to secure for the consuls a position of privilege. These "peculiar privileges" acquired by the consuls of Christian countries were also commented upon by a recent writer:

as Piggott has observed "the most cursory glance at the treaties will show how slight, indeed how incomplete, a foundation the articles of those treaties were for the very extensive structure of jurisdiction which has been raised upon them."

There was one difference between the British subjects in the "semi-civilized" states where they could theoretically divest themselves of their nationality, and those in "barbarous and uncivilized countries" where it was impossible

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to divest oneself of British nationality and acquire a local
nationality. Even under the operation of the Naturalisation
Act of 1870, it was

impossible to regard an island in the South Sea, or a kingdom in the interior of Africa as having
the necessary marks of a state, even if they happened to be controlled by the European
adventurers. They were not, therefore, covered by the enactment which provided for foreign
naturalisation, and a British subject within them was incapable of ridding himself of his native
allegiance.

Even though Britain concluded treaties with them, this did
not amount to a recognition that Britain was bound to admit
the validity of naturalisation granted by them. As has been
mentioned previously, the powers that Britain subsequently
acquired in those of the "barbarous and uncivilized countries"
which it colonised were far wider than those acquired in the
"semi-civilized" states.

Despite Lord Palmerston's declaration, the problem of
who were to be classed as British subjects entitled to
protection and subject to jurisdiction was fraught with
difficulties. Thus, for instance, questions arose about
whether the class would include an alien naturalised in a
British possession, or the grandson born in a foreign
country of a British subject resident there, who were
entitled to be deemed British subjects by virtue of the

39. Whitley Stokes: A Collection of Statutes Relating to
India (Calcutta: 1881) Vol.II, Naturalisation Act 1870,
Vic.33 and 34, pp 878-889.
41. See Lord Denning's judgment in Nyali Ltd vs Attorney
General (1956) in Kenneth Roberts-Wray: Commonwealth and
Colonial Law (London:1966), Appendix III, pp 978-83. The
Crown had no exemptions from payment of tolls in Kenya
Protectorate where sovereignty lay with the Sultan of
Zanzibar, while in Kenya Colony the Crown had wider powers.
special statutes. In addition there was the practice of granting protection to subjects of native states, who were called British protected persons.

The subjects of Indian native states under the protection of the Crown have been expressly directed by the Imperial Act to be treated in the same manner as British protected persons under Foreign Jurisdiction Acts, and the natives of other British protected states may no doubt justly claim to be treated as British protected persons for the purpose of foreign jurisdiction.

The application under the direction of an Order in Council to a consular court to administer British law was prima facie an application of this law to all British persons within the jurisdiction of the court. While the application might have been correct regarding British subjects who, as a rule, were subject to British law when outside British dominions, the application of this law was obviously not correct in the case of British protected persons, who were subjects of states, which were under the protection, but not part of the dominions of the British Crown, and not subject to British legislation. In certain cases the sovereign of the protected state delegated power to the British Crown to exercise control over his subjects. However, even this power had not been granted. It was:

implied by the fact of the protection as regards the subjects when outside the territorial limits of the protected state. It might also be argued that if such a subject accepts the protection of

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42. W.E. Hall: Foreign Powers, pp 123-31. Hall deals fully with the subject.

43. R.G. Gregory: India, p.36, mentions that in 1879 there were "2,979 Khojas, 1,066 Bohras, 954 Hindus, 367 Memons and 26 Parsees". However, he incorrectly states that all of them "were regarded by the Consul-General as British subjects, though many came from Native States".

the British Crown in a foreign country, he must accept the burden of obedience to English law and submit to the British consul. 45

In a criminal case a person was, as a rule, only liable to criminal proceedings in any court if he was bound by the law administered by that court. Although, even here, there was no reason why a foreigner not subject to the jurisdiction of the court should not prosecute a person, who by reason of his British nationality was subject to that jurisdiction.

The system of capitulations exercised over the Ottoman dominions was extended to Morocco, Persia, China, Korea, Japan, Siam to Madagascar (till 1896) and Zanzibar, this latter being ultimately made a protectorate. The jurisdiction of the Crown depended upon the treaty made in each case, and upon any practice which arose subsequently, and which might have amounted to usage.

All resident British subjects, except subjects of native Indian states, were required to register themselves at the Consulate. Failure to register did not prevent one from being considered a British subject but made one liable to a fine and to the criminal jurisdiction of the court. 46

The provincial courts (of the type in Zanzibar) could try cases which were punishable by three months' imprisonment or £20 fine. In other cases the court was to send the accused for trial to England, Bombay or Malta. If sentenced to imprisonment, an offender was to be imprisoned in the Ottoman dominions on the approval of the Secretary of State,

45. ibid., p. 156.

46. For a commentary on various treaties, see W.E. Hall: Foreign Powers, p.149; H.J. Jenkyns: British Rule, pp 159-160.
or was to be sent "if a native of India, to Bombay, and in
any case to Malta or Gibraltar, to undergo a sentence." 47

If reasonable grounds were established for apprehending a
British subject who was about to commit a breach of public
peace, or if his acts were likely to produce a breach of
public peace, or if he had been convicted by the consular
court and had refused to give any security for his future
good behaviour, he could be deported:

if a native of India, to Bombay, if a native of
Malta, to Malta, and if a native of Gibraltar, to
Gibraltar, in any case to England. 48

In the Persian Gulf and the Gulf of Oman, along with Zanzibar
and the Somali coast, it was the Indian and not the English
law that applied. 49

2) Extraterritoriality in Zanzibar

In 1869 the Rao of Kutch placed his subjects in Zanzibar
under British protection, prompting the following remarks
from a British naval officer, which graphically describe the
effects of Britain's exercise of extraterritorial powers:

It is absolutely foreign to English ideas that there
should be a state within a state, administered by a
consul who is also a governor and a magistrate, but
such a condition of things is familiar enough to
Indian civil servants and excites no remark at
Zanzibar. There the consul has full jurisdiction,
civil and criminal (within limits), over the British
subjects and subjects of the British protected
states. The importance of the position may be
understood from the numbers under his care, and
from the immense value in the commercial world of
Zanzibar. British Indian subjects farm and administer
the customs and carry on, either directly or indirectly,
the greater part of a trade supposed to amount to

48. ibid., p.162.
49. ibid.
upwards of £700,000 annually.\(^{50}\)

It would be useful to mention two general areas over which extraterritoriality did have an effect. The first was the effect on the general powers of the Sultan, and the second the effects on the Indian minority.

2(a) General Effects in Zanzibar

Britain had continuous diplomatic contact with Zanzibar, which as a Muslim country qualified as a "semi-civilised" state. One of the legal consequences of this status was that an official of the Sultan, usually a kadi, could sit on the consular court to watch over the proceedings of the plaintiff and defendant. However, the rights granted to different countries by Britain in its consular courts varied. The Sultan's kadi in Zanzibar did not seem to have the extensive rights granted to a similar official in Korea, by virtue of the Treaty in Korea.

The Sultans in Zanzibar were completely baffled by the tenacious aspect of British nationality. It affected persons of Indian descent born in their dominions and working in their dominions as traders, and no immunity was granted to the highest officials of their administrations. Until the exercise of extraterritorial jurisdiction, the Sultans had regarded all the persons living in their dominions as their subjects. However, the "judicial and coercive jurisdiction" \(^{51}\)


exercised by the British Consuls created a situation of a "halfway house" where British subjects, living within the authority of a foreign power, were subject to the jurisdiction of the British Crown. While the Sultan had legally delegated these powers to Britain, which the British Crown legitimately exercised, in real terms it meant an erosion of his power. The Sultan of Zanzibar had not only foreseen jurisdiction over British subjects in both criminal and civil matters, but when a British subject was accused of a crime by a Zanzibari subject, the kadi could not proceed with the trial without the presence of a British official in the court. Towards the end of the century extraterritoriality was applied in an increasingly systematic fashion.

A further problem posed by the exercise of consular jurisdiction was that of the lack of the police's power of arrest. In Zanzibar and the mainland dominions the apprehension of persons accused of crimes, or of committing minor offences against British subjects, posed a recurring problem. No Eastern state had surrendered the right of apprehending persons, although Zanzibar had come fairly close to surrendering this right to the British consul.

The operation of the British consular laws also affected Zanzibari practice in general, since these became less operative among foreigners. The Sultan therefore objected to the granting of these extensive extraterritorial powers


53. When the question of the police was studied by the Select Committee on Consular Service and Appointments, Consul Medhurst of China was not in favour of allowing a Hindu policeman to arrest a European. P.P., Vol.VIII (1857-8), Q. 1913-16.
British consular jurisdiction did not exempt the Sultan's administrators from its control. In principle the British subjects in the employ of the Zanzibar Government remained under the jurisdiction of the consular court. The legal writer, W.E. Hall, claimed that in the Eastern states this jurisdiction was claimed for the British subjects in "ordinary civil employment", and that those subject to "disciplinary rules" were to submit to their territorial masters. In the case of Zanzibar it was the key officers of the Sultan, like the Customs Masters, Jairam Sewji and Tharia Topan, who owed their allegiance to the British consul. We can see the long term effects of the loss of authority over British subjects in the behaviour of General Lloyd Mathews, Prime Minister in the Sultan's Government from 1888 to 1893, who openly helped the IBEAC. A surviving associate company of IBEAC admitted that it was "General Sir Lloyd Mathews, of the Sultan's service, to whom, if to any man, Great Britain owes her Protectorate over Zanzibar". Mathews openly helped in making the Sultan's dominions safe for Europeans during the time in which Peera Dewji, an Indian courtier, exercised great influence with Sultan Khalifa. However, the most serious charge against

54. Shih Shin Liu: Extraterritoriality: Rise and Decline, pp 229-35. *The Times*, 13-7-1863, stated that the Hong Kong Supreme Court was "the greatest nuisance in the East".

55. Cator, a middle-ranking customs official with the Sultan, was not considered justiciable by the British Consular Court in Zanzibar.


57. R.N. Lyne: *Apostle of the Empire*, pp 119-23. Writers like Lyne are extremely unobjective when British interests are concerned. Khalifa was accused of being an ignorant and weak man because he opposed British interests, and his advisers who opposed Mathew's were accused of being worthless.
General Mathews was made by Sultan Seyyid Ali, who said that Mathews had opposed his orders in matters in which he had no right to interfere, and further that Mathews "did not treat our sovereignty with due respect".  

"When the power of European civilization became responsible for the administration of justice, the necessity of extraterritorial rights disappeared." In the case of Zanzibar protectorate status was declared by treaty on 14 June 1890, and control over British subjects and protected persons was formalised.

2(b) The Effects on the Indian Community

In Zanzibar the British Consulate had stressed that the reason for establishing jurisdiction was the protection of British subjects. However, it would appear that the main reason for the exercise of this jurisdiction was the punishment of British subjects in matters concerning the slave trade. Since British control of the slave trade was exercised by a very small consular staff, the provision for protection was minimal. It was not until 1890, when the protectorate status was declared, that protection could be provided systematically.

38. ibid., p.125. Consul Rennell Rodd supported this infringement because of the influence of hangers-on at the palace. Hollingsworth does not stress the implications on sovereignty arising from the forcible retention of Mathews at Seyyid Ali's Court by the British: Zanzibar under the Foreign Office, pp 78-9


60. Shih Shin Liu: Extraterritoriality, p.71, n.3. France finally renounced her rights of extraterritoriality in Zanzibar in 1904, Germany concluded a convention with Britain on 14-11-1899, renouncing her extraterritorial rights and it considered the conditions justified when Portugal abandoned jurisdiction in Zanzibar in 1907, p.140, Italy (1905), Belgium, Portugal, Austria, Hungary and Russia in 1907, p.104.
The inability of the British subjects to sign a register with the British consul could lead to their losing protection. Conversely, however, failure to register did not exempt the subject from consular jurisdiction. "The right to protection is no correlative immunity from the consequence of illegal acts". Hence the British subjects who indulged in the slave trade and did not sign the British consular register were brought to the British consular court on criminal charges. Therefore the emphasis of extraterritorial jurisdiction was on the punishment of those British subjects participating in the slave trade, and not on the provision of protection for British subjects.

While the British Consular Court exercised both the civil and criminal jurisdiction in Zanzibar, it had to rely on the Sultan for various ancillary services. The right of arrest still lay with the Sultan, while that of punishing the criminals, subject to the court's jurisdiction, lay in the Consular Court. The major input into the body politic of Zanzibar was the British Consular Court's use of a series of foreign laws, consisting of Foreign Jurisdiction Acts, Orders in Council and Anglo Indian civil and criminal laws. Since the British Indian subjects and protected persons were subject to these laws, their effect extended to the civil and commercial dealings of this community at large, including the local population and the rest of the foreign trading community.

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61. V.E. Hall: Foreign Powers, p.129. This book influenced law officers at the Foreign Office, and Hall claimed that the powers of a protecting state, especially over foreigners in the protectorates could be validly granted by the protected power and not by the sovereigns of foreigners resident therein.
The Indian community which had settled before the establishment of the British Consular Court had achieved a measure of accommodation with the Zanzibar community. When the British Consular Court was established, the Indians, while still participating in the local trade, commerce and social processes, were also subject to the British consular edicts. It was not the protective aspect of the consular responsibility which affected them, as much as the stipulation to abide by the slave trade restrictions which were placed upon them. Hence the main impact of the extraterritorial jurisdiction on the Indians was this coercive aspect which restricted their slave-oriented commercial activity. Since this activity was legally practised by the Zanzibari society, the Indians were isolated from this society, its laws and its trade.

In the nineteenth century the consulates were generally accused of not protecting small businesses, and the British Consulate in Zanzibar was no exception. The consular officials were especially unfamiliar with the businesses of the Indian subjects, which they were supposed to protect. The official and secondary literature consistently referred to the mystique of the business ability of the Indians. This lack of knowledge of Indian businesses was not conducive to their protection. The larger Indian businesses of Sewji and Topan did have direct access to British protection. However, in as much as they were Zanzibar-based businesses, the extraterritorial jurisdiction, which also led to the abolition of the slave trade, was responsible for an eclipse of their enterprises in their Zanzibari context. The large-scale British-based businesses, like Smith, Mackenzie and Company
and the British India Steam Navigation Company generally benefited from this jurisdiction.

The protection of the religious interests of the Indians was considered to be another obligation of the British. The Treaty of 1836 (Article 23) allowed the freedom of conscience and religious tolerance for British subjects. However, the consuls were generally not very knowledgeable of the religions of the Indian subjects. It is also questionable whether the consular authorities really saw the problem in its proper perspective. When the Parliamentary Select Committee studied the possibility of allocating public funds for consular chaplains in 1874, no consideration was given to the religious beliefs of the British Indian subjects in Zanzibar, a port with considerable tonnage.

While extraterritorial jurisdiction was generally exercised to protect British subjects, the peculiar position of Indians in Zanzibar, resulted in the exercise of the jurisdiction being a mixed blessing. The lack of a police force to protect their interests, and the use of coercive jurisdiction to compel obedience and enforce sanctions resulting from the foregoing legislation, made them predominantly responsible for "negative duties." More importantly, the lack of "positive duties" within British jurisdiction had long term repercussions on the Indians.

Sir Bartle Frere was silent on the problem of extraterritoriality in Zanzibar. However, while in Egypt he

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64. Piggott: Extraterritoriality, p. 50.
65. Ibid.
agreed with the Khedive about the wrongs of extraterritoriality:

It is intolerable when Greeks and French shamelessly uphold the scum of their own people in their crimes and fraud committed in Egypt and do not allow justice to be done.66

The Sultan in Zanzibar faced similar problems amongst the British subjects, since the most articulate amongst them could turn the situation of extraterritoriality to their own advantage and to the disadvantage of the Sultan. There were cases of foreigners and British subjects opting for the jurisdiction of the Consular Court rather than that of the Sultan if they felt they could obtain a more favourable hearing in the former.

3) Legal Enactments

When the extraterritorial rights were first granted to Europeans in the Levant, they were concessions by powerful sovereigns to weak foreign trading communities. This enabled Christians, as foreigners, to obtain justice in countries where law and Islam were synonymous. Capitulations were first obtained in the Porte in 1580, by the first British Ambassador, William Harborne, and extended in 1675 to include disputes between Ottoman subjects and Englishmen. However, gradually the roles were reversed, and by the nineteenth century European powers had become stronger and the Porte weaker.67 In the nineteenth century this was the relative position of power from which treaties were negotiated between Britain and the Sultan of Muscat and Zanzibar.

3(a) Treaties

The important common features of treaties between Christian and Eastern countries were: judicial and economic privileges; the inviolability of the foreigner's residence; consular jurisdiction in civil cases between subjects of the same foreign country; special forms of trial and consular supervision over criminal cases in which the foreign subject was concerned and immunity from new legislation and taxation by the local powers. 68

These extensive privileges granted by virtue of treaties were due to the generosity of the Eastern sovereigns. Sometimes this generosity was a result of the relative weakness of Eastern sovereigns, and the immunity from jurisdiction, taxation and legislation of the local sovereign strengthened Britain's already superior position. Thus the liberal grants made by the Zanzibar sovereigns, like those

of the Ottoman Sultans turned against them into an international servitude that gravely impaired their sovereignty within their dominions. 69

These treaties were partly used to extend British rights "into a new engine of political influence or pressure". 70

The treaties between European powers and the rulers of Eastern and African states covered a vast range of activity. While some of the treaties provided minimal rights, others had far reaching effects. The treaties signed during the


69. ibid., p.90. The terms of the treaties were sometimes enforced by the use of a squadron. For instance, Bombay Government obtained various terms from the Imam of Mocha, including the protection of Indian merchants at Mocha. See P.L. Playfair: A History of Arabia Felix, N.S. (Bombay: 1859), pp 135-9.

70. ibid.
"scramble for Africa" were viewed as being title deeds over vast areas of territory. However, immemorable other treaties were signed during the early part of the century.

The first element of jurisdiction, apart from cession or conquest, was conceded by Eastern rulers by treaty to the British Crown. Thus:

The most common political technique of British expansion was the treaty of free trade and friendship, made with or imposed upon a weaker state.

The treaties signed on the East African mainland were not regarded as contracts between equals, however, even in the case of the Sultan of Zanzibar, who was regarded internationally as the head of a sovereign state with full treaty making capacity, (when he) entered into negotiations with European powers, it was necessary to see whether all the elements of treaty making were present to discover whether a binding agreement had in fact been concluded.

However, powers granted by a foreign sovereign were important because "only power which the sovereign is permitted to exercise in a foreign country by means of extraterritorial...

71. E. Hertewell: The Map of Africa by Treaty (London: 1892), Vol. 162. Sir Edward Hertewell succeeded his father as the Librarian at the Foreign Office, and between them they were the authors of the treaties (1824-1902). These treaties placed African chiefs and their territories under the sovereignty of the Crown, and the chiefs effectively lost their treaty making capacity. For treaties which were title deeds to regulate the disintegration of Turkey and place it under the tutelage of Europe, see T. E. Holland: The European Concert in the Eastern Question (Oxford: 1893).


74. A. C. McEwen: International Boundaries of East Africa (Oxford: 1971), p.13. The German claim was defeated in 1889 as a result of the Lamu Arbitration in part because they claimed that a verbal agreement had been reached with the Sultan, which was considered inadequate. See Hertewell: Maps of Africa, Vol. III, p.891, Island of Lamu Award, p.894.
command is the power obtained by treaty." The numerous commercial and anti-slavery treaties between Zanzibar and Britain enabled Britain to carry forward trade and establish greater control in this area.

The application of the personal laws of Christian societies in countries like Zanzibar was based solely on explicit agreements embodied in treaties, but it did not have any strong historic tradition. The long standing customs or usages which existed in general between European societies did not exist when applied by such societies in certain Muslim countries. In the Persian Gulf kingdoms of Muscat and Zanzibar, extraterritoriality was sanctioned to a very limited extent by custom or usage, before being included in specific treaty provisions. In cases where the East India Company could claim extraterritoriality by custom and usage, this was due solely to the presence of Indians in these parts.

With regard to foreign jurisdiction resting solely on sufferance there is little to be said. So far as it is possible to trace the matter, Zanzibar is the only country in which it appears ever to have been claimed as exercisable on sufferance. Another writer records that there is no evidence of this jurisdiction in Zanzibar consular records. While it is not clear how Piggott traces the exercise of sufferance, the first recorded evidence seems to be the Hardy and Smee voyage of 1809 when Governor Yacout was forbidden by these officers of the Bombay Government from making an excessive customs

75. Piggott: _Exterritoriality_, p.33
76. _ibid._, p.52.
charge from the British Indian traders.  

The Muscat Arabs gained ascendancy after driving away the Persians from Oman. Once the Imams of Muscat had established their power in the Persian Gulf, they began to gain a footing in Zanzibar and parts of the African coast between 1698 and 1807.  

It was in 1798 that the East India Company's Indian agent in Bushire, Mirza Khan, negotiated a treaty with Muscat to exclude the French, with whom the Imam had strong ties and whom the company regarded as a threat to trade. In general terms, however, the treaty of 1798 had begun to limit the freedom of the kingdom of Muscat, and had been accompanied by the establishment of a political agency by Captain Malcolm in 1800 when the agreement of 1798 was confirmed. Doctor Bogle from Bombay was appointed the European officer and shortly afterwards the political representative of the state of Mysore closed his office and the European orientation of the Omani kingdom during the nineteenth century had begun.

An adviser to the Sultan, Sheikh Mansur, warned Sultan Said "that when two nations, one powerful, the other weak, ..."

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78. See Chapter VIII on Customs House.
82. Lorimer: Gazetteer, Vol.I, p.214. As the danger of immediate French influence declined in 1809-10, there was talk of reducing the strength of British political establishment. In 1801 a Khojah Aratoon had been Indian Agent at Bushire and there was an Indian Agent at Muscat, p.186.
entered into a lasting alliance the latter, in the course of time always became subject to the former.\textsuperscript{83} Sultan Said could not accept this advice because he required British help to quash Qawasim, the Wahhabi incursions and pirate raids. In 1809 he accompanied Sir Lionel Smith's expedition against the Qawasim pirates,\textsuperscript{84} and in 1819 he accompanied Sir William Keir to destroy the pirates as far as Bombay. Britain's efforts to assist the abolition of Qawasim piracy were not based on any territorial rights in Muscat, but on treaties made from 1820 to 1892. The interpretation of piracy, as defined by Britain, was extremely broad, since it included all acts of fighting between Arab tribes at sea, and secondly involved operations against tribes which had not signed these treaties.\textsuperscript{85} Hence British actions inflicted a tremendous blow to sipping in the northern Indian Ocean. At the same time Indian trade was brought more directly under British control.

The law of nations recognised that piracy was a crime against nations triable before any court, no matter what the nationality of the prosecutor, of the pirate or of the ship.\textsuperscript{86} The British Consular Courts had unlimited jurisdiction with regard to the place where the offence was committed, but were limited to offenders who were British subjects. Amongst the Eastern and Muslim states generally no such agreements against piracy were formalised. This is illustrated by the

\textsuperscript{84} F.O.54.2, I.O. to F.O. enc., 3-2-1838.
\textsuperscript{85} Husain Albaharna: \textit{Local Status}, p.29.
incident in which a Muscat ship directly punished subjects of the state of Mysore, who were involved in a piracy attempt off the coast of Malabar. However, no court was involved in this punitive action and Muscat did not acquire any extraterritorial rights from the Mysore state to safeguard its shipping in Mysore waters.

British engagements with Muscat on piracy and slavery were different from Muscat’s intervention in the case of Mysore pirates, and the engagements were formalised in 1822, when a treaty for the suppression of the slave trade was concluded. 87 This treaty, aimed at suppressing the operation of the slave trade by Christian nations, did not interfere with the Sultan’s trade in slaves with Muslim countries, other than Zanzibar. While the Sultan lost $85,000 per annum under the provisions of this treaty, he received no compensation from the British Government for his loss.

The treaty declared the abolition of the slave trade between the Sultan and Christian nations, but it was not clear how Britain could exercise this authority over subjects of Christian nations with whom it had made no similar arrangements. This especially applied to Portugal, which was regarded as an ally by Britain and had maintained a slave trade stretching from its African possessions to its

Indian possessions, including the Arabian Gulf. The treaty allowed Her Majesty's ships, but not those of the Indian Navy, to seize slave ships east of a line which ran from Cape Delgado in Africa to Diu on the Indian coast. It was mainly the Sultan who lost his jurisdiction over his own ships on the high seas, within the Delgado-Diu line, to the British Navy. Authority was requested by Britain and given by the Sultan to establish an agent in Zanzibar. The work of this Agent would entail the intelligence on ships carrying slaves by "Christians of all nations". The Sultan of Muscat also addressed a letter to the Governor of Zanzibar, which read in part:

I have permitted my friends, the English, to keep an Agent in any part of my country they may choose, and you are to give a house to the English Agent, and wherever he may stay you are to pay him great respect, and no one must refuse to receive the agent.

The 1798 qualnemah and the 1822 treaty also contained the provision that Britain would defend the Sultan when the need arose. This treaty of offence and defence was put to the

T.F. Buxton: The African Slave Trade (London: 1839), pp 37-40. The 1822 Treaty excluded jurisdiction over British Indian subjects who were not Christians. This omission was due to the fact that the Treaty was prepared by the Governor of Mauritius. See C.S. Nichols: Swahili Coast, p.224.

89. C.U. Aitchison: Sumuada, pp 39-91; Hughes Thomas: Treaties and Engagements, p.317. The validity of this Treaty was not affected by the separation of Muscat and Zanzibar. See E. Hertslet: Memorandum on Treaties with Zanzibar and Muscat, 18-7-1871 (British Museum).

90. R. Hughes Thomas, ibid., p.321. Letter from the Sultan to the Governor, n.d. Sept.1822. See also Lorimer: Gazetteer, Vol.I, Part II, Appendix L, pp 2476-9. Some writers have stressed that the Sultan readily acceded to this Treaty to obtain maximum concessions from Britain, but in view of his losses amounting to $M.T.85,000 per annum, this would seem questionable.
test in 1810, 1814, 1821 and in 1824, when rebellions took place against the Sultan. Although ships of the Indian Navy were in port at Muscat during this time, the Sultan received no help.\(^1\) The Government of India explained this lack of assistance to the Sultan, by stating that the provision for it in the treaty was merely "complimentary phraseology",\(^2\) and not a formal offensive and defensive alliance.

The omission in the Arabic translation of the clause in the 1822 Treaty making it incumbent on the Sultan, his heirs and his governors to assist in apprehending British subjects engaged in the slave trade, was not discovered until 1845. The Sultan granted these powers in a separate letter without wishing to have to change the Treaty.\(^3\) This treaty helped to confirm Said's authority over the East African coast by making him a contractual party, and at the same time "gave the British an interest in propping up their collaborator".\(^4\)

The 1822 Treaty laid the foundation of British jurisdiction within Zanzibar, although the jurisdiction surrendered was of a very limited and specialised nature.

In 1845 a further agreement disallowed British Indian subjects from participating in the slave trade and prohibited, as from 1 January 1847, the export of slaves from the Sultan's African dominions to his dominions in Asia. The Treaty did not, however, prohibit the transport of slaves from one part of the Sultan's African dominions to another. The ports of Lamu, in the north, and Kilwa, in the south, and the islands

\(^1\) F.O. 542, n.84.

\(^2\) Ibid., Cogan's Memorandum, 22-2-1838.

\(^3\) R. Hughes Thomas: Treaties and Engagements, p.322, Sultan to Hamerton, 18-3-1845.

\(^4\) C.S. Nicholls: Swahili Coast, p.139.
of Pemba and Zanzibar were exempted by the Treaty, and ships belonging to the Sultan of Muscat's subjects were exempt from being searched.\textsuperscript{95} Hence, while the seeds of separation were sown between Zanzibar and Muscat by disallowing the transport of slaves to Muscat, the Treaty allowed the Sultan to utilise slave labour in developing the Zanzibar economy, particularly the clove plantations in his dominions. As a signatory to these treaties, Sultan Said became estranged from his Arab elites and depended upon Britain, a position used by Britain to extract further promises on the slave trade.

A recent writer has pointed out that the Sultan of Muscat is still subject to the slave trade provisions of the 1822-1845 treaties. British cruisers still have the right to exercise certain 'controls' on Muscat flag vessels, both on the high seas and in the territorial waters of Muscat. Vessels and properties of the Sultan and his subjects are liable to confiscation if they violate the provisions of the above agreements.\textsuperscript{96} Since the Sultanate of Muscat is not a British Protectorate, the above agreements have far reaching results on the independence of the Sultanate.

The slave trade engagements were confirmed in a solitary article (XV) of the Convention of Commerce of 1839, but it also provided that "ships and vessels of war belonging to the East India Company could search and seize vessels engaged in slave trade with Christian countries". Such powers had

\textsuperscript{95} These additional articles to the Further Agreement are not mentioned by C.U. Aitchison, possibly because they were not formally agreed to, although Sultan Said was informed about them by Her Majesty's Government. See also F.0.93, 65/2, Slave Trade Agreement, 2-10-1845.

\textsuperscript{96} Husain Albaharna: \textit{Legal Status}, p.68. Oman is dependent upon U.S.-British defence aid. U.S. has recently acquired a landing strip at Mabisrah which would have coverage of Persian Gulf shipping and is well placed to take oil-wells in the Middle East. See \textit{Guardian}, 10-2-1978
PREVIOUSLY only been granted to the Royal Navy. In December 1839, the line of search was extended to include the Indian coast of Kathiawar, Kutch and Karachi, thus further restricting the area free for slave trading. The English version of the ratified treaty was inserted in the London Gazette, since the Foreign Office did not feel that it could be responsible for the version of the treaty written in the "peculiar dialect" of the Muscat Arabs. Since the Sultan relied on the Arabic version of the treaty, there was always a possibility of different interpretation, or even omission, as in the case of the 1822 treaty.

The Commercial Treaty of 1839 brought an increasingly large segment of a British subject's life within the circum¬section of the British Consulate. This Treaty, and treaties generally made with Eastern countries (capitulations in Turkey), granted British subjects exemptions regarding their person, houses and property from arrest, entry and taxation. Within these provisions, claims by the subjects of the Sultan of Muscat or foreigners against British subjects, were brought before the British consul and no appeal was allowed. Complaints by British subjects against subjects of Muscat or other Asian foreigners were carried before the Sultan, who

97. C.S. Nicholls, *Swahili Coast*, pp 156-162. Captain Cogan, as a member of the Indian Navy with vast infor¬mation about the East, was presented to the King by Lord Palmerston on 28-9-1836. F.O. 54,1 F.O. to Cogan 24-9-1836. See Lauterpacht (ed.) Oppenheim's International Law, pp 770-774, on Commercial treaties.
98. F.O. 93,65/1, F.O. Note initialled by Lord Palmerston, 24-3-1840. In the case of the Siamese Treaty also, the English version was held valid. F.P. Vol.VIII (1857-8), pp 324-5, Q.3347.
disposed of them personally, or appointed an officer to do so. 99

A recent interpretation of this Treaty includes the assertion that the Treaties between Zanzibar and the USA (1833), Britain (1839) and France (1844) strengthened the Sultan's commerce. 100 However, this can only be considered true from a limited and short term point of view. Sir Bartle Frere, in 1875, assessed the impact of American, German, French and British commercial treaties. He asserted that while Said, by means of the treaties with the above powers, had wished to promote trade and induce foreign allies to settle in Zanzibar, the "terms...have since seriously fettered the action and limited the fiscal resources of the ruler of the state". 101 In order to attract traders the Sultan had limited his customs duties to a very light scale, and bound himself to abstain from monopolising articles of trade, through a "most favoured nation" clause. Therefore each treaty power demanded for its own subjects the same privileges and exemptions which had been granted to another power.

The foreign consuls were rarely inclined to diminish, even in appearance, the importance of privileges secured to subjects of their own government, so that the Seyyid's power to tax trade for fiscal purposes was limited to those few traders who could claim no protection from a foreign consul. 102

99. E. Hortalett: Treaties and Conventions (London; 1840), Vol.V, pp 611-8. This treaty mentions criminal jurisdiction (Art.iv), as mentioned by Tarr: Consular Jurisdiction, pp 88-9, and the Slave trade conventions of 1822 Moreby Treaty are confirmed (Art.xv) by the Treaty of 31-5-1839. W.E. Hall: Foreign Powers, p.149, writes: "and in exceptional instance of Muscat, the treaties in force convey no more than civil jurisdiction".


102. ibid.
Sir Bartle Frere further maintained that Britain had a "greater special interest" than any other of the powers with similar treaty rights, because of Britain's help to the Sultanate and the presence of Indian traders in Zanzibar. However, Sir Bartle Frere does not dwell on the ramifications of this "greater special interest" on the sovereignty of the Sultanate, or on the freedom of the Indian merchant class.

Combinations of various factors, including Sultan Said's residence in Zanzibar after 1840, the inability of his agents to exercise control over his Muscat kingdom, and the weight of British treaties on the slave trade, weakened the links between the two kingdoms. After Sultan Said's death, Lord Canning permanently separated the African and Asian kingdoms of the Sultan in 1861. The formal separation was at first disputed by the French, but it was finally accepted in 1862 in joint engagements by Britain and France. The one significant function served by this Anglo-French declaration was that it affirmed the independence of Muscat, later reaffirmed by the Hague Court of Arbitration on 8 August 1905. However, the western part of the kingdom, based in Zanzibar, was made a vassal state in 1890 when protectorate status was declared.

Once the kingdom was divided in 1861 British activity to abolish the slave trade was intensified during the reigns of Sultans Majid and Barghash, and regulations prohibiting the transfer of slaves, even between various parts of the African

mainland were promulgated. The numbers that could be carried were also limited by a Customs House Manifeste of 1863.

After the departure of Sir Bartle Frere's Mission, the Treaty of 1873 was signed, followed by a supplementary treaty of 1875, which curbed the powers of the Sultan even further.

In 1876, the Sultan himself issued proclamations prohibiting the conveyance of slaves by land, the arrival of slave caravans from the interior and the fitting-out of slave hunting expeditions.

During this period the political Agency at Zanzibar was overseen by the Bombay Government, which always stood for encouraging trade, and stifling the anti-commercial forces.

The Bombay Government saw Zanzibar and Muscat as the key elements of this foreign policy, especially because of Seyyid Said's interest in commerce. The attitude of the Bombay Government was in constant conflict with that of the Government of India, where the influence of Aitchison and his rather formal treaty-oriented inactivity was strong. When the Government of India took over the administration of the Zanzibar Political Agency in 1873, it had expressed no sentiments towards the commercial and trading interests.

Before the Treaty of 1886 was signed by the Sultan of Zanzibar and Britain, the Foreign Office had wrested control

105. F.O. 93.65/4, Treaty signed on 14-4-1873, and as a result Act 32 & 33 Vict. c.75, was repealed and Act 36 & 37 Vict. c.59 established the Vice-Admiralty Courts at Zanzibar and Aden; Whitley Stokes: Statutes relating to India, pp 957-60. The Act was later amended as 42 & 43 Vict. 38 (1879) and repealed in part the jurisdiction of the Vice-Admiralty Courts at Aden and any of the Consular officials in the "dominions of the sovereigns of Zanzibar, Muscat and Madagascar", ibid., pp 1152-5.

over the Consul-General from the Indian Government. The Treaty of 1886 confirmed the jurisdiction granted in the Treaty of 1839, and declared that British subjects would enjoy extraterritoriality as regards their person and property. This treaty dealt with both the civil and criminal jurisdiction.\(^{107}\) There were three general categories of jurisdiction: (1) Cases between British subjects under Article 16 were to be heard by the British Consular Courts; (2) cases between British subjects and Zanzibari subjects were to be dealt with as follows: the plaintiff was to be brought under the jurisdiction of the defendant's court. In the interests of justice an official of the plaintiff's nationality was to attend the proceedings. The Sultan's court, therefore, exercised a jurisdiction only in those cases where a British subject was a plaintiff. (3) Cases involving foreigners of different nationalities were to be disposed of by respective consular officials, and the interference of the local courts was disallowed.\(^{108}\) The United States also concluded a treaty with Zanzibar on 3 July 1886, similar to the above treaty, which was ratified in 1888.\(^{109}\) These treaties were granted by the Sultan on the grounds that the Zanzibari legal system was different and inadequate. The treaties, however, ensured by withdrawing their citizens from its jurisdiction, that the Zanzibar legal system could not be improved or changed to accommodate the foreign communities resident there.

\(^{107}\) F.O.93/116/5A, Zanzibar Treaty of Friendship and Commerce, 30-4-1886; F.O.84,1729, No.308, enc.1, Kirk to F.O., 19-12-1885, copy of the Treaty.


As the treaties between Britain and the Eastern countries did not universally grant the right of deportation, a doubt had been expressed on the question of deportation with a view to trial or punishment. The argument was based on the fact that a treaty which delegated jurisdiction could only be understood to refer to territory and places within which delegation could have been made, and not beyond the territory and waters of the delegating power. Hence the trial and punishment should only take place within the state where the offence was committed. However, Hall asserted that, based on usage and sufferance, the British consul (i.e. in Turkey) had adequate grounds for deportation. He also contended that "the Eastern state has an evident interest in getting rid from its territory of proved or suspected foreign criminals".

As is shown subsequently in the case of Peera Dewji, this power was open to abuse, although Hall maintained that it was a matter of "pure municipal law for the foreign state to settle between itself and its subjects", and in the case of Britain ample powers existed for this purpose under the Foreign Jurisdiction Act 1890 (Sections VI, VII, VIII, IX, XII).

W.E. Hall and H. Jenkyns held similar views on the divisibility of sovereignty upon which principle Zanzibar was declared a Protectorate in 1890. They laid more emphasis on the actual fact of "the assumption of the protectorate" than on the terms of treaties for the

exercise of jurisdiction in the protectorates. Jenkyns' attitudes towards treaties made with "some half-naked chief. .. not sufficiently civilized to code jurisdiction"\(^{114}\) were that it was absurd for British jurisdiction to depend on such grounds. Increasingly after 1895 the consent of protected persons became unimportant.

3(b) Foreign Jurisdiction Acts

While treaties were made with foreign powers at the international level by the Crown, the jurisdiction under them was exercised, with the authority of the Crown, by officers called consuls.

The Foreign Jurisdiction Act does not create the foreign jurisdiction of the Queen, it only legalises her exercise of it, and declares how it shall be exercised. Criticism has been made of the extensive structure of powers exercised through jurisdiction based on the incomplete foundation of articles of Treaties quoted above.\(^{115}\)

The method by which the Crown exercised this jurisdiction was a matter of municipal law. Hence the first element of jurisdiction was the amount of power conceded by the rulers of the foreign countries to the British Crown.\(^{116}\) Secondly, the right depended on the extent to which the Queen, in exercising the powers vested in Her Majesty by the Act of Parliament, granted the powers to her consular officials.\(^{117}\)

After the abolition of the Levant Company in 1825, the Law Officers of the Foreign Office had expressed, in 1826, uncertainty as to the validity of the exercise of jurisdiction

\(^{114}\) ibid.

\(^{115}\) J.E.S. Fawcett: British Commonwealth, pp 125-6.

\(^{116}\) Papayanni vs the Russian Steamboat Co.; for contemporary discussion on FJAs see K. Roberts -Gray: Colonial Law, pp 112-4. In the preamble of the Act it said: "Whereas doubts have arisen...".

\(^{117}\) C.J. Tarring: Consular Jurisdiction, p.13.
by the British consular officials in the Ottoman Empire. Their doubts eventually prompted the recommendations of Mr Hope-Scott in 1843, in accordance with which the Foreign Jurisdiction Act of 1843 was passed. The Act introduced a statutory fiction and recited that by treaty, capitulation, grant, usage, sufferance and other lawful means, the Crown and its officers had facilitated the exercise of jurisdiction ab extra. Hence the Foreign Jurisdiction Act of 1843 did not confer territorial or any other jurisdiction, but facilitated the exercise of it. The sovereignty thus delegated to the Crown implied that sovereignty might exist without territorial dominion. The sovereignty which was conferred could be considered as a part of the sovereignty naturally belonging to the sovereign of the territory, but transferred by him to the Crown. The jurisdiction acquired had two aspects, firstly, the administration of the law by the British officers within the dominions of another sovereign; and secondly, the actual law which was applicable to British subjects. In either case it was assumed that if the Order in Council, with respect to the jurisdiction in any territory, was silent, English law applied to all British subjects within the territory, but frequently the Order in Council legislated for those subjects. While some civil jurisdiction was exercised it was the criminal jurisdiction that was the more important. In 1843 Lord Aberdeen referred to criminal


119. The first three categories fall under the heading of "treaty", and the last three under the heading "sufferance". There is no other practical means of acquiring jurisdiction. K. Roberts-Wray: Colonial Law, pp 112-4.
jurisdiction as being the main reason for enacting the Foreign Jurisdiction Act of 1843, so as to punish the criminal acts of British subjects in places outside the authority of the British courts.

Hence Her Majesty had power and jurisdiction in diverse countries and places outside Her Majesty's dominions. While the application of this jurisdiction in Zanzibar to a protectorate status being declared, this did not happen in the case of Turkey or China, because of diverse factors specific to those countries.

Section 1 of the FJA of 1843 enabled the Queen to hold, exercise and enjoy any power or jurisdiction within any place of her dominions where Her Majesty had acquired such power and jurisdiction, as if such power and jurisdiction had been acquired by cession.120

The second section treated as valid and effectual everything done in the pursuance of power and jurisdiction, as though it was done according to local law then in force at such a place. Hence 6 and 7 Vict. c.94 was the foundation on which the whole system of Orders in Council provided for the jurisdiction of Her Majesty's courts; "and the courts formed under the Act are authorised to procure evidence of any power they require".121 The Queen had the same power to govern her subjects and legislate in regard to them, as if they were in a Crown Colony.122

120. H. Jenkyns: British Rule, p.151.
122. In the case of Zanzibar, Bombay was the court where the cases were referred to. See W. Murison: Zanzibar Protectorate Law Reports: 1868-1918 (London: 1919), pp 19-22. Shivji Haji vs Jairam Sewji heard on 23-11-1883 by the High Court of Bombay (Appellate).
Under section 3 of the Act, the judges of all courts in Her Majesty's dominions were empowered, where necessary, to determine any issue or question of fact before them, to transmit questions to the Secretaty of State, who was to answer such questions and his answers were to be final and conclusive. The FJA of 1890 (53 & 54 Vict. c.37 section 4(1)) was similar to the above section of the FJA of 1843. The court was to draw inference from the fact, stated by the Secretary of State, and that inference might be adverse to the Order in Council.

Section 4 of the Act gave power to send to a British colony for trial, persons charged with offences cognisable by Her Majesty's officials in any country or place outside Her Majesty's dominions. Provision was made to examine, within the country where the crime was alleged to have been committed, the witnesses for the defence whom the accused could not have produced in the colony. A certified copy of their evidence was to be transmitted to the court where the trial was to take place, to be read there and received as admissible evidence. The court was also to give effect to the laws of the country where the crime had been committed, as relating to the nature and degree of such crime and the punishment thereof.

Under section 5 sentences of death or imprisonment passed within countries or places outside Her Majesty's dominions were to be carried into effect in any British colony appointed by Her Majesty in an Order in Council. 123

123. See A.L. Goodhart & H.G. Hanbury (ed.): History of English Law, Vol.XIV, W. Holdsworth (London; 1964) pp 84-5; Eric Walker: The British Empire: Its structure and Spirit (London; 1947) p.72; FJA 1843 "became the main roof from which the vast protectorate system grew up during the last quarter of the 19th century".
Section 7 gave protection against actions done in the pursuance of Her Majesty's power or jurisdiction, enumerated above.

The RJA Amendment of 1865 (28 & 29 Vict. c. 116) simply provided that the term "British Colony" in the previous Act included any of Her Majesty's possessions outside of the United Kingdom. Hence, while prior to this Act prisoners from Muscat and Zanzibar had been sent to Bombay for trial, it was the 1865 Act which clarified that the Indian possessions were to be considered as a "British Colony".

Since every Order in Council made by the Queen in Council was assumed for the purpose of the exercise of jurisdiction to be a local law, it was not operative beyond the limits of the country. Hence a person could not be deported by way of prevention or punishment of a crime. Deportation was exercised before 1843 and continued to be exercised after the Act of 1843 came into operation. It was challenged on the grounds that it was an "extraterritorial" power and was legalised by the Act of 1875 (38 & 39 Vict. c. 85). The Order was to have the same effect as if it were within the country or place in which the authority making it authorised jurisdiction.124

The Act of 1878 (46 & 47 Vict. c. 67) was passed to give powers to the Crown to extend its application to any place where the Crown exercised foreign jurisdiction. This Act

124. 38 & 39 Vict. c. 46 (1876) extended punishment to the princely states of India, who had no communications or engagements with foreign powers. IPC 361,370,371 were to apply in Asia, Africa or the high seas to punish slave traders. See Whitley Stokes: Statutes relating to India, pp 1015-8.
also enlarged the power of the Crown by the Order in Council to confer jurisdiction on colonial courts in respect of matters, civil or criminal, arising within the territory under the FJA. It also provided that where the foreign country, especially in Africa, was not subject to any government from whom the Queen might obtain jurisdiction, as recited in the Act of 1843, the Queen, by virtue of the Act, was to have jurisdiction over her subjects during their time of residence in, or while resorting to that country. The object of this enactment was to enable British subjects in "uncivilized territory" who were not under any protectorate or any civilized government, to be punished for offences committed there.125

Until 1878, the FJAs had been applied to "semi-civilized" Eastern states. However, the "scramble for Africa" posed newer difficulties, in that the African countries were considered to be "more barbarous countries".126 Therefore the Act of 1878 began the extension of powers in this direction. The wider powers granted to cope with British subjects were, however, not sufficient because:

\[\text{in as much as it was practically impossible to keep order among the white men without keeping order among the natives with whom the white men were in daily contact, the Act was in effect the machinery of a Protectorate.} \]

On the west African coast the consular officials not only had powers to end the impunity of offenders against British subjects unprotected from uncivilized persons, but also the

additional function "to avenge in a regular manner offences by uncivilized persons against British subjects". 128

The 1843 Act and all the amending Acts were consolidated by the FJA of 1890 (53&54 Vict.c.37) and the application of these acts was considered to be "potent and far reaching... bringing rule under the guise of protection". 129 Unlike the preamble to the 1843 Act, which stated: "Whereas doubts have arisen...", the 1890 Act stated more positively: "It is and shall be lawful...". 130

Under section 2 of the 1890 Act the Queen was to exercise jurisdiction over her subjects "resident in or resorting to countries without regular government with which territorial treaties might be entered into", or who might "suffer such jurisdiction". 131 The jurisdiction in this case only differed from the ordinary cases of treaty jurisdiction in being unlimited.

Under section 3, acts done in pursuance of the Queen's foreign jurisdiction were to be considered as valid, as if they had been done according to local law, then in force in the country. The pre-supposition behind this section seemed to be that the consular court in Zanzibar, though applying the legislation of English origin in the name of the Queen of England, was in fact sitting on behalf of the Sultan of Zanzibar and formed a part of his judicial system.

Section 4 provided that if in any civil or criminal proceedings in any court in the Queen's dominions, or in any

130, ibid., and see n.119.
131, Piggott: Extraterritoriality, p.57.
courts "held under the authority of Her Majesty", including the consular courts, a question about the existence or extent of any jurisdiction was to arise, the court was to refer the matter to the Secretary of State. The decision of the Secretary of State on the proceedings was to be considered final. Hence by taking a matter away from the court, and leaving the "decision" to the Secretary of State, extremely wide powers were vested in him, including matters "of conflict between the Orders in Council and the Treaty". While under section 3 of the 1843 Act the Secretary of State could only ascertain facts, in the 1890 Act he had powers over the existence of the jurisdiction in question, and as to the manner of its existence.

Section 12 of the FJA 1890 laid down that if any Order in Council was repugnant to any Act of Parliament extending to British subjects in any foreign country, or to any Order made under the authority of any such Act, it was to be read subject to that Act or Order, and was to be void to the extent of the repugnancy. The effect of section 12 was to establish the principle that the Order could not alter the Acts of Parliament extending to British subjects in oriental countries.

The FJA in section 15 stated that the future Orders in Council would "extend to persons enjoying Her Majesty's protection, that expression shall include all subjects of the several princes and states in India". This Act tried

132. ibid., p.38
133. ibid., pp 34-44, discussion on the limits of FJA,
to eliminate the problem of ambivalence of jurisdiction by laying it down that the true extent of any civil or criminal jurisdiction was to be determined by the Secretary of State whose decision was to be final. This imperative was modified in the FJA of 1890, by the words "on the application of the court". The courts were left with the discretion to decide which, if "any question" ought to have been addressed. The reason behind the authoritative power vested in the Secretary of State was to prevent the consular courts diverging from one another, and so giving rise to different practices in identical circumstances.

A long controversy on what the FJAs set out to accomplish has ensued. One recent writer, K. Roberts-Wray, concludes that in the FJA of 1890, "Section 1 did not create powers, it removed doubts regarding the operation of one branch of the already existing prerogative of the Crown". The other view is held by J.E.S. Fawcett who claims that the Acts conferred powers on the Crown which it did not have before. Two East African constitutional lawyers, Y.P. Ghai and McAuslan, also subscribe to the view that the Acts conferred powers on the Crown.

The final results of the rights and obligations created by the treaties between Britain and Zanzibar were the creation of the status of a protected state, over which the Crown exercised jurisdiction under the FJA of 1890. At the end of the nineteenth century, despite the geographical separateness of Britain and Zanzibar, in constitutional terms

137. Ghai & McAuslan: Public Law, p.15, n.36.
Zanzibar and other colonies lay "on the periphery of municipal law". 138

3(c) Orders in Council

The Orders in Council were part of the superstructure based on the foundations of the Foreign Jurisdiction Acts, and they have always needed modifications as to details. However, by the time the Order in Council of 1866 was issued, the exercise of both civil and criminal jurisdiction over British subjects were functions already incorporated within the British consul's office.

There was no law regulating the exercise of this jurisdiction until the Zanzibar Order in Council 1866, but that it was exercised is not to be doubted. 139

The Orders in Council were the warrants for the proceedings of the consuls and exhibited the rules to which they had to adhere. 140 They were the immediate source from which the consuls drew their powers. These were generally framed within the rights granted by the rulers to the Queen.

The Orders in Council passed through several stages of development, and the earlier models were enlarged and developed with subsequent experience. The consuls themselves were responsible for the implementation of the Orders in Council in Zanzibar, but subsequently officials with legal experience were appointed as judges to the consular courts.

138. J. E. S. Fawcett: "Treaty relations of British overseas territories" BTIL (1949) Vol.XXVI, pp 88-9. Geographical separateness had been confused with constitutional plurality and has wittily been called "the salt water fallacy". ibid., p.89.

139. Ghai & McAuslan: Public Law, p.127. See Appendix II.

140. E.W.A. Tusoas The British Consul's Manual (London: 1856), p.256. This manual of general consular duties includes specific references to various agreements and treaties which the consuls had to follow with regard to commerce and slave trade; K. Roberts-Wray: Colonial Law, pp 144-6.
The first Order in Council directing how consular jurisdiction was to be exercised in Zanzibar was promulgated in 1866 and supplemented in 1882 under the authority of the FJA of 1843. 141 The consul was empowered to issue regulations for observance of treaties for "the peace, order and good government". The Indian legislation, to be applied initially over the East African territory, was the Indian Penal Code in 1867. The British Consul promulgated the necessary regulation to allow the enforcement of the Indian Penal Code as the criminal law for those subject to his jurisdiction. 142 "Unfortunately he had no power to make such rules, but his exercise of criminal jurisdiction based on the Code, was not retroactively validated until 1882." 143

The Order in Council of 1877 laid down that British subjects committing offences in Muscat and Zanzibar against sections 367, 370 and 371 of the Indian Penal Code, which forbade the kidnapping or abduction for slave trading, or abetting the commission of any such offence, were to be dealt with as if such abetment or offence was committed in any place in India. 144

The Foreign Office on the basis of the Western Pacific Order in Council 1877 (Article 25) formulated an Order in Council "to empower the Consul-General to remove from Zanzibar for a limited period a British subject or a protected person". 145

141. Vaughan: Dual Jurisdiction, p.12.
144. Tarring: Consular Jurisdiction, p.17, FJA 39 & 40 Vict. c.76.
145. F.O.84,1983, No.54, enc., F.O. to Euan-Smith, 6-3-1889, R.S. Wright, Note, 22-2-1889.
The Legal Officer at the Foreign Office recognised that such powers might interfere with the freedom of the Sultan in choosing his advisers, thus raising serious diplomatic questions. Secondly, the Foreign Office was worried whether it could exercise the power of removal without paying lip service to the principle of justice. The Foreign Jurisdiction Act 1843, Section 1, did provide arbitrary powers in a territory acquired by cession or conquest, but the accused had to be heard. Using the FJAs from 1842 to 1878, it was decided to use the Order in Council 1884, and by calling it the "Principal Order" and amending it as the "Africa Order in Council 1889", it provided that if a British subject or protected person was about to commit an offence against the "Principal Order", or was conducting himself in a manner dangerous to peace and good order on the African mainland, he could be prohibited from the Zanzibar dominions for a term not exceeding 2 years. The sentence being that (1) he could be imprisoned for up to 2 years, (2) whether convicted or imprisoned he could be deported beyond limits specified in the order of prohibition, (3) once removed, he could be discharged on arrival at that place. Since some of the advisers of the Sultan were British subjects or protected persons, and could be deported even if they had not actually committed an offence, but were "about to commit an offence", these powers were rather grave. Therefore, the allegation that in a protectorate situation "a British protected person is protected

146. F.O. 84, 1623, FJA (1873) Chapter 85 Vict. 38 & 39, 13-8-1876, stated that where an Order in Council provided for the removal or deportation it shall be lawful.
against everyone except the British", had even greater validity in an extraterritorial situation.

The civil and criminal work of the consular court increased because of the greater commercial activity and the increase of European interest in Zanzibar and East Africa. The Order in Council of 1884 clarified the application of this jurisdiction, and it was important because amendments based on it were to extend the jurisdiction to the mainland.

All the consular courts in the Eastern countries had general civil and criminal jurisdiction over British subjects and protected persons, as did the Order in Council of 1884 (Article 9, 12) as applied to Zanzibar. Insults to established religions which provoked a breach of peace were also made punishable by Article 11.

Jurisdiction on bankruptcy, probate or administration with respect to property of British subjects was vested in the consular court by Articles 83, 23 and 26. The non-testamentary instruments affecting interests in immovable property were to be registered in Zanzibar according to Article 43.

The courts were authorised to compel attendance of British subjects to give evidence to the Sultan's court, or before courts or judicial officers of states in amity with Her Majesty, on pain of fine or imprisonment. This facilitated the presentation of evidence in a case involving a British plaintiff and a subject of the Sultan.

148. See n.62 and 63.
150. Ibid., p.100.
The 1884 Order in Council was also amended in 1888 and it extended the powers of the consul and provided that the consul promulgated legislation known as Queen's Regulations, which would be binding to all those subject to the Order. The 1884 Order in Council and the 1889 Africa Order in Council were subsequently extended not only to cover consular jurisdiction, but also provided the legal basis for wider powers assumed by governmental activity, imposed by the General Acts of the Berlin and Brussels Conferences.151

Since the Foreign Office had enacted the Africa Order in Council 1889, after the Imperial British East Africa Company had begun its work as a chartered company on the East Africa mainland, the British Government had incurred responsibilities in this territory. It was the FJAs and the Orders in Council "made thereunder, which provided the statutory base for the extent and exercise of jurisdiction by the Company, and afterwards, the Government in East Africa."152 While the Order in Council of 1884 applied to the coastal strip and Zanzibar island, the Africa Order in Council of 1889:

was a more ambitious piece of legislation; it created a comprehensive framework of administration, including the power to hold courts and promulgate regulations, to be exercised, usually by the consul over British subjects, British protected persons and certain classes of indigenous inhabitants and foreigners.153

This Act was subsequently amended to administer the East African mainland, excluding the coastal strip.

152. Ibid., p. 15.
153. Ibid., pp 16-17.
Glial and McAuslan have highlighted another problem in regard to the Zanzibar Order of 1884 and the Africa Order of 1889. In as far as the foreigners granted jurisdiction over themselves through their own governments, the British consular court could exercise generally civil jurisdiction over them. The main problem was the exercise of criminal jurisdiction over foreign criminals, who evaded such jurisdiction, in the protectorate or "sphere of influence". The British Government could not exercise this jurisdiction without the permission of foreign governments. The situation was rectified in the East Africa Order in Council 1897, when Britain, as a protecting power, refused to allow the renewal of extraterritorial rights, through treaties to foreign European powers.

Although the Protectorate status was declared in 1890:

from the point of view of international law, Britain had had obligations in respect of East Africa imposed upon her from years past, and its public notification may be seen as a belated conforming to Article 34 of the General Act of the Berlin Conference.

However, from the point of view of municipal law, the enlargement of this jurisdiction did not take place for some years. In 1891 the Sultan agreed to the exercise of jurisdiction authorised by Article 16 of the Treaty of 1886, by other than consular officials, thus preparing the way for the establishment, under the Order in Council of 1897, of Her Majesty's Court for Zanzibar. In 1892 the Sultan delegated his jurisdiction in

154. ibid., pp 30-33.
155. See n.60.
156. Ghai & McAuslan: Public Law, p.17.
all cases arising within the British Protectorate of Zanzibar, in which the plaintiff or complainant is subject to the jurisdiction of the protecting power, and the defendant or accused is a subject of His Highness the Sultan or of other non-Christian power not represented by a consul. 157

This jurisdiction remained under the Sultan of Zanzibar but was exercised by the British officers of a court which was styled "His Highness's Court of Delegated Jurisdiction". In 1897 an Order in Council authorised the formation of Her Britannic Majesty's Court for Zanzibar, and Her Majesty's jurisdiction in Zanzibar ceased to be consular. This Order affected the extent of British jurisdiction in various ways and also clearly foreshadowed the surrender to Great Britain by other Treaty Powers of their rights of jurisdiction in Zanzibar. 158 Article 5 provided inter alia that

This Order extends to British subjects and foreigners with respect to whom, the Government whose subjects they are, has by treaty or otherwise, consented to the exercise of power and authority by Her Majesty, and the expression "person subject to this Order" shall be construed accordingly. 159

This Order, which dealt mainly with judicial matters, had restricted application to the local inhabitants, although the full jurisdiction was conferred by the East Africa Order in Council of 1902. 160

Article 2 of the 1897 Order, defined British subjects to include a British protected person (a) who being a native of any place beyond the dominions of the Sultan of Zanzibar,

which is under the Protectorate of Her Majesty, is temporarily within the limit of this Order; or (b) who by virtue of the "Foreign Jurisdiction Act of 1890", or otherwise enjoyed Her Majesty's protection in Zanzibar. These were mostly subjects of Indian princes and states.

Article 5(3) declared that the Order was to extend to Zanzibari subjects, and to foreigners not otherwise subject to the Order - this Article referred to Articles 40 and 41 of the Order. Hence on the coastal strip the Order was not extended to foreigners who enjoyed extraterritorial rights through treaty, unless the foreign powers consented to the exercise of this jurisdiction.

Article 40 provided for the exercise of jurisdiction by the British court in cases between persons subject to the Order and the Sultan of Zanzibar's subjects, in which the Zanzibari subjects were plaintiffs or complainants. Until this time the jurisdiction in cases where the Zanzibari subject was a defendant was still vested in the Sultan.

Under Article 41, the Order provided that those foreigners whose governments should transfer their jurisdiction to Britain in Zanzibar, should become subject to the Order in Council, and therefore subject to the jurisdiction of the British court; but that foreigners who continued to enjoy extraterritorial privileges, would still have to file the consent of their governments before submitting to the jurisdiction of the British court. 161

In Zanzibar the Order in Council further provided that the Consul General could make regulations which had to be

exhibited in the office of the consul for the district for one month, and could be confirmed or disapproved by the Secretary of State. The purpose of such regulations was the preservation of peace, order and good government of British subjects, and the observance of treaties, local laws and customs. 162

The delegated jurisdiction was understood not only to extent law from Britain, but also

in the interests, be it said, of the Eastern state no less than that of Great Britain, that permission is given to enact laws at the mere will of the British Government, which shall be intended to run, and still run, within that territory. 163

It is interesting to note that this distinct surrender of authority was supposed to be a definite advantage for the Eastern state.

In Zanzibar the dual jurisdiction by the British over their own subjects, and by the Sultan over his own subjects during the protectorate period was preserved through a Zanzibar Courts Decree 1923 cap.7. The role of the Mohammedan courts of the Sultan was to exercise jurisdiction over indigenous Muslims or Arabs, but jurisdiction over British Indian Muslims was exercised by the British courts. 164

All through the nineteenth century when the basis of jurisdiction was being formulated, no British Indian Muslims, whether subjects of the Crown or protected by it, were allowed to claim jurisdiction under the Sultan’s Mohammedan Law.

3(d) **Indian Legal Enactments**

(i) Extension of British Control and the Decline of the East India Company.

Sir George Cornwallis Lewis alleged that "the native Governments had been destroyed" while the East India Company was acquiring the Indian Empire. He also accused Hastings of "rapacity" and Clive of enriching himself in defiance of his employers: "Lord Clive returned enriched by a noble fortune, not acquired; I regret to say, by noble means." Partly to eliminate this misgovernment, the King's Government had created in 1784 a special department called the Board of Control. Its function was to attend to Indian affairs, and to control the Court of Directors of the East India Company. Lord Cornwallis was appointed the first Governor-General (1786-1793), and simultaneously held the office of Commander-in-Chief. He systematically excluded Indians from the administrative services in India. Lord Wellesley was appointed the Governor of India in 1798 by the Executive Government, and he was "under restraint of a clause in an Act of Parliament, passed expressly to prevent territorial acquisitions in India." He defied this restraint and consolidated British power in India by

165. G.C. Lewis: *Speech on the introduction of the Bill for the Better Government of India* (London; 1858), p.4. This speech was delivered in the House of Commons on 12-2-1858. It also accused the employees of the East India Company of being an "insubordinate and mutinous race", p.5.

166. Further material on this subject may be consulted at the Northamptonshire Record Office, Papers of Edmund Burke (Pitswilliam Manuscripts) No.30; *Impeachment of Warren Hastings and Affairs of the East India Company; on the Government and the E.I.C.(1766); Hastings' reception of bribes and oppression of the Rajah of Tanjore and the execution of Mustafa Khan.*


acquiring Surat, Madras, Karnatic and Tipu Tib's kingdom in Mysore.

Henceforward the government of India was of a dual character, resting partly with the Crown, through the Board of Control, and partly with the Court of Directors of the East India Company. In 1785 changes made in the Government of Bombay had ramifications in the Persian Gulf. The Bombay Government established a separate Secret and Political Department, distinct from the Public Department. Hon. R.H. Bodda, the Resident and Governor, who had visited Muscat in 1769, appended his signature constituting this new Department.

Following the changes in the Government there were changes in the court system. By the Act of 1786 (26 Geo.iii. c.57) the criminal jurisdiction of the Supreme Court of Calcutta was extended to any offences in any part of Asia, Africa or America, especially concerning the Company's trade. In 1797 the number of judges at the Calcutta Supreme Court was reduced and Mayor's Courts at Madras and Bombay were substituted for the Recorder's Courts. In 1801 a Supreme Court was established at Madras and in 1823 a Supreme Court for the Presidency was established at Bombay.

In matters of trade, a resolution of the Bombay Government in 1811 suggested that the East India Company's trade in the Persian Gulf be opened to other traders. In 1813 the


170. Lorimer: Ibid., p.158.


172. Ibid.
trade monopoly of the East India Company in their corporate
capacity was abolished, and Europeans were allowed to settle
in India under licence, which benefited English not Indian
industry. The licence system was abolished under the
Charter Act of 1833, and the right to trade and settle was
made freely available to everyone. During the same year the
Company was prohibited from trading and became solely an
administrative agent for the Crown, responsible for the
internal government of India.173

During this period of the East India Company's rule there
were two sets of courts. One set - the courts of the
Company - were held partly under charter, partly under their
powers as collectors of revenues and as the territorial
sovereigns (these powers being derived from native rulers).
The other set comprised courts held under Charters issued
by the Crown in pursuance of the Imperial Act of 1773 (13 Geo.
iii. c.63). Broadly speaking, the Company courts exercised
civil and criminal jurisdiction over Indians, and the Crown
courts over Europeans.174 This strange double system of
courts was discarded in 1858.175 The double court system in
civil justice resulted in discrimination in favour of Euro-
peans till 1850, and the vestiges of discrimination in criminal

of Criminal Procedure made distinctions between proceedings
against European British subjects, who until 1872 could
only be prosecuted in the High Courts except for trivial
offences. The Code of 1872 abridged these privileges.
175. H. Maine: India, p. 483; M. H. Lindley: The Acquisition of
Government of Backward territory in International Law
(London, 1926), p. 545. On the subject of E.I.C. and
extraterritoriality, see G. W. Keeton: Extraterritoriality
in China, pp 78-86.
law and justice continued into the twentieth century. It is important to note that some of the discriminatory practices which the East India Company had exercised were later directly inherited by the British Government. In the case of the East India Company and the Levant Company, the chartered companies, under the factory system, had acquired extraterritorial privileges which were then passed on to Her Majesty's Government. In the case of Zanzibar initially the consular system had acquired the extraterritorial privileges which were then extended to the mainland by the Imperial British East Africa Company. The IBEAC, however, was unfortunately not successful, and it was followed in quick succession by direct British control. The IBEAC was not only an Agent of a foreign power — Zanzibar — but primarily derived its power from the British Government. The IBEAC "henceforth, was not merely an agent of the Sultan of Zanzibar, but an arm of British imperial policy".

After the suppression of the Indian rebellion in 1858, which acted as a death blow to "Double Government", Parliament abolished the Company and vested in the British Crown the sovereignty and direct government of British India, (21 & 22 Vict.c.106) which was henceforth governed in the name of the Queen. It is therefore clear that the

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treaties concluded by the East India Company were binding on Her Majesty's Government. In effect, the East India Company had exploited Mugal India and the protected states which, in constitutional terms, lived on sufferance, and brought them under its control. The Indians had rebelled against this "haphazard plunder" and a newer and more systematic exploitation was undertaken directly by Britain. ¹³¹

"British India" included only places in the Queen's dominions, while "India" included, besides "British India", the territories of any native prince, or chief, under the suzerainty of Her Majesty, exercised through the Governor-General in Council in India. ¹³² Therefore "British India", because of these dependencies, would itself have been an Empire, if it had not been a dependency of the British Crown. This imperial position was recognised in the title of Empress of India (Kaiser-i-Hind), which was assumed by Queen Victoria in 1876. ¹³³ The change in the Royal title meant that the Indian princes became subordinate to the paramount power of Britain. Principles of international law ceased to apply to the protected Indian states and the Government of India had no scruples about interfering in the internal affairs of the protected Indian states.

¹³¹, Ramkrishna Mukherjee: The Rise and Fall of the East India Company (Berlin, 1955), pp 162-9, 245-8, especially quotation by Palme Dutt, p.245. Marx had written "under the present system the native states succumb under the double incumbrance of their native administration and the tributes and inordinate military establishments imposed upon them by the Company", p.165.


The matter of native states in India had great significance to the subjects of those states resident in Zanzibar, especially the Kutchias. The Rao of Kutch was induced to issue two declarations in 1869 and 1872, which forbade his subjects in Zanzibar from indulging in the slave trade, and placed them under British protection. These declarations illustrated the principle that the native states of India, by having "ceded without limitation or reserve, their rights of negotiation" to the British Government, also surrendered their right to protect and govern their subjects resident abroad. These princes also accepted the obligation to assist the imperial policy and gave practical effect to those engagements which the British Government entered into with foreign powers. Similarly in 1873, the Sultan of Muscat agreed, at British insistence, that the term "British subjects" in all treaties between the British Government and Muscat, was to include subjects of native states in India.

The legislative power of the Governor-General in Council depended on Imperial Acts and the India Council's Act of 1869 which had been extended, beyond the territorial limits of British India, to all British subjects and the servants of the Government of British India in any part of India (in the whole sense of the term) and to native Indian subjects (i.e. natives of British India) in any part of the world. The powers to legislate for native Indian subjects, when outside India, was a larger extraterritorial power than was possessed

185. ibid., pp 252-3.
186. ibid., pp 253-6.
by the legislature of any other British possession.

Till 1872 the Government of Bombay had direct relations with Zanzibar, and exercised through its Agent extraterritorial jurisdiction over British subjects and protected persons. The Bombay Presidency had a Council of two officials appointed by the Home Government from among the Indian members. The Governor and Council held executive and legislative meetings, but at the latter the Council was enlarged by the addition of twenty nominees of the Governor, half of whom were not to have been office holders of the Crown in India. The local legislature could not alter an Imperial Act (without the previous consent of the Governor-General) without an Act of the Governor-General in Council. While such local government could not normally have relations with foreign states, the Bombay Government did have such relations with Zanzibar. The Governor-General in India, and prior to him the East India Company, had powers of appointing a diplomatic Agent. Since Indian interests ranged over a vast area, from the Somali coast to the River Mekong, these relations were vested in one supreme authority in India, which held all the strings for the execution of foreign policy. The need for such officials was especially apparent in areas like the Somali coast, where Parsis lived and traded, thus creating "an advance outpost of the Empire".

After the assumption of power by the Crown in 1858


189. Ibid., pp 100-101.

over the whole government of British India, charters issued by the Queen under the authority of an Imperial Act, established a High Court in Bombay for the Presidency. The judges of the High Court were appointed by, and held office at, the pleasure of the Home Government, and the jurisdiction of the High Court was fixed by Charter, with an appeal from them to the Queen in Council. They held civil and criminal jurisdiction within Bombay, and extraterritorial jurisdiction over British subjects in Zanzibar. The Zanzibar Order in Council 1866 laid down that certain criminal cases could be sent to the High Court of Judicature at Bombay, to "confirm, vary or remit" the sentence and punishment that had been imposed. In civil cases the appeal also lay to Bombay if the value of the subject matter exceeded 200 dollars.

3(d)(ii) The Indian Codes

Bombay was the first province in India in which a Penal Code was enacted. This simple and short code was written more in the style of a treatise than a law, and remained in force for thirty years from its enactment in 1827. This code applied to the Company's courts until it was superseded by the Indian Penal Code. Eminent jurists, such as Lord Macauley and Sir J.F. Stephen, framed the new Indian codes in the middle of the nineteenth century by stripping native English law of its peculiarities. They were presented "in a rationalised, concise and simplified form" so as to be

191. The four High Courts were at Bombay, Calcutta, Madras and Allahabad.
194. Morris and Read: Indirect Rule, p. 110.
applicable to Indian conditions. Once enacted these codes were not only applied to India but were widely applied in the African and Asian dependencies of Britain. They were first exported to Zanzibar by consular officials to be applied on an extraterritorial basis to British subjects and British protected persons. It was the India Code of Civil Procedure (1859) which was widely used in Zanzibar. This Code was later amended (Act XIV of 1882) and was part of the Acts of the Governor-General of India and amended the Acts mentioned elsewhere. The Governor-General in Council of India and the Bombay Governor in Council could amend any existing or future enactments at the terms to be fixed by the Secretary of State. The Secretary of State had the power to modify, amend or substitute any of the enactments in Appendix III.

In matters of crime, the Indian Penal Code (1860) and the Code of Criminal Procedure (1861) were mainly used in Zanzibar, which was considered in these matters to be a district of the Bombay Presidency. The judicial Assistant of the Consul-General (also concurrently Her Majesty's Consular Officer in Zanzibar) was to be considered the magistrate of the district. The Consul General was considered to be the Sessions judge of the High Court at Bombay. The Indian Code of Criminal Procedure was applied in Zanzibar, because it accepted the principle of personal and not

195. See Appendix III.
196. Tarring: Consular Jurisdiction, p. 103; Renton and Phillimore: Colonial Courts, p. 154, 185.
197. For a description of the development of Indian Criminal Law, see J.F. Stephen: Criminal Law, Chapter XXXIII, pp 286–346.
A similar consular court, but in closer proximity to Northern India, was based at Kashgar. The Indian Code of Criminal Procedure applied at Kashgar, as if it were a district of the Punjab. The consul had the powers of a sessions judge and an appeal lay in the High Court of Punjab. The promulgation of four Codes, the Penal Code and the Codes of Criminal and Civil Procedure were supposed to have unified India. Despite the fact that they were referred to as the "India Codes" they were a series of codifications on "what was basically the English law on a wide range of subjects, including criminal law, criminal and civil procedure, evidence, contract and succession". These codified laws were imposed on India while the bulk of Englishmen were not subject to them. These had, "of course, a moral basis, from which a new set of moral ideas were diffused among the population of the Indian countries". Hence the Indian Codes were basically imperial laws, which recognised Indian conditions, but contained and imposed the moral underpinnings of the British legal system.

The most important early enactments affecting those people in Zanzibar who were subject to the Orders in Council were the Indian statutes. These were applied from time to time by Orders in Council or by the Order of the Secretary of State. The first Indian statute to be applied was the

Indian Penal Code, and the last one was the Inventions and Design Act applied by the Order of the Secretary of State in 1901.

The introduction of the Anglo-Indian legal Codes replaced local and personal laws. The dominant criminal legal system replaced in northern and southern India was derived from the Mugal conquerors. The most authoritative written guide of this Indian Muslim law was the Hadda. 203

Most of the criminal and civil procedures replacing the Sunni criminal law were basically derived from English principles. However, within the limited domain of family laws, the laws of succession and inheritance, the Indians retained their personal laws. Principles regarding Indian marriage, adoption, joint family laws, partition and succession were allowed to exist. Amongst the Indian Muslims their laws of marriage, testamentary and intestate succession and wakf (quasi-religious trust) were allowed to remain. 204

Although the Indian Codes were simplified enough for any magistrate to apply them easily, the consular officials had great difficulty in applying these codes. One reason was that the consuls uncovered anomalies when applying them in extraterritorial terms. These were solved when legally qualified magistrates became available. Another reason was that some of the consuls lacked the powers to implement this jurisdiction. The consul in Zanzibar first implemented the

203. J.F. Stephen: Criminal Law, Vol.III, p.292. There were three penalties in Sunni Muslim law of crime: (1) Kissas or retaliation, (2) Hmg, specific penalties, (3) Tazeer, or discretionary punishment.

Indian Penal Code under the Order in Council of 1866.

However, he did not have the authority to issue this regulation but consular acts were made retroactively legal by the Order in Council of 1882.\textsuperscript{205}

The Zanzibar Order in Council of 1884 replaced the 1866 Order in Council and further entrenched the appeal powers of the Bombay High Court.

The odd break from the use of the Indian Codes was the Africa Order in Council of 1889. The Order applied to the East African mainland, but not to Zanzibar. It is possible that since the Foreign Office enacted this Order in Council, which was to be implemented by officials of the IBEAC, it stressed the application of English laws on the East African mainland. The appeal still lay in an Indian court, but it did reflect a changed situation. Firstly, since the Order did not apply to Zanzibar but only to the mainland dominions, it further separated the IBEAC administered mainland from Zanzibar. Secondly, the odd break from the use of Indian legislation on the mainland reflected the metropolitan orientation of IBEAC's interests and the lack of Indian interest and penetration in this region.

The Order in Council of 1892 (Africa) reversed this odd break and "empowered the Secretary of State to declare that any Indian enactment should have effect within a jurisdiction established under the Order of 1889."\textsuperscript{206}

\textsuperscript{205} Morris and Read: \textit{Indirect Rule}, p.113. Read points out that the confirmation of the 1867 regulation took place in 1882, but does not mention that 1867 regulation was illegally used; see Ghai and McAuslan: \textit{Public Law}, p.127.

\textsuperscript{206} Morris and Read: \textit{Indirect Rule}, p.113.
After the declaration of the East Africa Protectorate in 1895, the East Africa Order in Council of 1897 replaced the 1892 Africa Order in Council. This Order allowed for the application of certain enactments (Appendix III) from the Governor-General of India in Council and the Governor of Bombay in Council. The Order further stated that these enactments were to use the procedure and practice observed by the Presidency of Bombay. However, in as much as the above enactments, procedures and practices were inapplicable, the common and statute law of England was to apply.\(^{207}\)

The application of the FJA of 1843 and the Consolidation Act of 1890 generally used English law in non-Christian states. But in Zanzibar, because of the large settlement of Indians "the law applied was the law of British India".\(^{208}\)

However, it required legislation in addition to treaties before a consular court could exercise the jurisdiction granted to it by treaty, and the legislation was not forthcoming until 1848. From then on however a succession of statutes dealing with the East African slave trade was passed, culminating in the Colonial Courts of Admiralty Act and the introduction of Indian courts to the East African scene.\(^{209}\)

These Indian provisions are important for the background they provided for the understanding of the Indian administrative and legislative precedents to the East African Protectorate.\(^{210}\)

By the time the administration of justice in the protectorate came to be considered, there was nearly fifty years of admiralty, and thirty years of civil and criminal jurisdiction, based on Indian law, sometimes exercised by Indian courts in relation to East Africa.\(^{211}\)


\(^{209}\) Ghai and McAuslan: Public Law, p.127.

\(^{210}\) Tarring: Consular Jurisdiction, p.103, Art.8.

\(^{211}\) Ghai and McAuslan: Public Law, p.128.
The disappearance of the consular courts did not lead to a disappearance of appeals to Bombay. Uganda broke away from this practice in 1904 and Zanzibar in 1914. The Court of Appeal for Eastern Africa, established in 1902, began to take over these appeals.

Thirty Indian Acts were in force in East Africa by 1908, using the Order in Council of 1892. Indian enactments were brought into force in 1898 and 1899, especially the Indian Contract Act. By 1900 the Foreign Office were requesting that the East African Orders in Council of 1897 and 1899 ought to apply as far as Uganda. While these Acts were to apply to Indians who were coolies and traders, it was clear that the situation had been transformed. The Indians were no longer subject to extraterritorial jurisdiction in Zanzibar (after 1890), or in East Africa (after 1895), and they were totally subject to the colonial laws and controls.

During this period of colonial control the metropolitan control, through the Colonial Office, was paramount. The local European community had become dominant in political and economic terms. After 1930 Indian laws were gradually replaced by pure English laws and the antipathy to the Indian laws increased.

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213. Ibid., pp 119-30.
CHAPTER V

CRIMINAL JURISDICTION

The legal enactments described in the previous chapter were primarily used in Zanzibar to abolish the slave trade. The application of this legislation indirectly affected the commercial life of British subjects by curtailing their trade. The British consuls, therefore, tried to extend the application of these legal measures to British protected persons from the native states of India resident in Zanzibar. This chapter describes in chronological order how the extension of dual jurisdiction came about. Under the Sultans Said and Majid many of the relevant legal enactments were used in an unsystematic and at times improper fashion, furthering both the extension of jurisdiction and British economic and political interests; this is demonstrated in Section 1(a).

At the end of this period the existing legislation was reviewed, as a result of consular prompting, and new legislation introduced, notably the Order in Council of 1866, described in Section 1(b). Consul Kirk used the new powers afforded him to their full extent, helping to consolidate his political influence over Sultan Barghash; the last part of Section 1 deals with this period.

Prior to the application of these measures the Indians had been subject to the political and legal jurisdiction of the Sultan of Zanzibar. Therefore a measure of accommodation had existed between the Sultan's government and the Indian residents. With the establishment of extraterritorial
by the consular courts, the process was reversed. Special problems were created by extending this jurisdiction to Kutchis from the protected states of India. The consular control was applicable not only in criminal matters, but was also extended to include civil matters, which were far more numerous than criminal prosecutions. These civil suits increased the scope of the work of the consulate and necessitated additional staff, including a judge, and an increased coordination of the activities of the Bombay Government, the India Government and the Foreign Office, which was difficult to achieve. This process is covered in Section 2, while the final section deals with the legal consolidation of the early 1880s. In the last two decades of the 19th century the legal enactments began to be applied systematically and the Foreign Office consolidated most of the legal measures in the 1880s, while the Bombay High Court remained as the Court of Appeal.

1) SLAVE TRADE JURISDICTION AND BRITISH PROTECTED PERSONS

1(a) Early Jurisdiction, 1843-1861

The British Consulate enforced the slave trade legislation upon British Indian subjects settled in Zanzibar from those parts of India which were already subdued by the East India Company. Hence the Khojas who came from Kutch were not subject to the civil or criminal jurisdiction of the consular court, because the State of Kutch in India was a protected state and not directly a part of India subdued by the British. Therefore there were elements of both Hindus
and Muslims amongst the British protected persons. Even later in the 19th century consuls used incorrect terms for the various Indian ethnic groups. For instance, Vice-Consul Elton referred to an Indian Muslim as "Musulman Hindu with henna dyed beard".

The Political Agent of the Bombay Government was simultaneously appointed a consul of the Foreign Office and was able to exercise extraterritorial jurisdiction over the activities of British subjects. He was also increasingly able to exercise jurisdiction over British protected persons because of the measure of political influence of the Bombay Government in the dominions of the Sultan of Zanzibar.

Slave trade measures were, therefore, modulated by the consideration of the Bombay Government's strategic interest in the Omani Empire. F.H. Maddock, Secretary of the Government of India, stressed that

the delay of a few years in the final extinction of this traffic is far less evil than the annihilation of the political influence which the British Government may fairly hope to effect.

Lord Palmerston, therefore, weakened the anti-slavery measures and allowed the Sultan to hold on to his monopolies at Mirima.

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1. While the indiscriminate use of the term 'banyan' does give the impression that only non-Muslims were subject to the jurisdiction of the Sultan's court, this was in fact not the case. C.S. Nicholls, Swahili Coast, p. 275, maintains otherwise.


3. P.O. 15, No. 262, Enc. 15; sub-enc. 1; F.H. Maddock to Chief Secretary at Bombay, 28-2-1843, p. 403. Bombay Government had taken a similar stand during the 1824-26 occupation of Mombasa by Captain Owen when it opted for continuance of relations with Sultan Said than the ending of the slave trade. For a more blatant defence of slavery by officials of the East India Company, see D.R. Banji: Slavery in British India (Bombay: 1933), p. 12.

These considerations allowed the Sultan to be cultivated as a political ally. It is, therefore, important to remember that slave trade abolition amongst the British subjects and British protected persons was not carried out without any cognisance of the political interests of the Bombay and India Governments. The burden of the abolition campaign thus fell upon the Indians, who were either subject to British jurisdiction or were increasingly brought under it. Another writer has alleged that the Indian interest in the slave trade was exaggerated to bring them effectively under British jurisdiction, after British attempts to impose commercial jurisdiction over them had failed. In fact the earlier consuls generally took a non-interventionist attitude to matters of commerce, which were by convention left to private enterprise. Therefore, allowing for the protection of trade under the Treaty of 1839, control over commercial matters resulted from a spillover effect of British criminal jurisdiction.

The abolition attempts amongst British subjects created problems for the consuls because it restricted the commercial operations of the British subjects. The main beneficiaries of the slave trade were British protected persons (mainly Kutchis) who remained unaffected. Since it was Consul Hamerton's task to protect the commercial interests of the British subjects, he found himself in an anomalous position because the slave trade regulations actually operated to the detriment of British subjects. The British subjects

5. Sheriff: Commercial Empire, p.421.
could not receive slaves legally in payment of debts because they would be liable to a penalty.  

In 1850, when Commodore Wyvill captured three Kutchis engaged in the slave trade, Captain Hamerton was requested to inflict the fullest penalties according to British law so that the punishment would convince the Indian traders that the British Government were serious in their intention to end the slave trade.  

The East India Company, without taking any account of the fact that one of the accused (Ebji Sewji) was a Kutchi, and that Commodore Wyvill's action was illegal, applauded the fact that Ebji Sewji's attempts to send slaves southwards had been defeated.

These measures by Wyvill, and Captain Hamerton's assertions that the Kutchis of all the Indian groups were involved in the slave trade, marked the beginning of the campaign to bring about Britain's ultimate control over the Indians, and especially to bring their commercial operations within the orbit of British control.

The Rao of Kutch in 1836 had already enacted measures to stop the slave trade in his own country and therefore informed the Sultan that it was up to him to stop the Kutchis in Zanzibar from dealing in slaves.

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7. F.O. 34, 815; F.O. to Hamerton, 19-3-1847. Statutes 6 & 7 Vict. cap. 98; Geo. 4 cap. 113 were applicable. Sheriff: Commercial Empire, pp 421-2.

8. Ibid.; Commodore Wyvill to Hamerton, 8-6-1850. Hamerton concurred with the Commodore; Hamerton to Wyvill 14-6-1850. The F.O. sent instructions that one of the accused who was instrumental in the conviction of the other two, be pardoned. F.O. 34, 857; F.O. to Hamerton (n.d.); Sheriff: Commercial Empire, pp 422-5.

The Rao's statement did not have any legal effect with regard to Kutchis living in Zanzibar, since it could not be applied. The Rao, however, promised that "he would not fail to manifest his displeasure" against the Kutchis returning to Kutch after being "denounced" as dealing in slaves.\(^\text{10}\)

Captain Hamerton was instrumental in having the Sultan sign an agreement in 1845, which restricted the export of slaves from the Sultan's African dominions to his dominions in Asia.\(^\text{11}\) While this agreement was responsible for curtailting the slave trade with Muscat, it did not put an effective end to this trade. However, Captain Hamerton's death in office in 1856, and the gap of a few years before the appointment of Col. Rigby as the new Consul, helped to break the continuity in policies of slave trade abolition.

Col. Rigby was Consul in Zanzibar\(^\text{12}\) from 1858-61 and made a major effort to end the slave trade amongst the Indians. However, the Foreign Office considered his hostility to the slave trade as one which was "more of a personal than an official nature".\(^\text{13}\) Rigby used the Act of 1824 and the Act of 1843\(^\text{14}\) in convicting a British subject of European

\(^{10}\) NAI, Foreign Dept: Court of E.I.C. to Govn.-in-Coun., Bombay, No. 30, 19-12-1855, D.R. Banji: Slavery, pp 303-4. Hamerton's accusations against banyans from Kutch and Kathiawar, that they were engaged in slave trade more than the Indian Muslims, were made in 1851.

\(^{11}\) F.O. 93, 65/2 of 2-10-1845. See also F.O. 54, 15.

\(^{12}\) F.O. 54, 17, I.O. to F.O., 19-11-1859, and "the agent for the Honourable Company" simultaneously.

\(^{13}\) F.O. 84, 1179, F.O. to Pelly (draft), 29-4-1862.

\(^{14}\) F. Piggot: Nationality (Part II) (London: 1907), pp 372-3, 107-8; Whitley Stokes: Statutes Relating to India, Vol. I, see n. 7. Act 5 Geo. 4 c. 113 & VI & VII Vict. 98. F.O. 84, 1279, No. 126 (1866), opinion of R.V. Hearn, Solicitor to Bombay Government. This made British subjects living anywhere since 1-11-1843 subject to the offence of felony if they were involved in slavery.
descent for buying a slave boy, and a little later imprisoned a British Indian for purchasing a slave girl. In his attempts to stop the slave trade, Rigby made no distinction between Indians who were British subjects and natives of Kutch who were British protected persons. His only justification for treating both the groups similarly was that those men who in their own country would not be allowed to hold slaves, for they would be prohibited by the British as a superior power, it is not thought that subjects of those very states going to Zanzibar should be permitted to hold slaves.¹⁵

The problem of the legality of his actions did not deter Rigby. In 1860 he imprisoned and deported one Mohammed Wazir, a wealthy man who claimed that he had been born in Zanzibar, as had been his father, while his grandfather had come from Johanna. Rigby also deported Kana Manji, a wealthy Indian plantation owner.¹⁶ No Order in Council was in operation to sanction these punishments. Firstly, since one of the accused was not a British subject, his imprisonment and deportation were illegal. Secondly, even if the Order in Council had been operative the proceedings would have been illegal because there is no record that a Kadi of the Sultan had any share in the actual decision. Furthermore, the warrant for deportation did not "extend however to deportation either for trial or for punishment".¹⁷

The second stage of Rigby's anti-slavery campaign in 1859 was preceded by an announcement that:

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the purchase or sale of slaves by British subjects in any part of the world had been forbidden by British law and that all British subjects owning slaves must bring them to the British Consulate within one month for the purpose of emancipation on pain of being fined up to £100 for each slave not delivered.\footnote{18}

The Indian community was in turmoil and grave tensions existed between the British Consulate and the British Indians. At the end of the warning period not a single slave was emancipated. Rigby then summoned the wealthiest Indian and clapped him in irons and imprisoned him at the fort. The Indians went on hartal (strike) and the German and American firms were informed that all foreign trade would be stopped. Despite the imprisonment of Indians and the hartal by their numbers, they were unable to effect any changes in the Consular policies. Rigby kept up the pressure and in 1860 extended the process to Pemba. By the time Rigby left in 1861, he claimed that 6,000 slaves had been freed and, according to him, British Indians had no slaves.\footnote{19} An officer on the "Gorgon" claimed that Rigby had released 1,000 slaves and that because of this there were threats against his life, but because Rigby was a gallant man he walked with "a clear conscience and a trusty revolver".\footnote{20}

On account of the acute shortage of labour in Zanzibar, the released slaves, protected with their certificates of freedom issued by the Kadi, went to work with their old masters as wage earners. Hence, Rigby's slave trade

\footnote{18} R. Coupland: The Exploitation, p.172; Sheriff: Commercial Empire, p.427, mentions a fine of $10.

\footnote{19} P.O. 84.1120, Appendix to Muscat-Zanzibar Commission (No.14, 1860), Kirk wrote that because of the release of so many slaves the faith of Indians and Arabs in slavery was shaken.

measures merely transformed the slave labour into a pool of cheap labour to be used by the previous masters (though the Sultan complained that abolition also had adverse effects on trade and business). After Rigby left Zanzibar, he gave evidence to the Slave Trade Committee in 1871, in which he told them: "I have not had the slightest trouble in providing for them (slaves) and they have not cost the Government a shilling." Rigby meant that the Indians had not received any compensation. Coupland found this boast of Rigby’s a little heartless, especially since the British subjects in the West Indies were compensated for the slaves released under the Act of 1833, while the British Indian subjects received no such compensation. It is important to note that the British Indian subjects and protected persons were, by and large, ignorant of their legal rights and obligations generally, and especially in relation to abolition in Zanzibar. The fact that most of them would not challenge authority, since they were socially conservative and were illiterate in English, meant that the consuls could administer the laws without the persons subject to those laws comprehending them. The Indians neither pressed for any compensation, nor was any compensation ever offered to them. It is interesting to note that even the most ardent supporters of the anti-slavery campaign never considered any reparations or any compensation to the slaves, who were by far the worst sufferers from the slave

21. F.O. 84, 1146, Sultan Majid to Rigby, 26-7-1861. Majid was worried that further stoppage would be more disastrous to the Indians and to his economy. Rigby, however, denied this, Rigby to F.O., 5-10-1861.

trade. The released slaves did not "cost the government a single shilling" because Rigby expended no finances in training them for their new life and jobs as free men.23

In terms of legality Rigby can be faulted on two counts. Firstly, he held (again) no authority under an Order in Council for his proceedings. Had there been an Order in Council issued under the Foreign Jurisdiction Act of 1843, his actions would have been legitimised. Secondly, while the British Indian subjects were subject to British Consular jurisdiction, British protected persons were not. It remained to his successors to dispute and rectify the legality of his proceedings.

The economic implications of Col. Rigby's measures were that prices of fixed assets (houses, estates) dropped, since people subject to British jurisdiction could not obtain slave labour. The measure of uncertainty which Col. Rigby felt because he had to carry a "trusty revolver" was also felt by European and Indian merchants. They became extremely anxious and were preparing to leave "in fear of their lives and property". 24 It was asserted that because the Indians held mortgages on Arab estates25 Rigby had "struck at the very roots of slavery". While it can be legitimately claimed that Col. Rigby had struck at the roots of slavery amongst the Indians, and thus rocked their position in the economy, it cannot be claimed that he had struck at the roots of slavery itself. The role of

the Indians is more complex than has hitherto been pointed out. Consul Rigby had used Indians engaged in coastal commerce as informers on the movement of slave ships, and during the visit of the "Gorgon", under the command of Captain Wilson, two of Col. Rigby's Indian boatmen and his boat were used to hunt slaving vessels. The dual role of Indians, as helpers in the campaign to abolish the slave trade and as financiers of the slave trade, placed them in a difficult position with the regime of the Sultan of Zanzibar and the British Consul. However, since no attempt was made directly to control slave trading by the Arab caravans, the slave trade persisted. The slave trade was an integral part of the fabric of the Zanzibar economic empire and rooted in the Islamic pattern of life. Hence, while the British Indian subjects were not allowed to trade in slaves, thus affecting their hold on the estates, the slave trade generally continued because the French, Portuguese, Americans and Spanish continued to buy slaves. The real effect of the exercise of this extraterritorial jurisdiction was to divide the economy into "legitimate"

26. F.O. 84,1146, Rigby to Anderson, Chief Secretary Bombay Govt., 14-5-1861.


28. For instance, in 1873-4 Captain Elton in his diaries observed that slave trade caravans were allowed to proceed without hindrance. See E.A. Loftus: Elton and East Africa Coast Slave Trade (London: 1952), pp 5-30.


commerce, defined by the British Consulate, and the (illegal) slave-based segments of the economy. The Indian business community could only practise in the "legitimate" sector of the economy and this divided them from the Arab and the Zanzibari business communities. The result of Col. Rigby's policies was that the smaller Indian traders had to leave Zanzibar, while the wealthier traders adjusted their losses by channelling their capital into the sector of "legitimate" commerce. Hence, while the Arabs were left to practise the old slave-based trade, the Indians, for fear of legal action, began to channel their energies into transforming the nature of trade.

1(b) Period of Legal Reappraisal: 1862-70.

After Rigby left, and before Churchill arrived as Consul in 1867, a distinction was made between British subjects who had registered themselves at the consulate and those who had refused to do so. Until the arrival of Churchill, the subjects of the Rao of Kutch, who had not registered themselves, were under Sultan Majid's protection and were allowed to hold slaves. Col. L. Pelly and Lt. Col. Playfair (1863-67) raised some important issues of a jurisdictional nature about British subjects and protected persons.

32. R. Coupland: Exploitation, p. 17, however, does not see any "slump" in Indian business because in 1870 Indians were as prosperous as in 1860.

33. NAI, Foreign Dept (1866), No. 64, Enc. I.O. to Governor General in Council, 23-8-1866; F.O. 54/23, p. 75; F.O. 93.116/1. The Order in Council(9-8-1866) stated that a register be kept by the Consul and that any British persons: "who shall refuse or neglect to the satisfaction of the Consul, shall not be entitled to be recognised or protected as the British subject on respect of any suit, dispute or difficulty in which he may have been, or may be engaged or involved within the dominions of the Sultan of Zanzibar at any time when he shall not have been or shall not be so enrolled."
in Zanzibar. During this period serious problems affecting jurisdiction over British protected persons were highlighted. However, the consuls found it difficult to correct some of the wrongs which had previously been committed.

Playfair, who had previously served the Bombay Government in Yemen, brought to the notice of the Indian Government and the Foreign Office the unsatisfactory state of the administration of justice in Zanzibar. He pointed out that according to the convention of commerce the local authorities and the Sultan can neither apprehend a British subject nor search his house without the consent and cooperation of the consul.

The first positive action that Playfair took during this period of appraisal of policies was to apply pressure for the enactment of an Order in Council which would reorganise and define criminal jurisdictions. Since Playfair was not vested with many powers, he felt that any person imprisoned by him might sue him for false imprisonment. He suggested that severe criminal cases be tried at the Bombay High Court.

The representation by Playfair on the need for an Order in Council was followed by discussions between the Bombay Government, the India Government and the Foreign Office. The Advocate General at Bombay was of the opinion

35. F.O. 54.22, Playfair to Bombay Govt., 2-6-1865, p.10; Article V of 1839 Treaty provided for the administration of civil justice but did not mention criminal jurisdiction.
36. ibid., F.O. to I.O., 28-3-1865, wanted to know what the Indian Govt thought of Playfair's ideas, in reply to which I.O. to F.O., 8-9-1865, pointed out that "Supreme Court" was not the correct designation of the High Court at Bombay.
that "the consul at Zanzibar should be invested with the legal authority to try criminal cases" and that this authority ought to apply not only to charges by one British subject against another but also by a native subject of the Sultan against a British subject, since

The Treaty of 31 May 1859 (sic) leaves almost untouched the position of British subjects committing crimes within the domains of the Sultan.\(^\text{37}\)

The India Office's opinion on the above suggestion was that the decision ought to be left with the Foreign Office, but it agreed that cases of grave importance be sent to the High Court at Bombay for trial.\(^\text{38}\) The Foreign Office, after consulting the law officers, decided that Her Majesty's Government would issue an Order in Council to exercise jurisdiction upon Indians in Zanzibar in accordance with the Treaty of 1839, but felt that the India Office ought to express an opinion upon its terms.\(^\text{39}\) The India Office could not find any evidence of the authority under which appellate decisions of the Zanzibar consular court could be redressed at the Bombay High Court. Sir Charles Wood felt that the Order in Council might not suffice to empower it to exercise jurisdiction, since no provision was derived from a Foreign Jurisdiction Act.\(^\text{40}\) He also doubted if the High Court at Bombay was legally empowered to try criminal cases from Zanzibar, on which assessors in Zanzibar differed.

\(^{37}\) ibid., Opinion: The Acting Advocate General at Bombay, No. 27, 26-4-1865, pp 133-4. The Treaty mentioned herein is the Treaty of 1839 and not 1859.

\(^{38}\) ibid., I.O. to F.O., 11-5-1865, p.57.

\(^{39}\) ibid., F.O. to I.O., 19-7-1865, there is an incorrect mention to the Treaty as being that of 1838.

\(^{40}\) ibid., I.O. to F.O., 8-9-1865, p.107. The High Court at Bombay was empowered by Act of Parliament 25.5. Vict.c.104.
During the course of the discussions, the Political Department of the Bombay Government referred to Playfair about another important matter. It wanted Playfair to ascertain whether the Sultan of Zanzibar would be willing to convey formally to the British Government, the jurisdiction in criminal cases over British subjects within his dominions.

Playfair was reluctant to get permission from the Sultan since

H.H., is under the impression that the various foreign nations have already the undoubted right of self-government in all matters civil and criminal through their consuls.  

Playfair mentioned that the governments of France, America and Hamburg had already devised, through their consuls, rules of civil and criminal procedure.  

*I only am in the unpleasant position of having to execute authority for which

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42. *Ibid.*, Playfair to I.O., 21-7-1865. Just prior to this Playfair had issued a "Notification" on 10-7-1865, that every British subject as a mortgager or a mortgagee of property not taken possession of, should be brought for examination, registration and endorsement to the British Consulate. Failing that the Consul would not help in the recovery of any claims. Sultan Majid had approved of this "Notification".

43. Extraterritorial rights were granted by treaties to America (1833), France (1844), Hanseatic Republic (1859), Portugal (1879), Italy (1879), Belgium (1885), Germany (1885), Austria (1887), Russia (1896). J.H. Vaughan: Dual Jurisdiction, p.9, is incorrect in asserting that one of the reasons for the above treaties (apart from Britain) was to punish the slave trade offenders. There was no mention of slave trade abolition or jurisdiction for that purpose in the treaties of USA (1833) or France (1844). As a matter of fact slave trade bussles were known to use the French flag. The treaties with USA, France and Hanseatic Republic were commercial treaties and the separation of Zanzibar from Muscat after the Canning Award of 1861 did not affect the operation of these treaties. USA relinquished these rights over Zanzibar and that part of the protectorate which was British East Africa on 25-2-1905 by a Convention with Britain. See J.B. Moore, *International Law*, Vol. II, sec.267, p.638.
I have no legal warrant". The Sultan would have been wiser to question more closely the nature of extraterritorial jurisdiction in his dominions, especially since Consul Playfair's fundamental interest was to entrench Britain's political position. In legal terms Playfair felt that it was his duty only to safeguard his own position, especially in view of the fact that the other consuls did have the necessary authority to exercise this jurisdiction. The separate demands from the Christian nations to exercise extraterritorial jurisdiction in Zanzibar had created a judicial Babel, while the Sultan became increasingly incapacitated in passing any legislation affecting foreigners.\(^4\)

At the conclusion of the consultations between the Foreign Office, the Indian Government and the Bombay Government, the Foreign Office sent copies of a draft Order in Council\(^4\) to which Playfair made detailed amendments.\(^6\) The Order in Council was issued under the authority vested in Her Majesty by the Foreign Jurisdiction Act of 24th August 1843 and Foreign Jurisdiction Amendment Act 1866.

This Foreign Jurisdiction Act provided for the enactment of the Order in Council, which conferred civil and criminal jurisdiction on any of Her Majesty's courts outside the United Kingdom. It also provided for any regulations, decrees, orders and sentences to enforce and execute these

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\(^4\) The Sultan of Zanzibar was not as farsighted as the Nuba Pasha in Egypt who attempted to consolidate these jurisdictions through an international tribunal. See Norman Bentwick: "Capitulatory System", British Yearbook of International Law (1933), Vol. XIV, p.94.

\(^4\) F.O. 54.23, F.O. to Playfair, 25-10-1866; Foreign Jurisdiction Act, 24-8-1843; 6&7 Vict. cap.94, sec.4; The Foreign Jurisdiction(Amendment Act 1866); 29 & 30 Vict. cap.87, 6-8-1866.

judgments. The Order in Council was divided into civil jurisdiction (Articles 6-12) and criminal jurisdiction (Articles 13-23). The civil jurisdiction allowed the consular court to deal with civil suits and the right of appeal on cases with a matter at issue of over $200 to the High Court at Bombay. Playfair did not want to entrust the Kadi as sole investigators in matters concerning British subjects, since they were "all banal in the extreme". On criminal matters, Reilly, a consultant on this Order in Council, raised the peculiar problems created by Article 15, which gave powers of deportation after second conviction on slave trade matters. Playfair's interpretation of Article 30 (see footnote 33) was that no person having an option of being under British protection would be regarded as having it unless he complied with the Order in Council. However, natural born British subjects could claim protection even without previous registration, but neglect to register would not absolve them from any laws of their country. The Foreign Office, while agreeing in substance with Playfair's interpretation, instructed him to "interfere for the protection of an unregistered subject", only in special and exceptional cases. The registration of British subjects was made difficult in Zanzibar by the fact that the Sultan did not demand their registration. In Turkey, the British

47. F.O. 84.23, Reilly's Opinion, 12-4-1866, enc. in Treasury to F.O., 13-4-1866.
48. F.O. 84.1279, F.O. to Playfair, 4-1-1867. It would seem that the F.O. should have used the term unregistered protected person and not "unregistered subject". Playfair was also given a warrant to solemnize marriages, see F.O. 54.24A, F.O. to Playfair, 12-1-1867, and enc. p.7.
and other foreign subjects were required by police regulations to register at their respective consulates.\textsuperscript{49}

The provisions of the 1866 Zanzibar Order in Council relating to British subjects shall extend and apply to all British subjects of Her Majesty, whether by birth or by naturalisation, and also to all persons enjoying Her Majesty's protection in the dominions of the Sultan.\textsuperscript{50}

With the completion of the drafting of this Order in Council, the Foreign Office and its law officers formulated rules and regulations\textsuperscript{51} for the consular court at Zanzibar, which were based on the Order in Council. While the minor civil cases did not require personal attendance, except as a witness, the criminal cases would require an issue of warrant for attendance. Provision was also made for giving evidence under oath. Prisoners could not be committed to the Zanzibar Government's prisons unless they were certified by a physician, except in places where British consular prisons existed. Playfair had recommended the use of the Indian Penal Code since it was simple and the British residents were used to it, and the Foreign Office accepted it as a criminal law to which British subjects were amenable.

Playfair was succeeded as consul by Churchill\textsuperscript{52} (1867-70) who, armed with the Order in Council and the Rules and

\textsuperscript{49} P.P. Vol. VIII (1857-8), p. 291, F.W. Calvert, Q.4455-8, Seymour Fitzgerald of the Select Committee on Consular System saw in this jurisdiction "something of a character of an imperium in imperio", ibid., Q.4481.

\textsuperscript{50} Piggott: Extrerritoriality, pp 154-5. It is not clear why Piggott claims that the Persian Order in Council 1889 expressed more accurately what it meant, while the Zanzibar Order in Council was not specific in mentioning the jurisdiction as applying not only to the Queen's own subjects, but also over the subjects of the states which were under the protection of England.

\textsuperscript{51} F.O. 93.116/1, F.O. 84.1279: "Rules and Regulations for the Consular Court at Zanzibar". These were approved by the Secretary of State for the F.O. on 28-2-1867.

\textsuperscript{52} ibid., F.O. 84.1279, Churchill to Bombay Govt., 11-6-1867.
Regulations formed prior to his arrival, dealt with minor infractions of the Civil Code. However, his major preoccupation was to untangle the web of complex jurisdiction over the criminal offences of British subjects and protected persons. Part of this complexity resulted from the contradictory legacy of Rigby and Playfair, who had exercised jurisdiction without relying on legal guidelines. Despite Rigby's claim to have released vast numbers of British-held slaves, Churchill estimated that about 1,200 were still held by Indians, especially Kutchis, who were under the protection of the Sultan. Churchill's main task was to bring this group of Kutchis within British consular jurisdiction. He expected that the Sultan would renounce his control over people from the Kutch and other protected states of India. He based his belief on assertions by Consul Pelly, Playfair and the Bombay Government. Churchill pointed out that until it was brought to his notice, the Sultan had never doubted the right of Her Majesty's Government over the Kutchis. The Sultan had sent a Kutchi to be tried by Churchill, even though he was under the protection of the Sultan, and this might have been construed as a tacit admittance for the exercise of British consular jurisdiction. Churchill believed, however, that the Sultan had done this out of courtesy. Despite this, Churchill demanded from the Sultan jurisdiction over Jeipan Waljee for helping in robberies of British Indian shops. Recognition by Churchill of the Sultan's protection over the Kutchi did not deter him from exercising his jurisdiction over Waljee.

53. Ibid., Churchill to Bombay Govt., 22-12-1867.
54. Ibid., Churchill to Sultan Majid, 10-12-1867; Sheriff: Commercial Empire, pp 431-2.
This period of reappraising the legal position was simultaneously accompanied by attempts at extending consular jurisdiction. Now that Consul Churchill had legislation to back him up and the fact that the Sultan had silently acquiesced, gave the consular increasing grounds to extend their de facto legal position beyond the limits granted to them. Hence many of the consular rights were acquired by sufferance because the sovereign was not totally aware of the long term implications of the exercise of such jurisdiction, and instituted no measures to safeguard his interests.

Since Churchill did not receive any response from the Sultan to his demand for jurisdiction over Wajee of 10 December 1867, he wrote again on 19 December 1867, further elaborating his position. Churchill claimed that during Hamerton's and Rigby's time all Indians had been under British protection and that the recent lapse of protection over certain Indians did not mean that protection over them had been abandoned. Too late, the Sultan realised how his silence and courtesy had been misconstrued. Sultan Majid, in his reply, complained about interference by Churchill which exceeded the treaty limits. He carefully enumerated the various events leading to the submission by Playfair of a register of all British subjects and protected persons. He therefore considered "the status of all such as had not entered their names in the consular register, as assimilated to the Arabs in reference to jurisdiction, and at liberty to buy slaves".

55. *ibid.*, Churchill to Sultan Majid, 19-12-1867.
56. *ibid.*, Sultan Majid to Churchill, 21-12-1867.
Having clearly recognised that Churchill was trying to extend British jurisdiction, Sultan Majid strongly differed with Churchill's claim that these persons remained under British control. "This view is at variance with that entertained by your predecessors at Zanzibar", he said, and requested Churchill to put the case to his government. Moreover, all natives of India in Majid's service were under his protection, since many were born in Zanzibar. "Some of them as far as fifty years ago and we look upon them and their children as our subjects and Arabs." 57

The Bombay Government agreed with this view and informed Churchill that he could not exercise jurisdiction, since the subjects of the Rao of Kutch were not British "by right of birth or by force of registration". 58 While it was expedient to interfere with them, the only answer was to get a legal and morally binding contract concerning them. The Governor in Council of India felt that the issue was whether the subjects of Kutch merely held slaves, or whether they were involved in transactions with slavery. The Council felt that the position of the Kutchis would be the same as of people from Kathiawar, especially if they were involved in the purchase or sale of slaves. The legal considerations demanded would be of the type used upon an English firm, Fraser and Company, under English Statute Law. 59 To these queries, Churchill affirmed the Kutchis' role in slave

57. ibid.
58. F.O. 84.1292, Secretary of Bombay Govt to Foreign Secretary Govt of India, 31-3-1868.
59. F.O. 84.1279, No.418, Secretary Govt of India to Secretary of Bombay Govt, n.d.
dealing and wrote:

The question at issue therefore, to me appears to be, whether it is expedient for British Government to relinquish their hold on the Kutchis, who form the wealthiest class of trading population at Zanzibar. He further warned the Government to be prepared for a compensation claim when the Kutchis realised that the British Political Agent had no right to deprive them of an article of trade, which was not a crime in either their state of origin or the state they resided in. Churchill was clearly opposed to the "inconvenience arising from duplex authority" and according to him the Kutchis preferred a rigid control of the type exercised by Col. Rigby.

Churchill reinforced his interventionist argument by contending that Her Majesty's Government could not call upon the Sultan of Zanzibar to stop the slave trade, while at the same time allowing the Kutchis to hold slaves. Secondly, that if they were once allowed to hold slaves they could not later be stopped from engaging or trading in slaves. Hence Churchill preferred the Foreign Office to take a more interventionist position than the Government of India had hitherto taken.

Churchill's sensitivity to the economic implications of protection can be further seen in the case of the "negro lads, now being brought up in Zanzibar by the Church Missionary Society", since they too were entitled to be placed under British protection. In this case, however, Churchill wondered if anything short of an Act of Parliament

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60. *ibid*., Churchill to Secretary of Bombay Govt, 14-8-1868. Churchill did not deal with the issue of Fraser and Co.

61. F.O. 84.1325, Churchill to F.O., 18-1-1870.

could make a British subject of "anyone born a foreigner". While all the Africans and Zanzibaris were being "abstracted from the Sultan's Courts of Justice" once they assumed jobs with foreigners, Churchill was reluctant to follow this principle, which would have meant granting British protection to about 10,000 persons employed by Indians. Since this large segment of the population did not carry on the slave trade, nor was it in a position of economic strength, its treaty rights were not stressed.

The position of this very large group of Africans, emancipated from slavery and working for the British subjects, did not tax the mind of the Foreign Office. The Church Missionary Society, especially its lay secretary, E. Hutchinson, who had recorded the active interests of the Government in resettling freed slaves in Sierra Leone, was apprehensive of the British Government's interest in East African slaves, "both in the matter of providing for the support of the slaves and of extending to them the protection and privileges of British subjects". Conversely, the jurisdiction over the Indian British protected persons was zealously applied because of their economic strength, while no such measures were used on the freed slaves who were British subjects and upon whom there was need to spend

63. P.O. 84.1325, Churchill to Secretary Bombay Govt, 13-9-1870. The emancipated African slaves were also to be found at Nassick in India. Burton mentions "a Zanzibari negro probably a descendant of emancipated slaves" near Karachi; see Richard Burton: Sind Revisited, Vol.1 (London:1877), p.40.

64. E. Hutchinson: Slave Trade, p.87.

65. For the application of this jurisdiction in the Ottoman Empire, see P.P. Vol.VIII (1857-8), Q.2250, pp 227-9. E. Hammond, the Under-Secretary, F.O., described this jurisdiction as "very valuable".
money to find employment and training. The Nassick establishment in Western India for freed slaves was closed in 1874 and missionaries in Mombasa were asked to take care of the Nassick boys. Since there were no training facilities like Nassick in Zanzibar or the coast, the released slaves formed a reservoir of cheap labour. Most of those on the coast were allowed to continue working for their previous employers, because it was the least disruptive and the least expensive course of action to take.

The case of the jurisdiction over the Indians in Zanzibar was also in direct contrast to the situation in the Levant, where Britain and other European countries granted their jurisdiction indiscriminately. Because of the coercive nature of the British jurisdiction in Zanzibar, no Hutschis flocked to the British Consulate to seek its protection. Therefore, unlike the Levant, where British jurisdiction was sought by many merchants (including Indians), in Zanzibar the Consuls were actively involved in asserting jurisdiction.

The task of applying British jurisdiction over British Indian subjects and protected persons in Zanzibar was quite complex. It was mainly the position of the Indians which prompted the Foreign Office to express its dissatisfaction

66. E. Hutchinson: Slave Trade, p.90.
68. J.F. Harris: Travels, Researches, p.106. Elton mentions that of the 1408 slaves of Indians released, 920 remained with their masters, 488 began a new life.
69. See in contrast D.C.N. Platt: Cinderella Service, pp 136-41, who claims that this passive consular protection was provided in the Levant. Even the US Consul in Zanzibar was loathe to the grant of jurisdiction over the estate of a US consular employee from Comoro Islands.
with the consulate in Zanzibar. The consulate was subject to instructions from the Foreign Office on the slave trade, but with the Indians involving themselves in the slave trade and seeking the protection of the Sultan, there were new complications. While the Indian Government did not look favourably upon Col. Rigby's strong measures, the Foreign Office felt that Britain would have to ask its own subjects to stop the slave trade before asking the Sultan. Hence there was a measure of agreement between Churchill's more interventionist standpoint and the stand taken by the Foreign Office.

It was possibly because of this attitude of the Foreign Office and the consul that there was a shift in the positions adopted by both the Bombay and Indian Governments. While the Bombay Government was still of the opinion that the subjects of the Rao of Kutch were not to be interfered with in Zanzibar, it felt that "they could not exempt themselves from British law by taking service with the Sultan." The Government of India was informed by Bombay that non-registering Kutchis had thought that "they were emancipated from all control and interference and that the Sultan himself favours these pretensions." Churchill, in turn, wrote to the Sultan that the Indian Government by no means recognised the claim made by certain Kutchis and other subjects of protected states in India to be exempted from all control over them by the British Political Agency, on the grounds that they had neglected to inscribe their

70. F.O., 84.1279, F.O. Memo, 11-11-1870.
names on the Consular Register. Churchill felt that he was therefore "enjoined to interfere authoritatively". He further informed the British Indians, protected persons and the Sultan's Indian subjects, that the provisions of the Indian Penal Code were applicable to them.

This consular jurisdiction was extended to British protected persons in the service of foreigners. Churchill arrested a Madras Indian servant of Baron von der Decken called Arnasallo who was under the protection of the Sultan, fined him $M7500, and imprisoned him until he could be sent out of the country. Arnasallo was deported, as a prisoner, on a native Kutch vessel, and his fine was paid from his Zanzibar estate. Consul Euan-Smith followed Churchill's precedent when he deported a Kutchi, Jaita Nanji, for life to Bombay after a charge of slave dealing was proved. He was fined $M1,500.

While no complaints were registered by any foreign powers over the exercise of this jurisdiction, the Sultan strongly protested and told Churchill that he would not

71. P.P. Vol.LXI (1870), c.141, p.38, No.38, enc.2, 20-1-1869; see also F.O. 84.1292.
72. ibid., PP Vol.LXX, enc.4, 21-1-1869, p.39; F.O. 84.1307, Secretary of Bombay Govt to Churchill, No.1255, 17-4-1869. The Govt of India awaited the arrivals of the Sultan's envoy before making a decision.
73. Baron von der Decken gave up an army career to join a Bavarian traveller, Albrecht Roscher, but found that Roscher had been murdered. Decken was made a Honorary Fellow of the Royal Geographical Society in 1863 and given a gold medal in 1864 for exploration on the mainland.
74. P.P. Vol.LXI (1870), No.38, enc.1, pp 42-3; Vol.LXIV (1874), No.15, 22-5-1873. The deportation was presumably authorised under Indian Penal Code and Article XV of the Order in Council.
75. NAI, Foreign Dept (Political A), No.340-2, 22-5-1873, No.17, and enc. In this Report his fine is mentioned as $100.
76. F.O. 84.1417, No.116 and enc., Euan-Smith to F.O., 14-8-1875.
assist the British Consulate

in compelling our subjects and those under our protection to free their slaves, and in the event of your forcing them to do so, it will be against our will and we shall not be constrained to address a complaint of such proceedings to Her Majesty's Government.\footnote{77}

Churchill realised too late that he had "overstepped the limits of my powers", after having misinterpreted instructions from Bombay,\footnote{78} in that he could not interfere with the Kutchis under the Sultan's protection. His new position, without informing the Sultan of his mistake but appearing to "conciliate matters", was that he would not have any jurisdiction over the Sultan's subjects who held domestic slaves, but would still exercise control over those carrying on the slave trade. Churchill informed the Sultan that any new arrivals from India would not be entitled to seek the Sultan's protection.\footnote{79} Hence the process of insulating the Indians from seeking any accommodation with the Sultan's regime was to be twofold. On the one hand, the Kutchis were being brought under British jurisdiction, as British protected persons, and on the other hand the new arrivals were not to be given a chance to integrate effectively in the Sultan's economic empire. Therefore the struggle for the control of the Indians had reached a further stage under Consul Churchill. Britain's control was becoming increasingly dominant and was increasing the dependency

\footnote{77} P.P., Vol.LXI (1870), No.38, enc.2, p.44. Churchill also acknowledged a verbal/complaint, see F.O. 84.1292, Churchill to Secretary of Bombay Govt, 25-2-1869.

\footnote{78} Ibid., No.38, enc.1, p.43; F.O. 84.1307, Churchill to Secretary of Bombay Govt, 26-2-1869.

\footnote{79} Ibid., No.38, enc.4, 20-2-1869, p.45; F.O. 84.1370, Churchill to Majid, 1-2-1869. The tone of this letter is much stronger than the later correspondence with the Sultan.
of Zanzibar's political elite because the commercial class was increasingly being alienated from them.

The Bombay Government tried to restrict Churchill's powers by instructing him that he could legitimately ask for lists of slaves from the Kutchis, but could not ask them the numbers of domestic slaves they held. These instructions were among the many others which were sent to Churchill and had confused him. It was on his sick leave in England that Churchill read another statement to the effect that the "Indian Penal Code had no operation at Zanzibar" and that its provisions could not be used on the Kutchis. He reiterated that the Order in Council of 9 August 1866 had pointed out that "the Indian Penal Code was the law to be applied at Zanzibar". Furthermore, he felt that withdrawal from the authoritarian course taken with the Zanzibar Indians would lead to Britain losing ground on the East coast of Africa. Since the legality of British extraterritorial control was subsumed within the wider context of British political influence, Churchill's prime concern was not the legality of consular control, but the fact that no step should be taken which would make British influence decline in Zanzibar.

To consolidate his political influence over the Kutchis in legal terms, the Bombay Government took another step. Since the Rao of Kutch's statement following his Proclamation of 1836 had no legal validity in Zanzibar, he was induced by the Bombay Government to issue a Proclamation

80. F.O., 84/1307, No.1058, Secretary of Bombay Govt to Churchill, 31-3-1869.
81. ibid., Churchill to F.O., 12-8-1869.
to his subjects by birth, but resident in Zanzibar. The Proclamation of 1869 stated that the British Government "will, by virtue of the aforesaid permission, treat you who reside at Zanzibar as its own subjects". While the main purpose of this Proclamation was the abolition of the slave trade, the acting Consul, John Kirk, felt that this new jurisdiction would make British influence in Zanzibar paramount. Even after the issuance of the Proclamation, Kirk alluded to the same problems. While the status of the Kutchis was clearer than before, he had not considered it advisable
to put all the pressures of the Order fully in force, unless in slave trading matters over those Kutchis who had willingly de-nationalised themselves and still were considered as being other than naturalised Arabs.  

The process of British control was intensified with another Proclamation by the end of 1872, referred to as "spirited" by Coupland, in which the Rao warned his ex-subjects that the British Government

will deal with you as with its own subjects and punish you severely; and furthermore your property in Kutch will be confiscated by my Government, know this to be certain.

62. F.O. 84.1344, Kirk to Secretary of Bombay Govt, 28-9-1871. It would have been perfectly legal for British subjects or protected persons to expatriate themselves by witnessing a document called "declaration of alienage", but if they had been involved in slave trade before the date of becoming alien, they would not be absolved from prosecution. See Piggott: Nationality, Vol.1, pp 146-52.

83. R. Coupland: Exploitation, p.203; F.O. 84.1392, I.O. to F.O., 3-4-1873, India Office described the Proclamation as a "more forcible enactment". The Treaty of Alliance of 1819 between East India Co. and the Rao did not place Kutch under the British Crown; Sheriff: Commercial Empire, pp 419-20; F.O.C.G.P. 2314 (4/2/1819).

84. P.P. Vol.LXI (1870), correspondence on Frere Mission, 15-12-1872, pp 18-19. Jurisdiction over subjects of Indian Native states resident in Oman was obtained by Britain in 1873; see Lorimer: Gazetteer, Vol.I, pp 522-3.
While the process of acquiring this jurisdiction over the British protected persons had been spread over a fairly long period, it was imposed on the Kutchis and was not claimed by them. Certain legal writers portray the whole process in a totally different light, by stressing the fact that jurisdiction was "claimed":

The claim of subjects or relative states to British protection in foreign countries is recognised by the Orders in Council, which regulate the exercise of British jurisdiction in Zanzibar, Muscat and elsewhere.85

Since the jurisdiction was imposed and not claimed by the British Indian subjects, they were not in advance able to judge if such a jurisdiction was to their advantage, as opposed to the Sultan's jurisdiction.

The British Consulate and Political Agency in Zanzibar now had jurisdiction over all British subjects and protected persons. The Sultan could exercise powers of search and arrest only with the permission of the Consul, but the Sultan had to protect the person and property of British subjects.87

Hence the Sultan had lost most of the advantages to be derived from the presence of British subjects and protected


86. P.P. Vol. LXI (1870), No.21, enc.11. There were 3,657 British subjects, including 22 English subjects and 31 Goan residents, who were treated as British protected persons in absence of a Portuguese Consul; F.O. 84.1485, No.63, enc.1, Kirk to F.O., 10-4-1877, contains further comment on treatment of Portuguese subjects in "Memorandum of existing Commercial Treaties between Zanzibar and Foreign States". Bertram Thomas: Arab Rule under Al'Bu Said Dynasty of Oman, Raleigh Lecture, British Academy (London: 1938), p.19, makes the mistake of referring to residents of Indian protected states in Oman in 1873 as "Indian state subjects" and not as protected persons.

persons, but was encumbered with providing them with the services to protect their person and property.

1 (c) **Kirk and Resolute Policy - 1871-84**

The consular jurisdiction had hitherto been imposed by consuls who spent relatively short periods in Zanzibar. John Kirk had joined the consulate as a surgeon and had acted as a consul when Churchill was on sick leave. He was a person who clearly understood Britain's role in Zanzibar and who stayed in office for a long enough period as the Consul General (1874-1887) to be able to regulate the newly acquired jurisdiction. Kirk's great strength was that, while he was firm with the Sultan and severe with the Indians, he managed to maintain their confidence. It was during his tenure that pressures were brought to increase the scope of the Treaty of 1845, to attempt to stop the slave trade in the Sultan's African dominions. He not only eliminated the inconsistencies in imposing this jurisdiction, but managed to apply his policy uniformly. Kirk explained that the question of compulsory jurisdiction over immigrants who have settled here with little idea of returning to their native land would never have been raised, had they not involved themselves in the slave trade. The exercise of this jurisdiction indirectly furthered British interests against European and American rivals.

Kirk demonstrated the application of this "compulsory jurisdiction over immigrants who have settled here with little idea of returning to their native land would never have been raised, had they not involved themselves in the slave trade. The exercise of this jurisdiction indirectly furthered British interests against European and American rivals.

88. F.O. 84.13/4, Kirk to Secretary of Bombay Govt, 28-9-1871.
jurisdiction" in 1871, when he dealt with two Kutchis at the Consular Court. The first Kutchi had confessed to purchasing a female slave for $30. However, he contended that he had been long registered as a protected subject of the Sultan, and secondly that the girl had been acquired as a concubine, and that he understood that the Indian Government had not disallowed this. Kirk used the 1869 Proclamation of the Raо of Kutch to dispose of the question of jurisdiction. On the second point Kirk found the Kutchi guilty of purchasing a slave after instructions from the Bombay Government not to buy or sell slaves. In the second case, although the Kutchi was born in Zanzibar, Kirk felt that he did not have the legal rights over an Arab subject of Indian parents, who was born in Zanzibar. However, since the case involved the sale of an estate and five slaves after the death of the settler's father, Kirk felt that the estate of the deceased Kutchi ought to be administered according to British Law, and as the deceased had no right to hold slaves, they could not be passed on as part of his estate. 89

The protection of British Indian subjects and protected persons was also provided to a poorer class of Indians who were being sold as slaves in Muscat and Zanzibar. A Hadhramati Arab at Muscat, who held three Indian children as slaves, was prosecuted and sentenced to two years imprisonment, while the children were sent to Baroda. 90

89. P.P. Vol.LIV (1872), p.30; F.O. 84.1344, ibid., Kirk to F.O., 8-3-1871, No.23.
90. Lorimer: Gazetter, Vol.1, Part 2, p.2503. As late as 1900 children from famine stricken districts in western India found their way to the Persian Gulf, as did Khalasis and Baluchis, p.2510.
Kirk remarked on this aspect of his work in Zanzibar when he reported to the Secretary of the Bombay Government that he had had an Indian girl, owned by a wealthy Arab, withdrawn from a slave auction in Zanzibar and sent back to India.91 A small number of Indian women from parts of Bombay had been sold in Zanzibar for a long time.92 During the "Gorgon's" stay in Zanzibar, 13-year-old girls who were part of a band of Indian musicians, visited Zanzibar as "nautch" girls.93 Despite consular intervention in this matter, as late as 1890 Indian slave girls were held in Lamu by Arabs who had bought them as children, and a German held an Indian slave girl who still spoke Gujarati.94 Hence, while the wealthier Indian merchants were involved in financing the slave trade, involving Africans from the mainland, the poorer Indians were not immune from being enslaved in the same area. Consular jurisdiction in such cases allowed for the release of Indian slaves and for their return to India.

The sale of Indian slaves only illustrates the effect of British jurisdiction over this rather minor traffic, the major interest of the consulate being focused on the African slave trade. This aspect of the slave trade was to receive major attention when the House of Commons appointed a Select Committee on the East African slave trade on 4 August 1871.

92. F.O. 54-5, No. 269, sub. enc. 8, 30-8-1841, pp 376-7, 386. Also, No. 269, enc. 12, & No. 2, in enc. 12, of 3 & 31-8-1841, Reports from Capt. Hannell, Persian Gulf.
93. W.O. Devereux: "Gorgon", pp 157-9, although "nautch" girls (dancing girls) might not necessarily have been slaves.
94. F.O. 84-2063, No. 341, enc. 5, Euan-Smith to F.O., 28-8-1890.
The Committee considered a report by the Hon. C. Vivian, which recommended that "through treaty, usage and sufferance" the British Government, with the consent of the Sultan, exercised jurisdiction over all British subjects. The Report recommended that the provision in the (1866) Order in Council which gave the right of withdrawal from British jurisdiction by avoiding registration at the consulate, was not in order. In the case of the Kutchis, the Report stressed that they should be regarded as British subjects in consideration of the Rao of Kutch's Proclamation. However, it stated that since the Kutchis held slaves with the "implied sanction of the British authorities" they ought to be given about three years to release their slaves and to be given compensation. The Report, however, exempted those persons who "have legally become subjects of the Sultan of Zanzibar". On consideration of various reports, the Select Committee recommended that a Special Mission, with Sir Bartle Frere as envoy extraordinary and with Minister Plenipotentiary status, be sent to Zanzibar to negotiate a fresh treaty with the Sultan. The mission was specifically to deal with the question of the Kutchis. The question was considered in Article vii:

That the Kutchis and other natives of Indian states under British protection, shall be forbidden, after a date to be fixed by the Government of India, to possess slaves, and that in the meantime, they shall be prevented from acquiring fresh slaves.

In the draft of the treaty as signed by the Special Mission under Sir Bartle Frere, the above article was amended as

95. P.P. Vol.XII (1871), Appendix 3, pp 95-97.
96. ibid., p.vi, xvi.
article iv and read:

Her Britannic Majesty engages that natives of Indian states under British protection shall be prohibited from possessing slaves and from acquiring any fresh slaves in the meantime, from this date.\textsuperscript{97}

Lord Granville, Secretary of State for Foreign Affairs, on hearing from the Frere Mission about the involvement of Indians in the coastal settlements in the slave trade, invoked clauses 16 and 23 of the Order in Council of 4 November 1867 to be applied by the Consul at Zanzibar.\textsuperscript{98} He further advised the Duke of Argyll at the India Office of this action and recommended that British subjects be sent to Bombay for trial by the High Court.

While Frere asserted that the Indian subjects could "claim and obtain English protection if subjected to lawless violence",\textsuperscript{99} it was proposed to withdraw British protection from the British Indian subjects who were implicated in the slave trade "as a matter of punishment".\textsuperscript{100} This move could only have had negative implications, since Frere himself pointed out that the slave trade was:

\begin{quote}
permitted by His Highness' laws and participated in by every member of the reigning family and by his associates and his dependants, it seems to me impossible to devise regulations which shall effectually bar our own subjects.
\end{quote}

\textsuperscript{97} Coupland, Exploitation, pp 212-3; F.O. 84.1374, Kirk to F.O., No.48, enc., 6-6-1873. The above Treaty was signed on 5-6-1873 and the words "in the meantime" would seem to be redundant in the above article concerning Indians under British protection. They appear in the original draft and do not seem to have been deleted. Lord Shelbourne commented in the margin wondering if natives of protected states ought to be compelled. F.O. 93,116/2/31 Treaty in Arabic and English with Explanatory Notes.

\textsuperscript{98} P.P. Vol.LXI (1870), No.45, 15-5-1873, pp 98-105.

\textsuperscript{99} ibid., No.52, enc.1, p.113.

\textsuperscript{100} ibid., p.105.
who monopolise the trade of the country, from sharing its profits.\textsuperscript{101}

Frere appointed J.F. Elton, a Vice-Consul in Zanzibar in 1873, to punish slave trading by Indians on the southern coastal settlements of the Sultan's dominions. Elton reported punishing a Bohra for holding two young slaves, and a Khoja for receiving a female slave in connection with a mortgage:

But whilst inflicting fines in the above instances, the justice of which all allow, I have been careful to keep in mind the importance of preserving the goodwill of British Indian subjects.\textsuperscript{102}

By this time the British Indian subjects on the mainland had been sufficiently alienated from the Sultan's administration to request that consul officials should visit the coastal settlements regularly to adjudicate their disputes. As was the case with Col. Rigby's slave abolition campaign in Zanzibar, the slave trade abolition on the mainland led to a fall in the prices of houses and property, and trade generally suffered. However, Elton found that the Indian traders at Dar es Salaam were holding the "enterprising corner".\textsuperscript{103}

Prior to the signing of the Treaty between the Sultan and Britain, Captain Malcolm of HMS "Briton" visited Kilidini (Mombasa) and reported that there was not only slave holding but also slave dealing amongst the Indians residing in the coastal towns in the northern dominions of the Sultan.\textsuperscript{104}

\textsuperscript{101} One of the results was the establishment of Vice-Admiralty Courts in Aden and Zanzibar. See P.0. 84.1632, Vic. 16-7-37 (East African Courts) Chapter 9, Slave Trade (East Africa Courts Act) 1873).

\textsuperscript{102} J.F. Elton: Travels and Researches, p.74.

\textsuperscript{103} Ibid., p.75.

\textsuperscript{104} P.P. Vol.LXII (1874), No.87, enc.1, 15-5-1873, pp 126-8.
When Kirk heard these accusations against the Indians on the mainland, whom he was increasingly bringing within his control, he minimised their seriousness. Kirk accepted the fact that Indians did hold slaves for domestic purposes, but he felt that Malcolm was wrong in asserting that they were engaged in slave trading. He also staunchly defended the Customs House Agent at Lamu and maintained that the Agent had been extremely cooperative in the freeing of slaves. Kirk lent credibility to these statements by imposing his jurisdiction firmly upon offenders who were brought to court, or those who were obligated to attend the court. A Sindi British Indian subject who was accused of slavery offences refused to attend the court, upon which Kirk confiscated his property.

Kirk then successfully prosecuted a protected person who was a Kutchi by the name of Kanji Lalji. However, Kirk was still unsure of the opinion of the Law Officers on the status of the protected persons under the Treaty of 1873, and therefore sent his first accused in a criminal case to the Bombay High Court. Following this case he prosecuted Hadji Omar, a Memon from Sind, under Section 370 of the Indian Penal Code. This case was heard at Mombasa because of the problems of sending witnesses to Zanzibar, and led to a large-scale release of slaves by Indians because of the successful exertion of British Consular authority on the mainland. While Kirk had established the precedent of

sending the accused to Bombay, he prosecuted a Banyan in Zanzibar because of the difficulty of sending slaves to Bombay to give evidence.\(^{110}\) Kirk did this because he felt that the class of Indians "who were permitted to renounce their British protection and become Arabs" had been eliminated,\(^{111}\) and he had therefore proceeded to stop slave holding amongst them. Kirk felt that these Indians had already stopped indulging in slave trading for commercial speculation and were now begging for someone to come from Zanzibar to give the slaves their freedom papers.\(^{112}\)

The importance of Kirk's work was recognised by the Foreign Office on 18 July 1873 and the status of the Zanzibar Consul was raised to that of Consul General. His staff included two assistant officers who were also Political Agents for India. These Agents were concurrently appointed British vice-consuls and held similar powers as the Consul General. While the right of appeal to the Bombay High Court remained, the Bombay Government relinquished its control over the Agency and the Indian Government began to exercise direct control over its affairs. In 1876 the extension of the work of the consul on the mainland coast was signalled when Kirk expressed the need to establish a vice-consul at Mombasa, but he was opposed to accepting an officer representing one of the churches.\(^{113}\) Kirk's major interest was the preventive aspect of the slave trade, while the churches were interested in the effort to increase

\(^{110}\) P.P. Vol.LXXI (1875), No.10, 4-12-1874, p.19.
\(^{111}\) P.P. Vol.LXII (1874), No.106, enc., 7-11-1873, p.160.
\(^{112}\) F.O. 84,1376, Kirk to F.O., 1-12-1873.
\(^{113}\) P.P. Vol.LXXIII (1877), No.312,21-6-1876, pp 269-70; F.O. 84,1453, Kirk to F.O., No.109.
the facilities for training the freed slaves. The Consulate did not stress the need for the training of freed slaves because the British Treasury and the Indian Government were not willing to allocate any funds towards such an operation.

Following Kirk's actions against Indians violating the 1873 Slave Trade Treaty, the acting Consul, Prideaux, a political officer of the Indian Service, received from the Governor General in India the powers of a Deputy Commissioner, to prosecute cases of a criminal nature against "British subjects or the subjects of Princes and States in India in alliance with Her Majesty". The offences were to be dealt with under the Indian Penal Code (sections, 357, 370 & 371). The consul could inflict the punishment of imprisonment not exceeding seven years, including solitary confinement, as well as imposing a fine. The powers were conferred after the Bombay High Court had dismissed the case against Kanji Lalji involving slaves (see n.107). Justice Gibbs at Bombay had ruled that there was no treaty with the Rao of Kutch, or any other Order in Council, which gave jurisdiction over the Kutchis committing offences in foreign countries, and that the Rao of Kutch had no authority to give such jurisdiction to the Court. The Government of India felt that the authority of the Rao of Kutch was

114. F.O. 84,1399, Prideaux to F.O., 12-5-1874. Under the Provisions of the Indian Legislature, No. XI (1872) (The Foreign Jurisdiction and Extradition Act) the Governor General also conferred upon him the powers of Justice of Peace and Magistrate (First Class); F.O. 84.1415, Prideaux to F.O., No.26, 8-1-1875, enc. Notification No.1275, 13-6-1873. This Act was later superseded by Foreign Jurisdiction and Extradition Act 1879 (XXI) providing the Governor General of India power and jurisdiction beyond the limits of British India. This especially applied to Zanzibar because of the presence of Indians there.
immaterial in any but the political sense, although it felt that the Gibbs judgment misrepresented facts. However, the Government of India, while discussing the status of natives of India who were not subjects of Her Majesty, allowed for the possibility of "native Indians to become naturalised citizens of Zanzibar". This complexity, which the Government of India was unable to resolve satisfactorily, led to the condition which eventually meant that the judicial authority was transferred to Zanzibar.

Kirk applied his resolute policy to abolish the slave trade with the cooperation of Sultan Barghash, and it was implemented primarily on the strength of the findings of Sir Bartle Frere's Mission. This led to a further limiting of the powers of the Sultan, and British subjects and protected persons increasingly became dependent upon John Kirk and British power. The Sultan and the Indians ceased to have meaningful relationships with the Arab elite and the Arab commercial class.

2(a) Civil and Criminal Jurisdiction, 1875-1883

Since the Indians were a commercial community, the most important area of jurisdiction concerned civil suits filed by them and against them. There was also the less

115. ibid., F.O. 84, 1399, No. 7338, enc., Bombay Govt to Political Dept, Govt of India, 8-12-1873; Govt of India to Bombay Govt, No. 771, 1-4-1874.
116. NAI, Foreign, No. 264-273, esp. No. 270, Secretary to Govt of India, 8-12-1873; Govt of India to Bombay Govt, No. 771, 30-6-1874; No. 271, Govt of India to Secretary of State for India, 30-6-1874.
117. NAI, Foreign (Pol.), No. 61/64, No. 63, Secretary of Govt of India to Political Agent, 10-12-1874.
important jurisdiction concerning crimes committed by and against them which were heard before the Consular Court. The Consul also exercised criminal jurisdiction if the sentence did not exceed a fine of $1,000 or an imprisonment of twelve months. Punishments exceeding this sum were to be meted out in Bombay, where the Bombay High Court also exercised the appellate jurisdiction.

The most serious crime against a British Indian subject was murder, and after a few years of low numbers of cases heard the situation changed dramatically in 1869. Justice was arbitrary because of the sparseness of the police and judicial machine. This led to a situation where there was minimal goodwill towards the British Indian subjects, because even the innocent members of the community suffered.

The exercise of extraterritorial jurisdiction on the slave trade activities of Indians had an effect upon the civil and criminal matters concerning their interests. The British Indian subjects whose interests coincided with those of the British Consulate benefited from the exercise of this civil and criminal jurisdiction, in as much as their interests could be safeguarded. The British protected persons, over whom the jurisdiction was imposed, were not only subject to the customary taxes of the Sultan's administration, but were to pay for registration at the British Consulate, and were subjected to the various fees at the consular court proposed by Consul Churchill.

120. F.O. C.P., No. 2314, pp. 41, 52.
121. This list of fees for civil cases at the Consular Court included charges for witnesses, delivery of judgment and administration of oath. See F.O., 84, 1279, Churchill to F.O., 7-8-1867.
Foreign Office sought the opinion of Playfair, who submitted that the fees were too high and that, since the sums involved in civil disputes were low, the cost of justice would not remain within the reach of most of the litigants.\footnote{122} The Indians who were considered by the Sultan to be his subjects could obtain fair hearings in his courts. However, when they were involved in suits with European merchants, the European merchants preferred to sue in the British consular court rather than the Sultan's courts.\footnote{123} With the increasing control over the slave trade by the British Consulate, a larger proportion of the economic activity of Indians was carried on in the "legitimate" sectors of the economy. This increased participation in "legitimate" commerce led to a larger number of civil cases being heard in the consular court. Kirk had especially encouraged the increase of control over the civil and commercial matters of the economy.

The Consul General had civil powers which were subject to appeals at the Bombay High Court. In civil cases, if the sum or matter at issue exceeded $200, and all suits whose value exceeded $500, they were to be forwarded to Bombay. In criminal matters the court in Zanzibar could hear cases not exceeding $200 but if adjudged in conjunction with assessors fines up to $1,000 or imprisonment up to twelve months could be imposed.\footnote{124} In his first year of

\footnote{122. \textit{ibid.}, Playfair to F.O., 21-9-1867; I.O. also felt that the scale of the fees was too high, F.O. to Churchill, 24-11-1867.}  
\footnote{123. For the case of one such plaintiff, see F.O. 84,1344, Kirk to Bombay Govt, 28-9-1871.}  
\footnote{124. F.O. 84,1415, No.26, 8-1-1874, Administrative Reports, 1873 & 1874.}
office in 1867 Churchill decided one hundred law suits. Dr Kirk reported that in 1869 there were 67 law suits and that the amount adjudicated came to about £12,000. Kirk attributed this drop in 1869 to the fact that a large number of Indians were seeking the protection of the Sultan.

Following the visit of the Frere Mission and the new Slave Treaty, the cases heard between 1872 and 1875 show the increased activity of the consular court. 125

Civil Cases

<table>
<thead>
<tr>
<th>Year</th>
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<th>Value</th>
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<td>$66,453</td>
<td>3,475</td>
<td></td>
</tr>
</tbody>
</table>

Criminal Cases

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Fees &amp; Petty</th>
<th>Fines</th>
<th>Slavery Offences</th>
<th>Property Offences</th>
<th>Personal Offences</th>
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<tbody>
<tr>
<td>1873</td>
<td>18</td>
<td>2,026 Rs</td>
<td>Convicted</td>
<td>1</td>
<td>Convicted 3</td>
<td>Convicted 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Acquitted 8</td>
<td></td>
</tr>
<tr>
<td>1874</td>
<td>52</td>
<td>3,131 Rs</td>
<td>Convicted</td>
<td>25</td>
<td>Convicted 5</td>
<td>Convicted 6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Acquitted 2</td>
<td>Acquitted 2</td>
</tr>
<tr>
<td>1875</td>
<td>60</td>
<td>4,578 Rs</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

The number of civil cases dealt with in 1873 (68) was lower than might have been expected, as two-thirds of the suitors were refused access to the court because of the paramount political claims on Kirk's work. The rise in 1874 probably came about because of the introduction of the Limitation Act, under which claims of many years standing were brought to court.

The civil cases were far more numerous than the criminal

125. ibid.
cases and there was a scarcity of serious offences except infractions of the animal and vegetable refuse laws. In trying to enforce these laws, Kirk felt that the Order in Council ought to have included in clauses 1 and 2 "British born subjects and not apply exclusively to British Indians as they have been made to do". He intended to use the Indian Penal Code for infraction of these offences against public health, "safety, convenience, decay and morals by British subjects". 126

The increase in civil cases during January-March 1876 to 126 led Kirk to demand a Judicial Vice-Consul. The suits heard were a source of considerable revenue to Her Majesty's Government and in 1875 the courts collected £300. 127 Later the same year, in the suit before the British Consul, a very highly specialised staff appeared on behalf of the defendant. The consulate stressed the need for special assistance in its judicial staff. The above case took two months to hear and the bulky evidence was submitted to the Bombay Court of Appeal. Kirk felt that the appeal would affect "the whole status of the Kutchis and natives of India in Zanzibar". 128 Hence the civil cases began to play a larger role in determining the status of the Kutchis, which until now had been determined by the slave trade jurisdiction.

126. F.O. 84.147, No.144, Kirk to F.O., 11-10-1875. Kirk intended to use Code section 268 of Chapter XIV, where public nuisance was defined.

127. F.O. 84.1453, No.74, Kirk to F.O., 20-4-1876. Another case involving SMT100,000 was also heard. The India Govt fee was £210.

128. NAI, Foreign Dept (General A), Jan. 1877, No.213, Kirk to Lord Derby, 11-12-1876. The problem of administration of wills of Kutchis was related with the issue of jurisdiction over Kutchas.
The major problem with civil and criminal cases remained the issue of appeals sent to Bombay, since both parties were not always in favour of going there. This is illustrated by a case involving a Zanzibari plaintiff and a British subject as a defendant, where the plaintiff won the case with costs. The defendant decided to appeal to the Bombay High Court, but the Sultan objected and held that the judgment was final. Kirk, after examining the Treaty, quashed the application for appeal because he held that the judgment of the Bombay High Court would be ineffectual against a subject of the Sultan. The Foreign Office's observations on the case were that the judgment was invalid on two grounds. Firstly, the case was heard by a vice-consul, who had no judicial powers under the Order in Council. Secondly, the Order in Council did not provide for that part of the Treaty whereby suits by Zanzibari subjects against British subjects could be tried. The Order in Council was only empowered to try suits between British subjects. Since the judicial powers were derived from the Order in Council the Foreign Office felt that it should be supplemented to extend judicial powers to vice-consuls.  

Kirk sent a Memorandum on a draft of a new Order in Council, proposing to divide the civil court into three classes, the first being that of the Consul General's concurrent jurisdiction over all. At the second level, he recommended that the local consular courts exercise the same powers as the Supreme Consular Court, but within their

129. F.O. 84.1485, No.73, Kirk to F.O. (Lord Derby), 1-5-1877, enc. Holmwood, Vice-Consul's Judgment, 25-4-1877.
own limits. Thirdly, he recommended the establishment of vice-consular courts in districts where vice-consuls resided, whose powers were to be defined by the Consuls. Kirk further proposed:

Her Majesty's Supreme Court for Zanzibar ought to have a judge, and that appeals from the local courts would come up before this court. This would eliminate the inconvenience of sending appeals to Bombay.\(^1\)

Kirk hoped that since Zanzibar was the centre of trade, a divergence of civil and criminal justice would be avoided. In addition to effecting rapid justice, a uniform standard in the administration of justice would be provided. He based his case on the difficulty of sending witnesses to Bombay, especially since the Sultan disallowed his subjects from appearing as respondents in Bombay.

In consequence of the pressures of civil and criminal cases and the remonstrations of Kirk, Foster was appointed to sit on the Zanzibar Consular Court as a judge. Judge Foster reviewed the legal measures at his disposal from a purely legal perspective, and in the light of the extended jurisdiction of the consular court. He felt that the Order in Council of 1866 did not provide for a properly constituted court and that this Order was dependent for its validity on the Treaty of 1839.\(^2\) He made the same criticisms of the Judicial System as Kirk had made, especially on the legality of a vice-consul's jurisdiction to hear a case and the legality of concurrent and appellate jurisdiction of the Bombay High Court. Foster made other far-

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\(^1\) F.O. 84.1514, No. 70, Kirk to F.O., 4-5-1878.

\(^2\) F.O. 84.1486, Kirk to F.O., 18-10-1877, "Memorandum on Draft Order in Council."
reaching criticisms since the Treaty did not give authority for (1) the institution of any criminal proceedings against a British subject, (2) the settlement of any dispute between the Crown and a British subject, (3) the establishment of local courts under officers inferior in rank to the consuls, and (4) the application of English bankruptcy laws. Foster also felt that the Order in Council did not authorise the application of British and Indian laws in civil cases. The Zanzibar civil jurisdiction was limited to cases under $200. Some Arab plaintiffs had given up $50-60 because if the defendant took the case for appeal, the plaintiff would have to pay all the money for the appeal. The Order in Council did not provide for jurisdiction over marriages though they had been solemnised. Foster was also unhappy with the provision of assessors by the Order in Council because he did not trust their legal expertise. After spending one year as a consular judge, Foster wrote:

I am convinced that all my proceedings are illegal and that a little more or a little less illegality in them is of no great moment. 132

Foster wrote that criminal jurisdiction had been even more restricted than the civil jurisdiction. He was worried that the provisions to send criminals to Bombay for trial were negated by the Bombay High Court, which had declined to exercise jurisdiction since none had been conferred upon it by its charter, so that a lot of crime was going unpunished in Zanzibar.

In addition to the legal inadequacies that Judge Foster

132. ibid., etc., Foster's "Report on the Administration of Justice in Zanzibar"
faced because of the increase in the numbers and types of civil cases, the consular court had personnel problems due to understaffing. The absence of a clerk of court meant that all the work was done by one Parsee clerk. This had resulted in "delay and inconvenience to the suitors that none but the Indians would patiently put up with*. He pointed out that the business of the court was out of proportion to the machinery of the court, since in an area greater than France were "scattered many thousands of British Subjects, all of them traders and many of them wealthy", who owned two thirds of the Kingdom. In 1872 only 45 suits had been heard in the court, in 1874 they had increased to 273, in 1876 to 394, and in 1877 to 626. Foster considered that not only was the number of cases heard a high one, but the issues dealt with were also important. The conflict of British, Indian and Arabic Laws in various combinations had caused several cases to be withdrawn from the domain of precedents.

In view of all these inadequacies, Foster recommended that a fresh treaty be made with the Sultan and a new Order in Council, based on it, be issued. He wanted a Supreme Court of East Africa to be constituted with a judge receiving an appropriate salary, and based in a new court house. He also requested a legalisation of his past decisions, if his commission from Her Majesty could be back dated to the date of his appointment.

Kirk, who lacked legal training and the legal perspective of Judge Foster, was not in full agreement with the

133. ibid.
latter. Kirk was of the opinion that the Zanzibar proceedings were not illegal because the Treaty with the Sultan provided for "jurisdiction limited to certain classes of the inhabitants"; however, he did concede that Foster's position since his appointment in 1877 was anomalous. The local Indian press had commented upon it, hence Kirk urged the Government to antedate his commission or confirm his judicial acts. Foster had asked Kirk that his past and future proceedings be legalised so as to render his position "less untenable". He felt that great inconvenience would arise from his "administering justice and disposing of large sums of money without the smallest authority to do so". Foster died in office in 1881, without having received his commission. A legally trained judge, he found it extremely difficult to justify in a court which was attached to the consulate. He was in deep distress and his self respect had been derogated, since he had inflicted punishment and had delivered judgments without any legal authority to have done so.

The deep personal crises felt by Judge Foster were indicative of the grave pressures caused by the increased application of the extraterritorial jurisdiction by the consular court. The fact that the court was a part of the Consulate General and the Political Agency, meant that it

134. ibid., enc.2, Kirk’s Memorandum, 4-5-1878.
135. F.O. 84.1515, No.114, Kirk to F.O., 24-8-1878. Foster had not been paid his salary during this year.
136. ibid., enc.1, Foster to Kirk, 23-8-1878.
137. F.O. 84.1599, No.47, Kirk to F.O., 26-3-1881. James W. Allen illustrates an American case similar to Judge Foster. Allen was left in charge of the US Consulate in Zanzibar by a previous Consul, but he had no judicial functions and no authority to sign any instrument as acting Judge of the US Consular Court. See J.B. Moore: International Law, Vol.II, sec.264, pp 623-4.
was not a purely legal institution. Judge Foster was exercising wide-ranging civil and criminal jurisdiction with only a skimpy legal basis and Consul General Kirk, while cognisant of certain legal inadequacies of the consular court, was more involved with the political dimension of the consular work. The consular court, therefore, was not impervious to the political dimension of the work of the Consul General.

2(b) Murders

Two aspects of dealing with serious crimes such as murder will be considered in this section. Firstly, the distance between the Zanzibar and the Bombay High Court led to the miscarriage of justice because witnesses could not be easily made to appear in Bombay. Sir George Cornewal Lewis, the noted writer on juridical matters in the 19th century, had referred to the problem of the viability of criminal law as a personal rather than a territorial offence, because of the difficulty involved in administering justice. It was felt that criminal law applicable in foreign countries could seldom be successfully executed. While guilty men might occasionally be brought to justice, innocent men, charged in different parts of the world, would be unable to defend themselves against accusation. Therefore:

failure of justice and an acquittal is therefore likely to occur even if the utmost diligence is used, but it may be assumed as certain that, unless some special motive exists little diligence will be used.\(^\text{138}\)

\(^{138}\) G.G. Lewis: Foreign Jurisdiction (London: 1856), p.30, Lewis further pointed out that while an educated man might find himself difficult to extricate, a "poor, uneducated, friendless man might be almost at the mercy of the accuser", ibid., p.31. However, despite this Lewis approved of the jurisdiction exercised by Britain in an "uncivilized country", p.73.
It was due to this general principle that many of the accused British subjects and protected persons sent to Bombay for trial were acquitted. The second aspect of the consular jurisdiction affecting British subjects and protected persons in the Sultan's coastal dominions was that their interests were alienated from those of the Sultan's subjects. Serious crimes were therefore committed against them and, since the consulate had no police force to enforce justice systematically, it used punitive measures against the offenders.

While common law generally accepted the principle of punishing a crime by the courts of the country in which it was committed, the law of homicide was one of the exceptions to this rule, where England attempted to exercise local jurisdiction over the whole world. One early case, relating to this issue in Zanzibar, was tried at the Old Bailey in 1836. Regina vs De Mattas was an indictment for murder, under 9 Geo. 4, involving a Spaniard, De Mattas, who had wounded Jacob Kettle, a British subject, on land in Zanzibar. Kettle later died of the wound on a British ship.

It was held by Vaughan J. and Bosanquet J., that the prisoner could not be convicted because he was not a subject of His Majesty within the meaning of the Act and that because the offence was not complete on land, as the wounded man died on shipboard; verdict not guilty.

Had the crime been completed on land, the British jurisdiction would have been exercised, because murder is universally

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140. Ian Brownlie: Principles, p.263, "the United Kingdom legislature has conferred jurisdiction over nationals inter alia, in respect of treason, murder, bigamy and breaches of the Official Secrets Act, wherever committed".
considered an offence. In practice, however, while the Extradition Act of 1870 provided for surrender of criminals, the treaties were formed so as to preclude surrender. British subjects committing offences on foreign ships were subject to foreign municipal laws.

Captain Hamerton had attempted to exercise his jurisdiction over a British seaman who had murdered a Zanzibari subject. The Foreign Office forbade Hamerton to send the accused to England for trial because this crime had been committed in a foreign country. Captain Hamerton had compelled witnesses (including a US citizen) to leave Zanzibar to give evidence against the prisoner.

Captain Hamerton should be apprised that his conduct in sanctioning so grievous an outrage on the persons of the witnesses is entirely disapproved and is highly censured by Her Majesty's Government.

There had been an improvement in the situation since the time of Captain Hamerton, by the time Judge Foster had been appointed. Prisoners could be transported to the Bombay High Court for prosecution, although the fears of Kirk and Foster that the Bombay High Court was unable to inflict punishment were substantiated by the case of Dosaji Gulam-musseain, who was sent to Bombay in 1878 for murdering one Namuthbhai. The Bombay High Court acquitted him of the charge and sent him back to Zanzibar. Kirk felt that the

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142. F.O. 54.5, F.O. to India Board, 9-2-1843.
143. ibid., Hamerton to Bombay Court, 14-11-1842; see also NAI, Foreign Dept (Secret Nos 68-70), Secretary of Bombay Govt to Hamerton, 26-5-1843. Bombay Govt found Hamerton's proceedings "illegal" especially since Hamerton had placed the witnesses in irons to be transported, on the Sultan's ship "Curles" and on the Sultan's advice.
High Court had jurisdiction to obtain evidence and that the accused should not have been acquitted because of the overwhelming evidence.  

A major drawback in the situation was that a Zanzibari Arab could not be sent to Bombay as a witness, and witnesses generally could not be induced to travel to Bombay. Since this longstanding difficulty of sending witnesses had remained, the judges were reluctant to convict an accused without the oral evidence of witnesses. It was also considered that the separation of the accused from the sympathy of his neighbours and his trial amongst strangers caused acute hardship to him. This problem was endemic to the prosecution of criminals not only sent from Zanzibar to Bombay but also in the case of criminals sent from the Levant to Malta or Corfu.  

The release of the accused, Dosaji Gulambussain, was reported by the vernacular press of India, and Kirk felt that it might "cause much scandal and be commented on greatly to our detriment". As a Consul General, Kirk was concerned about the legal as well as the political implications of the Bombay High Court's decision. He therefore requested instructions to deal with such cases. The Foreign Office wrote that the "failure of justice in this case was inevitable" but that the new Order in Council would obviate the recurrence of this event.  

The Foreign Department of the Government of India

144. F.O. 84.1515, No.125, Kirk to F.O., 7-10-1878, Case No. 50, enc.1 (1878), Kirk felt that Act 39, 40 Vict. Chap.46 gave such powers.


146. F.O. 84.1547, No.11, Kirk to F.O., 6-1-1879.

147. F.O. 84.1546, No.6, F.O. to Kirk, 21-2-1879.
acknowledged the existence of ample evidence which could have convicted Dosaji Gulamussain. It nevertheless pointed out that there "was no legal means of bringing it properly before the Court at Bombay". The Foreign Department henceforth wanted such cases to be tried in Zanzibar and recommended that the Consul General be given the jurisdiction of a sessions judge under the Code of Criminal Procedure. The Foreign Department also asserted that the Governor General had no powers over such persons and recommended that an Order in Council, to give it effect, ought to be drawn up. However, it did not agree with Reilly, the legal adviser at the Foreign Office, about the appropriateness of English law over Zanzibar since 4,222 British subjects were Khoja, Hindu, Bohra and Memon, and therefore recommended the use of the civil and criminal law of India. 148

Before the above measures could be put into effect, Foster punished the next accused, Suchdeva, by deporting him to India, and reported the fact to the Bombay High Court. 149 The Registrar of the Bombay High Court raised questions about Foster's report, which was required under the Order in Council of 1866. The Registrar wondered if the accused was a British subject, because Foster had neglected to mention this fact. He mentioned Suchdeva's previous conviction when he had caused the death of a woman by ravishing her, and said that the accused had not been sentenced to the full capacity of his

148 F.O. 84,1694, No.2, Foreign Dept, Govt of India to I.O., 25-8-1882. The application of this law did not merely extending the law of Bombay Presidency.

149 F.O. 84,1515, No.148, Kirk to F.O., 13-11-1873. This was a case involving a Khoja merchant Suchdina, Enc.2, Foster to Chief Justice, Bombay, No.303, 13-8-1873.
crime under section 14 of the 1866 Order in Council. Foster advised the Bombay High Court that the suspected, Suchdeva, had been prosecuted under section 35 and not under section 14. Furthermore, he felt that it was immaterial if a person was a British subject so long as he was under British protection. The accused was not sent for trial to Bombay because Foster felt that the Bombay High Court had no jurisdiction. Secondly, Foster was not a magistrate of Bombay, so their High Court could not try a person committed by him; and thirdly, he could not get witnesses to go to Bombay. Since Bombay had not punished Gulamhussain he did not want another crime to go unpunished. Foster also disagreed that the "grounds for deportation are legally insufficient" because section 16 obviated the necessity of a previous conviction. He also stated that the Order in Council gave no power to Bombay to "confirm, vary or annul any sentence passed by the consul except where an assessor had dissented". Foster deported the accused for life because the "Sultan's prison is a den of filth and unfit for human habitation and it is monstrous that a British subject should be put into it". With the banishment of the accused, the possibility of Bombay acquitting him was eliminated.

This strong position taken by Judge Foster raised the issue of his accountability to the Bombay High Court. The Foreign Office dictated that since Foster was appointed by the Government of India, and until he received his consular

150. ibid., encl.3, Registrar Bombay High Court (Appellate) to Kirk, No.1218, 20-9-1878. The Bombay High Court in this letter misconstrued the Order in Council of 1866 as that of 1876.

151. ibid., encl.4, Foster to Kirk, 13-11-1878. The English prison in Zanzibar was not staffed, therefore "banishment for life from Zanzibar was considered adequate punishment".
commission he was accountable to them. The Foreign Office, therefore, ruled that on the question of censuring Foster the Bombay High Court was fulfilling public duty in dis-covering irregular trials. Judge Foster was duly censured but no measures were instituted to correct the situation he had complained about. In 1883 another miscarriage of justice occurred. The Bombay High Court could not convict Shaik Adum for the murder of Moosa since the Zanzibar court had only forwarded written evidence. However, a new Order in Council of 1884, which would have corrected some of the errors which led to miscarriages of justice, was nullified because of a printing mistake. This caused further delay before the Order in Council could become operative.

The second aspect of serious crimes involved the murders of British subjects and protected persons on the coast. The work of the British consular court had been extended to the coast but it was not able to provide adequate and routine protection. The far-reaching measures of the 1873 Treaty had alienated the British residents on the coast from the Sultan's subjects and his administration. These tensions took many forms and not only was the property of British subjects and protected persons threatened, but also their persons. Since the Sultan was also becoming increasingly estranged from his own governors by disallowing the slave trade, he did not overly interfere to defend the person and

152. F.O. 84,1546, No.18, F.O. to Kirk, 9-5-1879.
153. F.O. 84,1695, No.73, Kirk to F.O., 15-8-1883, and enc. No.3, Foreign Dept, Govt of India to I.O., 17-8-1883.
154. ibid., Kirk to F.O., the proposed Order in Council was dated 17-10-1883.
property of British residents. Thus the British Consulate, which had no police force, had to rely on the forceful and ad hoc measures of enforcing protection, including the use of the Royal Navy.

In 1874, during the absence of Kirk, the Acting Consul, Prideaux, sent his assistant Holmwood to carry on the work of freeing slaves on the northern part of the coast. He was instructed to visit Mombasa, Takaunga, Malindi, Lamu, Kisamayo, Brava, Patta, Siu and Paze. Holmwood was to enforce the Order in Council of 1866 and article iv of the 1873 Treaty. However, the Foreign Office was sceptical of Holmwood's visit to Brava in the Somali country. While in Paze, Holmwood had accidentally found out about the murder of Dimji Dayal, a British subject referred to as a "banyan". The evidence was collected by Holmwood but he took no further action. The case was followed up by Kirk after his return, but because of the time lag no criminal could be apprehended. The only method of punishment that Kirk could demand was reprisals against the whole town. Accordingly, Kirk demanded that the Sultan fine the whole town $800 for murdering a British subject. The lack of a police force which the consulate required to grant routine protection to its citizens necessitated the punishment of the whole town, which did not endear the British community to the local

155. F.O. 84.1400, No.527, Prideaux to Holmwood, 1-10-1874; Holmwood to Prideaux, No.4, enc. 17-11-1874. Holmwood reported that much to the credit of Indians they have given up slave trade.

156. P.P. Vol.LXXII (1875), No.88, 22-12-1874.


158. P.P. Vol.LXXIII (1877), No.283, 1-6-1876, p.249.
population. While the fines, so collected from Paze, were to be used for a school, Kirk wanted to restrict its use only to Hindu ("banyans") and not to Muslim children.\textsuperscript{159}

The consulate relied on the Sultan for redressing criminal acts against British subjects. However, the Sultan did not always see the punishment of offenders who were his subjects in the same way as the Consul General did. This is illustrated by the case of a Bajun at Lamu who had murdered an Indian Manji Muralji. The consulate made representations to the Sultan, whereupon the Sultan instituted proceedings against the two accused. Kirk demanded that the Sultan impose a death sentence on the Bajun and his accomplice, while the Sultan insisted that life imprisonment would be adequate punishment.\textsuperscript{160}

The conditions on the coast worsened, and in 1883 the Sultan failed to redress the murders of Indians at Manda and Mombasa. Consul Miles therefore requested that a man-of-war visit the mainland ports. Miles also requested the permission of the Foreign Office to visit these ports.\textsuperscript{161} Later that year the Indians complained that robberies had been allowed to go unpunished by the Wali (Governors) of the Sultan, and Miles visited Mombasa.\textsuperscript{162} Miles could not find the actual criminals. Hence the Swahili community was blamed for the murder on the complaints from the traders.

\begin{itemize}
  \item \textsuperscript{159} F.O. 84.1453, Kirk to F.O., 6-4-1876; F.O. 84.1484, No.27, Kirk to F.O., 25-2-1877.
  \item \textsuperscript{160} ibid., No.110, Kirk to F.O., 21-6-1876; and enc. F.F. Vol.LXXXIII,(1877), No.313, pp 272-7.
  \item \textsuperscript{161} F.O. 84.1644, No.13, Miles to F.O., 2-2-1883.
  \item \textsuperscript{162} NAI, Foreign Dept (A Pol.E), Sept,1883, Nos 349-50, Miles to Secretary of Govt of India, 13-8-1883, No.349.
\end{itemize}
In a fourth incident, Mackenzie of the British India Steam Navigation Company informed the consulate that an employee of the company had been assaulted. Mackenzie suspected that agents of the Sultan, who was himself a ship-owner, were involved in intimidating the company.163

The above cases illustrate that the British subjects and protected persons only received arbitrary protection in return for their loyalty to the consulate. In all the cases the administration of justice was delayed for long periods and was of a questionable nature. The inability of the consulate to apprehend and punish individual criminals, instead of punishing the whole community, harmed the interests of British subjects and protected persons.

The Sultan and the consulate both faced the difficulty of controlling either physically or politically the vast dominions of the Sultan. While the Sultan did send an armed force to the coast, he did not want to be actively involved in prosecuting his own subjects in order to protect British subjects. Where the Sultan's control was weak and he had to depend on the goodwill of the local chiefs, his power was only nominal. Kirk's impression was that the British warships were feared more than the Sultan's forces supporting his nominal rule.164 The Government of India did not accept this police role of the British Consulate and requested Her Majesty's Government to ensure that the Sultan fulfilled his duties in policing his dominions.165

163. F.O. 84,1644, Mackenzie to Miles, 28-2-1833.
164. F.O. 84,1417, No.97, Kirk to Secretary of Govt of India, 19-10-1875.
165. NAI, Foreign Dept (Political A), No.5/6, Govt of India to I.O., No.6, 17-12-1875.
Kirk, however, did not consider any of his measures arbitrary. He felt that the actions of the Consul General and Judge Foster were derived from the Treaty and this made them judicial officers of the Sultan.

Once being appointed Consul here by the Queen, the officer is ex-officio under the Treaty constituted a Zanzibar official and in absence of rules to the contrary applies the law that seems the best fitted to the case. This Court will administer Christian, Hindu and Mohamedan law alternately to suit the parties and of this the Court is the judge. 166

Hence, as far as Kirk was concerned, the powers derived from the Treaty gave the consular court enough powers for which only the court was "the judge". The Consul General could therefore extend the control without reference to the Foreign Office or the Indian Government.

3) CONSOLIDATING MEASURES, 1879-1890

The complexity of the cases undertaken by the British Consulate required the updating of the various Orders in Council, especially to cope with the complex legal problems which had arisen. This was done in the last decade before protectorate status was declared over Zanzibar in 1890.

British consular control had now superseded dealing solely with slave trade cases. Jurisdiction had been extended to include ordinary and serious crimes relating to civil and criminal matters, both in Zanzibar and on the coast. These measures led to a qualitative and quantitative increase in the Consular Court's judicial work. Judge Cracknell was appointed to succeed Judge Foster and the implementation of

166, F.O. 84, 151½, No.70, enc.2, Kirk's Memorandum, 4-5-1878.
new Orders in Council improved immeasurably the operation of extraterritorial jurisdiction in judicial matters.

At the insistence of Kirk and Foster, especially after the judgments in the Gulsamhussain and Suchdeva cases, the Foreign Office was instrumental in convincing Lord Salisbury that the Assistant Political Agent and the Assistant Judge ought to receive consular commission. 167

In addition to the increased powers for the judicial officer, Kirk was thinking in terms of the enactment of a new Order in Council conferring wider powers. Kirk made many points in assisting the construction of the new draft of an Order in Council. He wanted the civil and criminal jurisdiction powers of the consular court to extend to all the dominions of the Sultan, especially on the mainland. In addition to extending the geographical base, he wanted the laws to cover as many contingencies as possible. While bringing all the legal basis of power to the court in Zanzibar, he considered the concurrent jurisdiction of the Bombay High Court as inexpedient except as a recourse to appeal. 168

The Government of India's new draft Order in Council was quite different from the one Kirk had received from England, since it was based on Indian law. The Government of India was of the opinion that it was inexpedient to extend English civil and criminal law to Zanzibar, although it did not want to extend the Indian Divorce Act and the administration of civil justice. It was felt that while Zanzibar was a district of Bombay in judicial terms, in

167. F.O. 84.1546, No.8, F.O. to Kirk, 7-3-1879.
168. F.O. 84.1548, No.128, Kirk to F.O., 17-9-1879.
practice it had widely different conditions and a mixed plural community.169

The final version of the Zanzibar Order in Council of 1881 laid down that Her Majesty's jurisdiction in Zanzibar would be exercised by the Consul General and "Consular officers in and for Zanzibar", and jurisdiction was established in cases between British and Zanzibari subjects and that in such a "mixed case an appeal does not lie in the High Court of Bombay".170 The vice-consular and other consular acts done "under the direction or with the approval of the Consul General will be deemed to be valid and effectual".171 The acts done before the passing of the Act by the vice consul or other consular official were to be declared valid and effectual. The prospective and retrospective clause was passed in consideration of acts by Foster and other consular officials. Hence Kirk's bold statement (see n. 166) about the powers of the consular staff was too far-reaching, since the Order of 1881 was to have retrospective application which legalised previous acts of the consular court.

A further Order in Council called the Zanzibar (Indian Penal Code) Order in Council of 1882 was passed under the powers granted by the Foreign Jurisdiction Acts of 1843 to 1878. The Rule 24 of the Rules and Regulations of 9 August 1866, which laid down that the Indian Penal Code be considered the criminal law "to which British subjects at Zanzibar are amenable", was confirmed as a rule. This rule was also

170. F.O. 84, 1695, Zanzibar Order in Council 1881, 1-4-1881.
171. ibid.
declared valid prospectively and retrospectively.\textsuperscript{172}

The British Consulate had thus acquired a comprehensive Order in Council to administer the affairs of British subjects and protected persons, mainly from India. The consul and the judges had always been from Britain, even though the jurisdiction of the consulate was mainly over Indians, using Indian legislation. The 1881 Order came into effect in Zanzibar at a time when paradoxically British Indian subjects in India were about to hold offices as magistrates or session judges in the covenanted civil service of India. These Indian magistrates would have had the power to exercise jurisdiction both over the European and the Indian subjects of the Crown. However, the official European community was divided over this measure and the civilian European community was overwhelmingly opposed to such a move.\textsuperscript{173} Hence, while British control in extraterritorial terms over Indians in Zanzibar was exercised primarily by European officials, there was no reciprocity even in the Indian Empire to allow Indians in higher ranks of the civil service to exercise control over Europeans resident in India.

Despite the injustice resulting from the above situation in India, the Government of India was able to grant increased legal powers to English consular officials in Zanzibar.

While Indians did hold high positions in the court of the

\textsuperscript{172} F.O. 84.1694, No.2, Govt of India, Foreign Dept, to I.O., 25-8-1882. The last point did not mean that it was a mere extension of the law of the Bombay Presidency.

\textsuperscript{173} See P.P. Vol.LX (1883), c.3512, Govt of India, Home Dept, to I.O., No.33 of 1882, 9-9-1882. The racialist feeling against this legislation was very high amongst the Europeans. See P.P. Vol.LX (1884), Memorials, pp 422-543. The Indian subjects of the Crown overwhelmingly supported it. See also Chapter III.
Sultan of Zanzibar, there were no Indians in any positions of power in the British Consul General's office. Apart from the few Indians involved as clerks at the consulate, the Indians who had any standing were the pleaders who appeared in the consular court. It was the increase of Indian pleaders in Zanzibar arriving from Bombay that led to a further increase in the complexity of the cases heard and led to demands for a new Order in Council which was enacted in 1884.

The 1884 Order was of a very special character because it made Zanzibar, as far as the "administration of justice to British subjects (was concerned) a part of Her Majesty's Indian Empire". In the Zanzibar Consular Court every consul or vice-consul, or acting consul or acting vice-consul held in and for his district, a District Court with all the powers of the Consul General. Article 7 further provided that an initial appeal could be made to the Consul General with further appeal to the High Court of Bombay (Articles 9, 18, 21). British subjects could also be sent to Bombay for trial and punishment. This applied to British subjects and protected persons from Muscat and Zanzibar. The consul in the Ottoman dominions could send British subjects to either Bombay or Malta for trial and punishment. It was preferred that a sentence of imprisonment be carried into effect in Her Majesty's dominions (Article 13). Hence prisoners were to be sent to Bombay or to any other place in Her Majesty's

174. F.O. 36.1677, No.38, Kirk to F.O., 14-4-1884. It was this increase in work which prompted Judge Cracknell to ask for a pensionable post.

175. See C.J. Tarring: Consular Jurisdiction, p.43.
dominions, out of the United Kingdom, whose government would receive them. The Consul General in Zanzibar was to prescribe, either by General Order or by warrant in a particular case, how and where imprisonment was to be carried out (Article 12). The rules laid down in Article 13 were to be used for purposes of deportation and the person to be deported had to pay his expenses for deportation. The return of a person to Zanzibar without permission was punishable by a fine or imprisonment or both (Article 17). In the case of Muscat, a deportee returning there without permission was to be redeported.

The 1884 Order also granted the Zanzibar court a mixed jurisdiction in civil suits, i.e. authority to try cases in which parties belonged to different nationalities. In Zanzibar a foreigner (not a Zanzibari subject) had to consent to jurisdiction of the consul whether he was a plaintiff or a defendant. He also had to obtain and file in the court the consent in writing of a competent authority of his own country to submit to British jurisdiction (Article 33).

After the transference of the British consular court under the administration of the Foreign Office, the court exercised civil, criminal and vice-Admiralty jurisdiction. The 1884 Order confirmed these jurisdictions and they were exercised over the islands of Zanzibar, Pemba and the 800

176. See Sec. 5 of 6 & 7 Vict. c.94.
177. C.J. Tarring, Consular Jurisdiction, Chapter on Orders in Council.
178. Ibid. For the multitude of European nations enjoying extraterritorial jurisdiction, see n.43. In 1886 amendments were proposed to the 1884 Order, so as to admit the execution of decrees transmitted by courts British India in Zanzibar. See NAI, Foreign Dept (External) A, Proceedings Nos 101-108, Sept. 1886.
miles of mainland coast of East Africa. The Indians were the main group over whom these powers were exercised, since they were the largest foreign community in Zanzibar, and an important commercial group. About a similar number were to be found elsewhere on the coast.

The civil jurisdiction was sub-divided into (a) the original civil jurisdiction which included jurisdiction of a mercantile nature and other matters such as breaches of contract. The Order defined the law, and all the Indian groups, including Zoroastrians, Shias, Sunnis, Brahmins, were covered by it. In matters of caste, marriage and inheritance, their own personal laws were administered. Hence the Khojas used the Muslim practice and the Hindus used their own laws as regards inheritance, marriage and customs. (b) The probate and administration was the second part of the civil jurisdiction with intestacy as its predominant feature. Most of the Indian Acts were used to administer the law, but Judge Cracknell wanted to include the use of the Indian Contract Act (ix of 1872) and Limitation Act (xv of 1877). 179

Generally throughout the second half of the 19th century there were very few criminal cases, but the more frequent crimes were assault, theft and the receiving of stolen property. The criminal cases were justiciated under the Indian Penal and Procedure Codes. The appeals were still addressed to the Bombay High Court, but after the appointment of Judge Cracknell and the use of up to date Orders in Council,

179. F.O. 84, 1852, No. 50, Enc. 1, Holmwood to F.O., 14-3-1887. Judge Cracknell's report: "Her Majesty's Consular Court in Zanzibar".
the conditions had changed from Judge Foster's time. Out of the appeals addressed to the Bombay High Court, until 1887 no decision of the Zanzibar court was revised. In the absence of Judge Cracknell, Berkeley acted as a judge for ten months. He tried 400 cases and in no case was an appeal made against his decision to the Bombay High Court. The British Consular Court worked with a judge who had the assistance of a clerk and Arabic interpreters. The judge decided both on question of law and fact in the civil cases, while the summons and orders outside Zanzibar were served by the Sultan's governors. The prisons of the Sultan were considered inadequate and the prisoners were lodged in Gen. Lloyd Mathew's barracks.

The 1884 Order also provided that British subjects and protected persons importing or exporting arms from Zanzibar and Pemba were liable to a fine of Rupees 1,000 or an imprisonment of two months or both. The law was to come into effect after 27 February 1889. The Zanzibar Order of 1889 gave the Consul General powers to make regulations for peace, order and good government of British subjects and protected persons in Zanzibar. The prime purpose of this order was to prohibit the export of arms to the African interior.

The effectiveness of the above Orders required that the houses of British Indians could be "watched under direct orders from this office", but the Consul General complained that there was no police force at his command to carry this measure into effect. Consul General Euan-Smith did not

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180. F.O. 84,1906, Euan-Smith to F.O., 3-4-1888.
181. F.O. 84,1876, No.100, Enc.9, 26-2-1889. Notification of 17-12-1888.
182. F.O. 84,1905, No.242, F.O. to Euan-Smith, 28-12-1888.
trust the effectiveness of the Sultan's police to perform this duty because of their susceptibility to corruption. These new powers were used when the access to the coast was blockaded and a ship, chartered by a British Indian subject, Savji Hadji, and sub-chartered to Dr Carl Peters, was apprehended for carrying arms under the blockade of arms regulations. Judge Cracknell in the "Neera Judgment" released the ship because it was not carrying munitions of war like guns and ammunition but "belts and pouches and knives". The ship was, however, made to pay captor's costs because its papers were not in order.

Summary and Conclusions

The basic theme of this chapter is the persisting confusion in the application of extraterritorial jurisdiction over the Indians in civil and criminal matters. While at various stages anomalies were successively removed, the extension of jurisdiction at each stage led to further anomalies. Consuls Hamerton and Rigby applied this jurisdiction in slave trade matters without adequate legal powers. Consuls Pelly, Playfair and Churchill scrutinised the application of this jurisdiction and laid a legal basis for it. In as much as they increased the application of this jurisdiction over different categories of protected persons, they left behind a complex legacy to Consul Kirk. The Mission of Sir Bartle Frere led to the signing of a new Treaty with the Sultan in 1873, and the enlarged jurisdiction

183. F.O. 84, 1975, Euan-Smith to F.O., 14-1-1889.
acquired by virtue of this treaty was resolutely applied by Kirk, who was promoted to the rank of Consul General. The legality of the enlarged jurisdiction was enhanced by the changes recommended by Judge Foster, while the ad hoc application of the earlier measures was made increasingly more systematic, especially by Judge Cracknell.

The application of the jurisdiction in slave trade matters curtailed the economic activity of British subjects, while allowing protected persons from India to prosper. A major portion of the consular activity was devoted to extending British control over various categories of these protected persons. Since the consular court was a part of the Consul General's establishment, the wider implications of the increased and systematic enforcement of extraterritorial jurisdiction was to bring the Indians within the British sphere of control, political and economic as much as legal, and to alienate them from the Sultan's regime. This "compulsory" jurisdiction was mainly imposed over the Indians because of their involvement in the slave trade. The smaller Indian businesses began to develop the "legitimate" sector of the economy, which was directly encouraged by the Consul General. Participation in the "legitimate" sector insulated the Indian entrepreneurs from their Arab counterparts, and utilised a large number of former slaves who provided unskilled and cheap labour. The effect of restricting the slave trade had far graver consequences for

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185. See n. 88 for Kirk's assertion that this jurisdiction was applied because of Indian involvement in the slave trade.
the Sultan, because slavery was a cornerstone of his economy. This dual jurisdiction not only weakened the Sultan's empire, but it also made the Indians increasingly dependent upon the legal and political protection of the consulate. This protection was on occasion enforced on the mainland by the Royal Navy by reprisals against the Arab communities on the coast.

While the Bombay Government initially had political interests in the Sultan of Muscat's African and Arabian Empire, the division of the Empire in 1861 lessened its interest in Zanzibar. The application of the slave trade legislation further diminished the Bombay Government's interest in Zanzibar and it ceased to control the Political Agency in 1873, while the Indian Government similarly abrogated its control to the Foreign Office in 1883. The Bombay High Court retained an interest in Zanzibar because it was considered a district of the court at Bombay. The Bombay High Court, however, was not suited to hearing cases transferred by the Consular Court in Zanzibar.

Once the importance of slavery had decreased and "legitimate" commerce had increased in scope during the 1880s, an important aspect of the extraterritorial jurisdiction was the adjudication of civil matters. Criminal jurisdiction assumed a much smaller role and was transformed into control of crimes like murder. The application of this diverse civil and criminal jurisdiction necessitated the enactment of new Orders in Council in 1881, 1882 and

186 For full commercial implications of this jurisdiction on the commercial empire of the Sultan, see Sheriff: Commercial Empire, chapter VII, section III.
The shortcomings of the Order in Council of 1866 pointed out by Judge Foster were recognised and remedied in the Order in Council of 1882. This Order was made operative not only in prospective terms, but also retrospectively and legalised the previous actions which had been enforced without proper legal authority.

The main impact of the application of civil and criminal jurisdiction, both properly and improperly, was to consolidate British control in economic and political terms over Zanzibar. The following chapter illustrates, during the late Victorian era, the political nature of this legal control.
CHAPTER VI

LATE VICTORIAN JURISDICTION

Consular jurisdiction in Zanzibar was intensified during the last decade of the nineteenth century because of the importance of British interests involved in the area. Other features of the extension of British control were the jurisdiction of the Imperial British East Africa Company (IBEAC) over the northern mainland dominions of the Sultan in 1888, and the declaration of Protectorate status which totally formalised control over Zanzibar and the mainland.

From the point of view of the Indian community, three important issues emerge about the control over them. The first was the exercise of a political jurisdiction over an Indian courtier of the Sultan, Peera Dewji. The second issue was the effect on the Indians of the IBEAC’s control over the mainland. Finally, reference will be made to the nature of protectorate and colonial status declared by Britain over Zanzibar and the mainland.

The Consular Court had previously deported persons to the Bombay High Court for trial and as punishment for slave trade offences. In 1888 the Court exercised an administrative power of deportation which amounted to something more than a modus vivendi arranged between peoples of unlike laws, and infringed the sovereignty of Zanzibar.¹ The British Consular Court exercised deportation in Britain’s

political interests.

The right of deportation for political or quasi-political reasons touches sovereignty more nearly, and there can never be certainty that it will always be used with a single eye for the good of the territorial sovereign and in accordance with his will. Where the foreign state to hold it to the exclusion of the territorial authorities the latter might have to stand powerless in the face of intrigues directed against their existence under the sanction of the foreign government itself.²

Hence, while W.E. Hall, a legal authority, asserts the right of Britain to deport for trial and punishment, on the question of administrative deportation he asserts that "it cannot therefore be held that Eastern states have in this respect abdicated their sovereign rights".³ This right had not been abdicated by Zanzibar but the British Consulate nevertheless exercised it.

1(a) Peera Dewji's Deportation

Sultan Khalifa, the brother of Sultan Barghash, was appointed jointly by the British and German governments, mainly because he was a weak man. He suffered most humiliating attacks on his sovereignty and finally resorted to advisors whom he felt would guide him away from European control. This incurred the wrath of the Consul General and the two advisors were insulted since their influence effectively reduced that of the IBEAC and General Mathews.⁴ The writer, Lyne, saw the Sultan as "an ignorant, weak man, who came under the influence of worthless advisors, who intrigued

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3. ibid.
4. R.N. Lyne: An Apostle of Empire, p.119. Dewji is referred to as the low caste Hindu servant and Bakashumar as an aged intriguer hostile to Europeans.
against Mathews\(^5\), but fails to mention that Britain appointed Khalifa because he was weak and his advisors were only attempting to protect the Sultan's interests.

Sultan Khalifa's Hindu confidant, Peera Dewji, along with Bakashumar, exercised a lot of power.\(^6\) Euan-Smith, referring to the Sultan's bad administration and his very bad relations with the Arabs, said that he advised him not to be influenced by Peera Dewji, a "low born, but extremely clever, capable and unscrupulous adventurer", who exercised an "unwholesome influence over the Sultan's indolent mind".\(^7\) Euan-Smith went even further and wrote a personal letter to Sir Julian Pauncefote at the Foreign Office, in which he expressed his fear that the Sultan conferred with Dewji on most confidential matters and that since Dewji was a "declared enemy of the English" these confidences were divulged to the Anglophobic Germans. Thus Euan-Smith asserted that Dewji had instigated the Sultan's insult of General Mathews, whose influence with the Sultan had dwindled to nought, and therefore Dewji was a "danger to the state".\(^8\) Lord Salisbury was informed of the above facts, with a recommendation from Sir Julian that Dewji be removed to India for "carrying on political intrigues to the detriment of British interests". Lord Salisbury noted: "By all means, I think better than deposing the Sultan."\(^9\) Euan-Smith accused Dewji of being opposed to British and IBEAC's interests and therefore

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5. \textit{ibid.}, p.123.
6. F.O. 84.1910, No.311, Euan-Smith to F.O., 22-10-1888.
7. F.O. 84.1911, No.385, Euan-Smith to F.O., 4-12-1888.
recommened that

it might become necessary for Her Majesty's Government to decide as to whether a stronger ruler acting under British influence might not desirably replace the present Sultan Khalifa.

Since Britain and Germany had installed Sultan Khalifa, the Foreign office did not want him deposed until both countries had made a final decision on colonial questions. Lord Salisbury had decided against this course even before Euan-Smith's letter was received. The Foreign Office was also informed that Dewji was awaiting the arrival of Lt Wissman of the German Consulate in order to become a German subject. Euan-Smith gained support for Dewji's immediate deportation by obtaining a petition from the Sultan's brother and thirteen Arab chiefs criticising Dewji and Bakashumar for not being "real Arabs". Clearly the Arab subjects of the Sultan had realised that the Sultanate, its courtiers and Arab chiefs were not at all free agents and were subject to harassment. There was at this time a marked change in the attitudes of the local populace and marked hostility was directed at Europeans. Assaults on British and German sailors increased in 1889 and in August, at the request of Gerald Portal, the town was placed totally under the control of General Mathews as a precautionary measure, and shore leave for German and British sailors was cancelled.

The Foreign Office wrote that, if the Sultan thought it expedient to expel Peera Dewji

11. F.O. 84.1979, Euan-Smith to F.O., 28-2-1889. The advice of John Kirk was sought at this point, and he concurred with Dewji's deportation.
as a person dangerous to peace and good order, no objection would be raised on the part of Her Majesty's Government although he is an Indian British subject. 13

This power was to be exercised under the Order of 1884, but Euan-Smith was informed that another Order in Council would be passed to enable you to deport British Indian subjects who may be guilty of intriguing to the detriment of British interests in Zanzibar. 14

Once he was convinced of Dewji’s guilt, Euan-Smith informed the Sultan that his advisor would be removed from Zanzibar. The Sultan was given the option of removing Dewji for one year from Zanzibar “without it being hurtful to the Sultan's dignity”, 15 in which case the British Consul would not apply the Order in Council. The Sultan refused to dismiss Dewji from his service, but informed Euan-Smith that since Dewji was a British subject the British Consul was free to do what he wanted. Britain was unwilling to dethrone the Sultan, so it was decided to remove Dewji because of his importance at the Sultan’s court in undermining British influence. Bakashumar was also exiled to Arabia at the end of August 1889. 16

The Proclamation of 9 March 1889, made out by Consul Euan-Smith, was based on an Order in Council of 2 March 1889 and laid down that, because of evidence which the Consul possessed concerning Dewji’s incitement of enmity between His Highness the Sultan and Her Majesty’s power and authority, he could be deported. The period of deportation

14. ibid., No.55, F.O. to Euan-Smith, 18-2-1889.
15. F.O. 84.1977, No.140, Euan-Smith to F.O., 11-3-1889.
16. L.W. Hollingsworth: Zanzibar under the Foreign Office, p.34.
was designated not to exceed two years. Euan-Smith had to leave Zanzibar because of bad health but Sultan Khalifa was extremely annoyed about the Dewji affair and refused to receive the Consul General on the eve of his departure.

In the absence of Euan-Smith, Consul Hawes executed the Deportation Order and sent a copy to the Foreign Office. Feera Dewji was deported to Bombay on 19 April 1889. The Foreign Office was extremely dissatisfied that Consul Hawes did not mention the powers under which deportation was vested and called it "a great muddle". It was felt by the Foreign Office that since Euan-Smith had taken the evidence of Dewji's guilt, only he could have signed a valid deportation order. Neither Hawes nor the acting Consul, Portal, were satisfied by the evidence on oath, to the effect that Dewji was a person dangerous to peace and good order in Zanzibar. The Legal Officer at the Foreign Office stressed that under these circumstances "Hawes' proceedings are altogether invalid". The Legal Officer feared that Dewji could institute proceedings against Hawes and, while the Foreign Office was prepared to protect the Consular Office, the Treasury objected. The Deportation Order, under the Orders in Council of 1884 and 1889, was not drawn up in a proper legal form. While Hawes was not held entirely responsible for this, nevertheless the Foreign Office found the "legal accuracy" of the Order to be "more than questionable".

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17. F.O. 84.1973, Deportation under Order in Council 1884, section 17; for failure of good behaviour and security under section 16.
19. F.O. 84.1978, No.194, Hawes to F.O., 9-4-1889, and enc. F.0's observations, 5-6-1889.
20. ibid., F.0's observations, 5-6-1889.
The Foreign Office sent two forms to the Consul General. Form A was an Order of Prohibition, and Form B an Order of Removal. Although the Dewji case was considered to be irremediable, nevertheless these forms were prepared with legal advice for future use against British subjects or protected persons. The Order of Prohibition was to be signed by the Consul General or the acting Consul General to whose satisfaction it has been shown by evidence on oath that the provisions of the Order in Council have been infringed and not signed by some other person as occurred in Peera Dewji's case.22

The acts committed, or about to be committed, against the Zanzibar Order in Council of 1884, and those which would be "dangerous to peace and good order" in Zanzibar were included on the Order of Prohibition. Any attempt to excite enmity between the Sultan of Zanzibar and the people of Zanzibar, or any intrigue "against Her Majesty's power and authority in Zanzibar" would also constitute grounds for prohibition from Zanzibar.

The Sultan had pleaded with the Foreign Office not to send Euan-Smith back to Zanzibar, especially because of the role he played in deporting his advisor, but the Foreign Office refused his request. Euan-Smith, on his return, felt that since Dewji's departure the Sultan had responded favourably to the Consulate and feared that Dewji's return would decrease the importance of General Lloyd Mathews.23

22. Ibid., No.166, Enc.1, 14-6-1889; F.O. 84, 1984, No.220, F.O. to Portal, 30-8-1889; Portal asked the Foreign Office if Peera Dewji's sentence had been remitted, and if he was allowed to come back to Zanzibar. Lord Salisbury replied that Euan-Smith had denied these reports.
Poora Devji’s deportation with the concurrence of the Sultan for having broken the "peace of the sovereign of the country"\textsuperscript{24} would have been justifiable. However, there was not the slightest evidence of this having happened and the Sultan’s reaction amply demonstrated his opposition to this act of political deportation which further curtailed his sovereignty. The Devji deportation also defined the limits beyond which the Indian community could not legally step.

1(b) \textbf{Euan-Smith’s Exercise of Legal Powers}

Euan-Smith requested extended powers over Indian subjects (not British subjects) who "enjoy such extraordinary privileges". He felt that although the Indians enjoyed these privileges, which were unattained by any "other native, they are an exceedingly ill-mannered and ill-conditioned class of people". His reference was directed to the Khoja portion of the "native community". He felt that the powers over the Indians were rather "shadowy and undefined", especially with respect to the power to "deport evil-doers".

John Kirk had treated British subjects equally, but Euan-Smith was not so diplomatic. The Foreign Office found him incompetent in the legalities of consular work. He had drawn up an Order in Council on 7 December 1888 to make a register of "all resident British protected subjects", with the express purpose of exacting a fee for the privilege of British protection. The Foreign Office pointed out to Euan-Smith that the Rao of Kutch’s subjects were to be

\textsuperscript{24} F. Piggott: \textit{Exterritoriality}, p.101.
referred to as "British protected persons and not British protected subjects". Kirk, who continued to advise the Foreign Office, referred to Euan-Smith's terminology as "absurd". Kirk also pointed out that "official registration and payment of petty fees" would be resented by British subjects. He therefore advised that the order be disallowed, since previous consuls, Rigby, Pelly and others, had tried to use these measures and had failed. The Foreign Office thereupon informed Euan-Smith that his registration order would drive British proteges to German territory. It felt that the burden of being a British protected person ought to be made "as light as possible and British protection a favourable contrast to a foreign rule". On closer examination the Foreign Office decided that Euan-Smith's order was unnecessary since it was covered by Section 38 of the Order in Council of 1884 (Section 6(b)). Lord Salisbury was firmer and decided that since the policy of registration and fees would meet with resistance, Euan-Smith be instructed to withdraw them.

Despite the distinctions made by the Foreign Office between British subjects and British protected persons "over and over again by Zanzibar Orders in Council", Euan-Smith had not understood the difference. The Foreign Office was extremely upset, but Euan-Smith responded that since no one in Zanzibar had complained, he did not see why London was

25. F.O. 84,1975, and F.O. 84,1982, No.428, Euan-Smith to F.O., 26-12-1889, and Enwa Kirk to F.O., 8-3-1890; F.O's comment, 10-3-1890.
26. F.O. 84,2053, F.O. to Euan-Smith, 14-3-1890.
27. Ibid.
28. Ibid., No.119, F.O. to Euan-Smith, 17-7-1890.
so concerned. Like so many other men "on the spot" who were extending British Imperial authority in the 19th century, Euan-Smith had no regard for the niceties and legal finesse that were venerated in London. It was partly because of the illegalities committed by Euan-Smith as Consul General, responsible for the consular court, that it became clear that the legal and consular functions needed to be separated.

While the legalities of jurisdiction were not clear to Euan-Smith, the political aspects of control over Indians were not lost on him. In contradistinction to the deportation of Peera Dewji, the following case demonstrates his ability to bring under British control certain Indians whom he considered important, by doing favours for them.

Euan-Smith had exhorted the Indians to accept German overlordship (see Chapter II, Section 3). However, he was willing to befriend an Indian - Haji - whom he considered a man of great importance. Haji, who was already working closely with the Germans, was known for his anti-English sentiments and yet was befriended by Euan-Smith on the understanding that he would cut off his relations with the Germans. Having obtained this assurance from him, Euan-Smith then asked Consul Portal to assist Haji in recruiting labour for the Congo Railway. Haji's contract to recruit
labour for the Congo Free State was submitted to the British Consular Judge, who considered that it contained no clauses to which an exception can be taken on the grounds of their directly encouraging the slave trade, and the rights of the employed seem to be well safeguarded.  

The Consulate was, however, going to keep a strict watch on Hajji and his French partners in case the Indian Penal Code was infringed. The ship "Zanzibar" was allowed to leave with 400 men, possibly freed slaves, to work on the Congo Railway, after inspection by British and German naval officers.

2) IBEAC and Local Control  

Sir William Mackinnon had formed the British East Africa Association in 1887 to open up the British portion of East Africa to commerce. In September 1888, through a Royal Charter of Incorporation, it became known as the Imperial British East Africa Company. The field of operations of the IBEAC was not considered to have derogated from the sovereignty of the Sultan and hence Protectorate status was not declared over the mainland territories. It was, however, the first step to the declaration of Protectorate status on the mainland as an instrument of acquisition and administration. The rights of government and administration were obtained from the Sultan and various chiefs. The Crown had no dominion over these grants and agreements, but since the British Government had authorised the Company to hold and retain powers, "the Crown could not grant the Company
what it did not possess," there was nevertheless a measure of involvement. The IBEAC charter was based on municipal and not international law. The British Government had authorised the Company to hold and retain powers already vested in them, but conferred none on them. Hence the Company was subordinate to the British Government:

The IBEA field of operations is not declared a Protectorate since sovereignty is not indivisible. Such an arrangement in no way derogates from the sovereignty of the protected power.35 For international purposes the IBEAC was to be regarded as being under the sovereignty of Great Britain.36

Within a short period of this complicated legal scheme acute problems were created between the British Consulate and the IBEAC. Simons, the Consul at Lamu, resigned his post because of conflicting orders received from his joint masters, Consul General Euan-Smith at Zanzibar and the IBEAC.37

Under Article 2 of the IBEAC's Concession judges could have been appointed and courts of justice established. Consul Euan-Smith claimed rights of extraterritoriality over British subjects and British protected persons under Article XVI in the Zanzibar-British Treaty of 30 April 1886. The IBEAC judges had to apply to the Foreign Office to obtain consular commissions.38 The administrator of the IBEAC,

34. F.O. 84.2275, Memorandum by Lord Chancellor, 5-11-1892, No.152.
37. F.O. 84.2064, No.375, Euan-Smith to F.O., 13-9-1890, & enc.
38. ibid., No.377, Euan-Smith to F.O., 15-9-1890. Euan-Smith's use of "extraterritoriality" incorrectly is criticised by the F.O., see n.29 above, F.O. 84.2063, No.325.
Sir Francis de Winton, sought a consular commission because of the increased European and Indian population at Mombasa and the demand for increased judicial functions. With the start of the operations of the IBEAC, the joint consular and judicial functions (the "combination system") had led to a dominant role for the Consul General. This system had some similarity to the double government system of the East India Company although it was short lived. The presence of the IBEAC brought to light the highly politically oriented nature of the judiciary because of its control by the Consulate.

Two distinct features of the IBEAC need to be stressed. Firstly, that since the IBEAC was paving the way for the British Government to take formal control of the East Africa mainland, there were considerable problems between the Foreign Office, the consuls and the IBEAC. Secondly, these differences tended to be minimised when the Indian community posed a challenge to the IBEAC.

The IBEAC on the coast had exercised powers over the Indians resident there, and Mackenzie of the IBEAC was of the opinion that the Company had acted without legal authority towards the Indians and exceeded its powers. The Foreign Office was reluctant to grant any consular agencies to the IBEAC, and since the Company was not in a stable position because of the extremely tense situation on the coast, it wanted the consul to remain in charge of the coastal situation.

39. Ibid., No.385, Euan-Smith to F.O., 24-9-1890.
40. Ibid., Enc. de Winton to Euan-Smith.
41. Ibid., Note by Davidson (F.O.), 7-10-1890.
42. Ibid., Enc. Memo: Mackenzie to F.O., No.12.
43. F.O. 84.2065, No.395, Euan-Smith to F.O., 20-10-1890.
General Mathews, a major Minister of the Sultan of Zanzibar, advised the Foreign Office that the Sultan should not be allowed any control of justice on the mainland because the work of the IBEAC would be hindered. He advised the setting up of consular courts in each district under vice-consuls with a Court of Appeal based in Mombasa. Whereas the British East Africa Association had derived its powers from the Sultan, the Company did not serve his interests but those of the British Government from whom it originally derived its legal power. The IBEAC differed from the British North Borneo Company in that the IBEAC was subject to, and was to perform all the obligations contained in any treaty between the British Government and any other state or power. The Indian pleader, Camruddin of Zanzibar, gave advice on technical and legal questions. He advised the Company of "the necessity of appointing an experienced Indian judge, or a Barrister to act as a judge, assisted by an Indian pleader".

The IBEAC issued two proclamations on the coast. The first one required the registration of individuals and property, and imposed a fee for such registration and for obtaining a licence to carry on business. The second wanted to effect the registration of dhows on the Kenyan coast for a fee of Rupees 15. A British resident asked if he were obliged to comply with these regulations. Portal informed the Foreign Office that, according to the letter

45. M.F. Lindley: The Acquisition, pp 100-1.
of the law, the IBEAC did not have the right to charge fees nor to exact fines and inflict severe punishments. However, he was reluctant to inform British subjects at Lamu and Mombasa that they did not have to comply with the regulations of the IBEAC. The British subjects were advised to submit to these regulations, but to lodge a protest if they saw fit. A group of 75 Indians at Mombasa refused to obtain the trade licences, although two of the leading Indian traders did so. One of them, Tharia Topan, was a respected member of the commercial establishment in Zanzibar. Sir Francis de Winton had taken Topan and another trader, Dewjee Jamal, into his confidence and was convinced that their interests coincided with those of the IBEAC. The IBEAC administrator, Berkeley, also received an "impertinent" letter referring to his "tyranny" signed by an overwhelming number of Mombasa merchants, who were prepared to go to jail rather than submit to his orders. Fifty-four Indians accused the IBEAC of using "criminal intimidation" to make them subjects of the Company, and they wanted the IBEAC to establish a municipality in Mombasa from which it would receive taxes. They considered themselves to be under the protection of the British Government and did not want to become subjects of the Company. The IBEAC, however,

48. Ibid., No.26, Portal to F.O., 31-1-1892 and enc.
49. F.O. 84.2153, Lloyd Mathews to F.O., 16-6-1891. Lloyd Mathews offered the IBEAC the help of Topan to build a house at a reasonable sum if they did not wish to rent one.
51. F.O. 84.2229, enc. in No.33, Indian merchants to Berkeley, 22-11-1892, Enc. Peerbhoy and others to Portal, 28-1-1892.
regarded this as a question of grave importance, affecting their position and that of their representative Berkeley, since it was an open rebellion by British Indians against Berkeley's authority. Portal informed Berkeley that he had exceeded his authority and should have communicated with the Consul General before issuing the Proclamation. He was also informed that the British Indians looked to the Consul General at Zanzibar for legal protection, and Portal felt that the Indians, therefore, had a right to pay their fines under protest. Portal visited Mombasa after these representations because of the doubts which the Indians had expressed concerning the legality of the IBEAC's documents and their validity in British courts.

The opinion of the Consular Judge Cracknell was that the IBEAC registration ought to have been considered equivalent to a consular one. Davidson, as a legal adviser at the Foreign Office, agreed with Cracknell on the condition that the documents were to be made by the Consul General and reviewed by the Secretary of State. In his view the Indians had raised the whole question of the legality and administrative acts of the IBEAC. Berkeley went so far as to claim that the administrative acts of the IBEAC were not open to question by the Consular Judge Cracknell.

52. ibid., Portal to F.O., No.33, Portal to F.O., 7-2-1892. Berkeley does not seem concerned about the legality of the Proclamation but whether he can enforce it.
53. F.O. 24.2230, No.67, Portal to F.O., 24-3-1892, Section 43 of the Order in Council of 1884 would be the relevant section, according to Judge Cracknell.
54. ibid., No.68, Enc. 25-3-1892. See MacKinnon Papers (SOAS, IBEAC Box). IBEAC letters sent to Mombasa by German Mail, 17-1-1891. The Administrator was asked to collect a tax on land from Africans, on a district basis as was done in India.
The Judge felt that if a defendant or plaintiff alleged the illegality of any official orders, ordinances or proclama-
tions issued by the IBEAC administrator, then he would have
to examine whether the administrator's pronouncements were
binding, or if he had acted *ultra vires* or in a manner not
justified by the IBEAC Charter, Concession or the British-
Zanzibar Treaty. Berkeley denied this right because he felt
that his position would be rendered impossible by recalcitrant
British or Indian subjects. The legal adviser at the
Foreign Office felt that Cracknell, as a consular judge,
could not be instructed by the Foreign Office in the present
Mombasa Indian case, since Berkeley could impeach Cracknell's
judicial decision. If Berkeley's taxes were to be adjudged
legal, he would have the advantage of judicial decision and
"a public discomfiture of the recalcitrant Indians into the
bargain". However, he felt that Berkeley's desire to oust
the jurisdiction of the consular court was prompted by
serious misgivings and that his proclamation was illegal.55

Portal visited Mombasa after receiving his commission
and held two long interviews with the Indians. Their
animosity towards Berkeley was pronounced, especially since
Indians had been imprisoned without trial, for which they
demanded compensation. Portal, however, tried to support
the administrative authority, despite what he had acknow-
ledged as being illegal.56 In a private letter to Anderson
of the Foreign Office, he wrote:

55. *ibid.*, Davidson's opinion, 26-4-1892. See also Davidson's
opinion in F.O. 84, 2236, Telegramme No.19, Portal to F.O.,
5-2-1892. Euan-Smith, who was in London, also admitted
that Berkeley had exceeded his authority in imposing
taxes and imprisoning the Indians.

56. *ibid.*, Portal to F.O., 25-3-1892.
I think I can keep the Indian malcontents quiet, but they are very bitter about their imprisonment and anxious to bring an action against Berkeley. If they do so, the latter will deny the jurisdiction of this or the Mombasa court.  

Despite adamant opposition to the IBEAC by the Mombasa Indians and the recognition of its existence by Portal, as Consul General, and the Foreign Office, no attempt was made to obtain their consent for the IBEAC’s administration. Attempts were in fact directed to stifling their protest. The Directors of the IBEAC, for their part, took great exception to Portal’s intervention in Mombasa, believing him to be on the side of the Indians and accusing him of having encouraged “hostile demonstrations at a public meeting”. An IBEAC employee, Dick, was discharged for being one of the instigators against the Company.

The Mombasa Indian case was suddenly dropped from the reports. It demonstrated that on occasions where the Indians represented a threat to the Company’s interests on the mainland, the Foreign Office was willing to forego its differences with the Company, although it had recognised that the Indians had a genuine grievance. The Foreign Office, therefore, arbitrarily allowed the IBEAC to implement their control, even though there was some question about it. This case nevertheless revealed that the IBEAC was in an extremely weak position and controlled the territories very ineffectively. The Company proposed to provide

57. F.O. 84.2231, Portal to Anderson (Private), 9-5-1892.
58. F.O. 84.2232, No.190, Portal to F.O., 30-8-1892. In this instance Berkeley felt that the Directors of the IBEAC were mistaken and that he had not reported such an incident. C.W. Hobley: Kenya felt that the Foreign Office pursued an unreasonable and high-handed policy... notably on the taxation of Indian subjects for the upkeep of the administrative machinery”, p.69.
59. F.O. 84.2236, No.20, Tele, Portal to F.O., 5-2-1892.
police protection for British subjects, but the force consisted of Indian Volunteer Police who had been raised for general service in the IBEAC territories. The simultaneous discussion about the disbandment of the police force raised the whole issue of the provision for good public order in the IBEAC's territories. Their bad administration resulted from poor conception, bad management and under-capitalisation of the Company.

The IBEAC, however, still petitioned the Foreign Office that the British Indians were willing to submit themselves to taxation in return for efficient police protection. It was stated that Her Majesty's Government had declared its willingness to sanction taxation powers over British subjects by the IBEAC for administration purposes. In principle, therefore, the Foreign Office either ignored their legal misgivings or tried to remove them retrospectively in the interest of growing British control. In the case of a conflict between law and politics, the Foreign Office would seem to have overridden legal considerations in favour of the political ones. Nothing seems to have come of the IBEAC's petition because it was repeated.

Discussions continued, however, to centre on the agreement expressed by the Foreign Office to issue an Order in Council enabling the IBEAC to tax British subjects, which was

60. F.O. 2.58, F.O. (Currie) to IBEAC, 15-6-1893. C.W. Hobley: Kenya, "As the home Government had agreed to the grant of the Charter as a cheap and easy way of reserving this territory for Britain, the treatment accorded to the Company was ungenerous and shortsighted," p.69.
61. Ibid.
63. F.O. 2.73, IBEAC (Chairman) to F.O., 22-1-1894.
64. F.O. 2.74, IBEAC, Report to Shareholders, 31-7-1894.
considered to be a boon to foreigners but detrimental to the interests of the Indians. 65

The IBEAC also enquired if they had any rights to make "penal clauses in a proposed arms ordinance". The Foreign Office informed them that it would only be done if the Consul General issued a regulation for its enforcement under Section 2 of the Zanzibar Order in Council of 1888. 66 However, doubts about this and other regulations and their applicability continued to be expressed. 67

Protectorate status had been in operation in Zanzibar for some years and with the closure of the operations of the IBEAC British consular courts at Mombasa and Zanzibar were abolished in the hope that foreign subjects would bring their suits to a newly created court unattached to the consular establishment. The French, however, refused to accept the jurisdiction of the new court. 68 It was in 1896 that the French agreed to accept British jurisdiction over French subjects in Zanzibar, once a properly constituted British court had been established. 69

When, in the middle of 1893, the IBEAC started to depart from Buganda and territories north of the Tana, administration was increasingly taken over by the Government of Zanzibar - which meant effectively British administration, since Zanzibar was a British protectorate. 70 By 1895 the

65. F.O. 2.58, p.32, W.H. Bishop’s Statement. Brigade Surgeon R.C. Chandra (Indian) was present at the meeting, but raised no points.
66. F.O. 107,1. F.O. to Redd, Acting Agent, No.29, 14-2-1893.
67. F.O. 2.74, Memorandum by Crambrell, 27-3-1891.
68. F.O. 107,111, F.O. to Monsieur Cambon, in response to No.44 from Harding to F.O., especially relating to the case of Farro vs Peera Dewji.
69. M.F. Lindley: The Acquisition, p.314. Also n.103 of this Chapter.
70. Ghai & McAslan: Public Law, p.12.
IBAC had wound up its operations on the East Africa mainland and the British Government assumed control over the coastal protectorate and the adjacent colony. Once the control became effective the laws of the colony were applied to the Protectorate. Thus the Kenya Colony and Protectorate were governed by the same Governor, Executive Council and Legislative Council.\textsuperscript{71}

3) Jurisdiction within the Zanzibar Protectorate

In the last decade of the nineteenth century Zanzibar was declared a Protectorate by Britain. Despite the declaration of the Protectorate in 1890, the actual extension of this jurisdiction did not take place until some years later.

The Indian group of protected states was one distinct type of British protectorate. Before protectorate status was imposed on Zanzibar, a study of the 300 dependent states in India was made, since they contained 55 million people and covered 600,000 square miles. Britain extracted a revenue of £76 million and tributes worth £700,000. The state of Hyderabad itself was 81,000 square miles, about 3,000 square miles larger than the British Isles. Writers like H. Maine and C. P. Ilbert agreed that sovereignty over these dominions was divisible between the native Indian rulers and the British Government and was determined by treaties, engagements, \textit{summusa} (charters), and partly by

\textsuperscript{71} Lindley: \textit{The Acquisition}, p. 204. The leases of the Sultan of Zanzibar's bases, pp 237-9.
This view of the divisibility of sovereignty was also espoused by W.E. Hall and later by H. Jenkyns, who was the Parliamentary Counsel to the Treasury from 1886 to 1899. In fact, because of the paramount power of the British Crown in India, the native states depended on the orders of the Governor General and less upon treaties.

As a consequence the relationship of Great Britain to the Indian states was described as paramountcy.

This special status was recognised in the Extradition Act of 1870, Section 23, which provided that nothing in the Act should affect the lawful power of the Crown to make and execute

treaties for the extradition of criminals with Indian native states or with Asiatic states coterminous with British India.

Once protectorate status had been declared over the native states in India they had no international existence, and this was further recognised by Britain giving protection to the subjects of such Indian states living in Zanzibar and

72 W.E. Hall: Foreign Powers, pp 205-6, n.1, regarded the native states of India as a class apart from the Eastern states, where the paramount power exercised the greater or lesser amount of "residuary jurisdiction". Once the Queen became the Empress of India, the princes "were kept by sufferance or delegation". Internal independence amongst petty chiefs of Kathiawar was different from the Nizam of Hyderabad or the Rajput princelings of the Himalayas. See C.L. Tupper: Our Indian Protectorate (London, 1893), Chapter I, International Law and Indian Protectorate, pp 1-19; Chapter XVIII, The Constitutional Position of Native States, pp 332-356.

73 H. Jenkyns: British Rule, p.196. The limited powers of the Indian legislature and the wide legislative powers of the Governor General in Council are pointed out.

74 J.E.S. Fawcett: The British Commonwealth, p.122.

Muscat.* There was a lack of International Person as in the Indian vassal states of Great Britain which had no international relations whatever, either between themselves or with foreign states.77

After studying this group of states under British protection, Zanzibar was placed in a separate category of Oriental states with well-developed governments and a native sovereign. This category included the Malay States and Brunei.78 These states were regarded as "having longer traditions and more stable forms of government".79 In sociological terms a line was drawn between African societies and the Islamic states encircling the Indian Ocean. The protected states going west to east along the Indian Ocean were: Zanzibar, the Hadramaut States of the Indian Ocean, the Aden Protectorate, the Maldives Islands, the Malay States and three dependencies on the north coast of Borneo. (Tonga,

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76. See F.0., 94, 1632, 11-8-1876. Act of Parliament 1876: 39 & 40 Vict., c.96, s.4. However, the status of protected persons for legal and international purposes still had an indefinite status because of difficult legal problems posed by this branch of law which was still in a state of growth. See F.0., 94, 2275, Memorandum: Indian and African Protectorates, C.P. Ilbert, 24-1-1899. However, international law writers either invented principles or applied old principles to suit established facts. See William Lee-Warner: The Native States, cap. Chapter IX, Obligations affecting External Relations, pp 254-79; Kutch-Zanzibar Relations, pp 262-4 & 273.

77. Leuterpacht: Oppenheim: International Law, pp 165-6. For further information on the Indian protectorates and comparison with the African protectorates, see M.F. Lindley: The Acquisition, pp 195-201. In both India and Africa the protecting power assumed increased control over internal affairs, including annexation of protected territory.


a Polynesian Christian society, was an exception.\textsuperscript{32} The Persian Gulf states remained as protected states under the Foreign Office and were not transferred to the Colonial Office.\textsuperscript{30} The powers acquired by Britain were based on treaty and did not exceed the powers acquired in several independent Eastern states, except in the transference of foreign relations to the British Government.\textsuperscript{20} A measure of internal sovereignty resided in the local sovereign, especially as regards his own subjects.\textsuperscript{31} However, even in this respect, the British residents in the best organised Eastern states were not exempt from having influence on the internal matters of the state. The British Resident in Zanzibar carried out most of the administration, in addition to jurisdiction over all persons who were not subjects of the Sultan. Also local Statutes (Decrees) were not binding unless counter-signed by the British Resident. Therefore it can be claimed that a protected state can be absorbed practically in the administration of the protecting power.

The constitution of Zanzibar represents the highest point of assimilation to the Crown Colony system yet reached by any protected state. But the Sultan’s sovereignty is formally preserved and finds expression in the fact that the legislation of the executive and legislative Council takes the form of Sultan’s decrees.\textsuperscript{32}

In the early 1890s the Liberal administration was reluctant


\textsuperscript{32} Martin Wright: \textit{British Colonial Constitution}, pp 46 & 64. In contrast to Zanzibar which had internal sovereignty, it was impossible to say where sovereignty resided in Trans Jordan.
to have additional colonial responsibilities, but was even
more reluctant to see other European states acquire them.
Hence the limited obligations incurred through a Protectorate
were welcomed. The constitutional advantages of this type
of Protectorate were considerable since, unlike a colony, a
protectorate could be disposed of by the Crown without
obtaining the concurrence of the legislature.\textsuperscript{83}

The Sultan's mainland dominions came under the second
type of Protectorate, which consisted of East Africa, the
Somali coast and Uganda. In these territories it was con-
sidered that there was no sovereign or organised government
and the protecting power assumed and exercised both external
and internal sovereignty. Since these states were considered
uncivilised, as much power was exercised by Britain as would
have been had the territory been conquered.\textsuperscript{84} In Zanzibar,
where the Sultan still exercised a certain amount of power,
it was so because his government was considered to be "semi-
civilised" or a "well developed Oriental government".\textsuperscript{85} A
recent writer summed up the matter very succinctly:

Thus, protected states are generally territories
united under a single ruler, the rule being often
feudal and autocratic, and jurisdiction in them
and responsibility for their external relations
is transferred to the Crown by one or more formal
agreements with the ruler; colonial protectorates,
on the other hand, have been established among
primitive communities, often composed of loosely
associated, or even sometimes mutually hostile
tribes and groups, each having its own chiefs
and social rule; here the jurisdiction and res-
ponsibility of the Crown grew in part out of
concessions from local chiefs, but more exten-

This point is also asserted by H.F. Morris and J.S. Read:
Indirect Rule, pp 43-5.
authority in which the inhabitants acquiesced. 86

In both these types of protectorates the jurisdiction over British subjects was considered to be a matter of British municipal law. Two of the legal advisers to the Foreign Office felt that the powers of the Queen over British subjects, according to English municipal law, could be a matter of policy rather than of law, and "the law can be made to follow policy". 87 With the declaration of Protectorate status the British Parliament acquired complete powers to legislate for British subjects, because the foreign relations of protected states were exclusively in the hands of the British. 88

The position of foreigners, i.e. subjects of other European states, was a matter of municipal as well as international law. 89 Since the Sultan of Zanzibar never possessed any powers over subjects of European states, these powers could only be granted to Britain, as a protecting state, by the European power itself. Hence powers were granted by European states to each other by mutual agreement, and Britain

87. F.O. 84,2275, Memorandum on British Protectorates, C.P. Ilbert and H. Jenkyns, 26-8-1889.
88. This was the principle but in fact Indian laws were applicable in Zanzibar.
89. F.O. 84,2275, Note on Foreign Jurisdiction by H. Wright. See also J.P. Hockey: Problems of Jurisdiction, pp 24-33. Jenkyns wanted the imposition of jurisdiction without assent or dissent of natives and foreigners in the protected state, thus helping the formulation of international law over "external relations of an uncivilised country". But H. Wright felt that all inclusive jurisdiction would require the legislative pen, since protectorate unlike annexation could not establish total jurisdiction. Roberts-Wray: Colonial Law, p.104, "When a territory is ceded by treaty or formal agreement an instrument of annexation is not necessary". See also H.H. Johnston: "International Interference in African Affairs", Journal of Comparative Legislation and International Law (London: 1918), New Series, Vol.XVIII, pp 26-41.
and Germany agreed to this in the 1886 Declaration. The Lord Chancellor agreed that annexation was a direct assumption of territorial sovereignty. However, protectorate status was a recognition of the rights of the inhabitants in their own country, with Britain assuming only enough sovereignty to maintain "the paramount authority and discharge the duties of the protecting power".

The major impediment to Zanzibar's constitutional position was that it could not maintain political intercourse with sovereign powers. In principle, the extraterritoriality conceded to European powers in Turkey, China and Zanzibar implied that the protected power had abandoned a portion of its sovereignty in favour of the protecting power. The courts of the protected sovereign were not entitled to protect foreigners, since only the protecting power could discharge justice by establishing courts. Hence the protector stood between the protected power and the foreign power as a channel of communication. The protector thus assumed power to litigate for, and punish, people who were not natives of the state. This position was strengthened by the provisions of Article 34 of the General Act of the Conference of Berlin of 1885, which provided that a Power

90. M.F. Lindley: The Acquisition, p.118. Since the Sultan had adhered to the provisions of the General Act of the Berlin Conference, under Articles 34 & 35, he had the right to occupy new territory; while in 1890 Britain declared Protectorate over Zanzibar.


92. H. Jenkyns: British Rule, pp 174-5. See also W.E. Hall: Foreign Jurisdiction, p.218, who writes: "The mark of a protected state or people whether civilised or uncivilised, is that it cannot maintain political intercourse with foreign powers except through or by permission of the protecting powers."
which assumed a protectorate on the coasts of Africa, was to notify this fact to the other Powers who had signed the Act. The differences between the protectorates on the coast of Africa and those in the interior was the difficulty of maintaining effective jurisdiction inland. The above Article was "considered as international law for the uncivilised countries on the African coast". Any power which did not make objection when protectorate was declared was presumed to have assented to such exclusion or limitation. Britain presented the concept of "spheres of influence" as a delaying tactic before assuming power, which implied a moral claim rather than a true right. "Spheres of influence" can be further considered as "an alienation in disguise". The delimitation and demarcation of "spheres of influence" represented the preparatory stages of European intrusion into Africa; "the rights of the Africans in their own land were practically ignored".

The extent to which internal sovereignty of the protectorate was acquired by the Crown varied in the different protectorates and in each of the native states of India. It was ascertained as a matter of fact. In each case the

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95. G.W. Rutherford: "Spheres of Influence: An Aspect of Semi-Sovereignty", American Journal of International Law (20), (300), 1926, p.302. See also A.G. McEwan: International Boundaries, p.17, for a comparison of the status of Zanzibar and other parts of East Africa. For the delimitations of territories on the mainland and the actual demarcation of these limits on the ground by the European powers, see pp 42-44. See also H.F. Lindley: The Acquisition, pp 207-212, on conclusion of agreement on "exclusive spheres of influence".
96. C.P. Lucas: Partition and Colonisation, p.97. The only justification that Lucas gives for this action is that from the beginning of time "the stronger and the more civilised have encroached upon the weaker and more barbarous, and especially white men upon the coloured men."
internal sovereignty assumed by the protector was the whole sovereignty of the completely independent state, except what was left to the local government. The main difference between the Indian native states and Zanzibar was that the inherited rights of the Indian princes were not generally violated. In Zanzibar, the heirs to the Sultanate were ignored and weak persons subservient to British interests were nominated. The Prime Minister of the Sultanate of Zanzibar, Sir Lloyd Mathews, was loyal to British interests. The Crown exercised jurisdiction by resorting to the Foreign Jurisdiction Act, which had been originally passed for different purposes. Writers such as W.E. Hall were worried that the Foreign Jurisdiction Act of 1890 did not confer wide enough powers to enable the exercise of jurisdiction over foreigners or the subjects in the "barbarous countries"; since the Acts were meant to be applied for extraterritorial jurisdiction, the protectorate situation demanded:

powers that have at least a strong flavour of sovereignty, which are not specifically given by treaty or acquired by prescription...99

A recent writer has expounded the theory that when the Act of 1890 was passed,

the interpretation of foreign jurisdiction had been extended to mean administration as well as justice and to cover all inhabitants of the territory as well as British subjects.100

Furthermore, a protectorate which was governed by a Foreign

98. See Chapter IV, Legal Framework.
99. W.E. Hall: Foreign Powers, p.222. Since the Foreign Jurisdiction Act of 1890 was a consolidating Act, it should have had wider powers. Hall finds FJA 1890 more limiting because it only applied to a "foreign country", whereas FJA 1843 applied to a "foreign country or place", p.221.
Jurisdiction Act was naturally administered at first by the Foreign Office.101

These powers were then exercised by Orders in Council: the Africa Order of 1889 and the Zanzibar Order of 1897, the structure of which followed the Orders made for the exercise of foreign jurisdiction in the Ottoman Dominions. The Central Court was still held by a Consul General, with subordinate courts in different districts held by consuls or other inferior officers. These courts had both civil and criminal jurisdiction and, in East Africa, continued to follow the Indian law, with the provision for appeals to the Bombay High Court.

The East Africa Order of 1897102 applied to foreigners in so far as the Crown, by "treaty, grant, usage, sufferance or other lawful means", had jurisdiction over them. In the Zanzibar territory foreigners, who on 1 July 1895 were subjects of those governments who exercised any jurisdiction in that territory similar to the jurisdiction conferred by the Order, were exempt from it unless their government consented to it.103


102. The gradual extension of the powers of the Orders in Council is detailed by H. Jenkyns: British Rule, p. 193.

103. The first country to surrender its extraterritorial rights of jurisdiction to Britain was France in 1904. Italy followed in 1905 and the USA in 1907. These and other European powers surrendered their rights to Britain on the understanding that their subjects would become amenable to Her (HIs) Majesty's Court. France, Belgium and Germany did retain rights of testamentary jurisdiction. These were abrogated in the case of Germany during 1914-1918, and in the case of Belgium, since there was no Consular Officer, they were treated as lapsed by a non-user. The French relinquished theirs in 1937. See H.E. Kingdon: The Conflict of Laws in Zanzibar (Zanzibar: 1940), pp 11-12.
As stated earlier, the declaration of the Protectorate did not bring about an enlargement of the jurisdiction but an increased number of civil cases were heard at the British consular court. The "competent and reliable" British Indian pleaders who practised at these courts were Messrs Camruddin Amrudin, Mwanji Chaudabhoy and Mervanji Boyce. From the arrival of Judge Cracknell in 1881 until 1891, only one case was sent to Bombay for trial. A new dimension of the problem was the jurisdiction exercised by the Germans over the Indians in their territory, where in 1892 thirty Hindus intervened to save another of their number from unjust German treatment in Bagamoyo. The British Consular Court could not play any role in this case.

In many of the cases brought by British subjects against the subjects of the Sultan, the judge was assisted by the kadi of the Sultan. The declaration of the Protectorate had brought about the need to change the name of the Consular Court to the "Court of the Protectorate", thus bringing foreigners under its jurisdiction. The Foreign Office was agreeable to the suggestion but felt that this depended on the goodwill of France and Germany. There were also acute problems with the Sultan, since in certain cases he was both judge and defendant. Justice was only provided with the interference of the Consul General.

104. F.O. 84,2066, No.448, Euan-Smith to F.O., 9–11–1890.
105. F.O. 84,2229, No.40, Enc. in Portal to F.O., 23–2–1892, Cracknell's Memo.
106. ibid., No.41, Portal to F.O., 24–2–1892.
107. F.O. 84,2233, No.198, Portal to F.O., 2–9–1892. The cases of the pillaging of the Indian mosque at Pemba; Ranji vs an Arab who refused to pay rent - the Sultan refused to entertain any complaints from plaintiffs at his Baraza. The Sultan also refused to deliver boxes of pearls and gold sovereigns belonging to British subjects.
because a lot of cases were decided by the Sultan against the British subjects. The Sultan had also quashed judgments made by the kadi, especially where his interests (tenancy of his houses and mismanagement of three mercantile steamers) were reversed. Unless the cases warranted strong diplomatic pressures, the plaintiffs had to reconcile themselves to the judgment. The Sultan, however, had immunity from action in the British Court, in official, personal and commercial matters, even though his state was under the protection of Her Majesty. 108

Under the Treaty of 30 April 1886, the Sultan had authority to judge cases where his subjects were complainants. However, in 1892 Portal and Sultan Seyid Ali agreed that in all cases arising within the British Protectorate and Zanzibar "the Sultan hereby delegates all his judicial powers" to Her Majesty's Consul General. 109 A kadi could be appointed by the Sultan to be present and act as an assessor. Hence the subjects of the Sultan who were defendants or accused, and British plaintiffs or complainants, were all under the jurisdiction of Britain.

Despite the time which had been spent defining the legal position of British subjects under extraterritoriality, this issue assumed newer dimensions, as illustrated by the following case. The British Indians brought a claim against Mr Coster, the Collector of Customs, because rice which belonged to them had been stolen from outside the Customs House. Since Coster was a British subject it raised

questions about the legal position of British subjects in
the service of the Sultan. Sir Arthur Hardinge, the first
East Africa Protectorate Commissioner, wanted to establish
a Court of Delegated Jurisdiction.\textsuperscript{110} However, the magistrate
felt that if a British subject were to be seized, or his
property seized, a warrant from Her Majesty’s Court would
be necessary. However, the Court of Delegated Jurisdiction
was not formed until 16 December 1897, for British subjects
who were plaintiffs or prosecutors and the Sultan’s subjects
were defendants.\textsuperscript{111} Lloyd Mathews, as the First Minister of
the Sultan, accepted the fact that in their personal acts
British employees of the Sultan were justiciable in British
Courts. In their official capacity he felt that his res-
ponsibility to his sovereign, the Sultan, was paramount, and
therefore he was unable to accept the Court of Delegated
Jurisdiction because this would imperil the Sultan’s juris-
diction over his own subjects.\textsuperscript{112} Hardinge and Judge
Cracknell accepted this proposal\textsuperscript{113} on a trial basis, but
did not want the English judge to be in a minority in this
Court and be out-voted by the kadia or the First Minister of
the Sultan. Davidson at the Foreign Office pointed out the
complexity of the problem by saying that the permission of
the Queen to relinquish her jurisdiction formally would
have to be sought to permit her subjects to be sued in the
Sultan’s courts.\textsuperscript{114} Euan-Smith, who was in Zanzibar in the
absence of Hardinge, felt that the proposal was an attempt

\textsuperscript{110} F.O. 107/111, No.192, Hardinge to F.O., 11-6-1900. See
C.W. Hobley: Kenya, p.74, who describes Hardinge as the
“head of State”.

\textsuperscript{111} Ibid., Court of Delegated Jurisdiction; Constitution.

\textsuperscript{112} Ibid., Memorandum by Sir Lloyd Mathews, 19-7-1900.

\textsuperscript{113} Ibid., No.331, Hardinge to F.O., 20-9-1900.

\textsuperscript{114} Ibid., Davidson’s (F.O.) Minute in No.331, 7-11-1900.
to enable British subjects to bring suits against the Zanzibar Government. This was to be done to enable the British Indians to sue the Zanzibar Government in its corporate capacity, in particular to facilitate suits that they wanted to bring against the Sultan’s mercantile steamers. The British Judge, Cator, had refused to sue Coster because he felt that he had no jurisdiction over the Zanzibar Government. British subjects working in the service of the Zanzibar Government were not personally liable, because the Zanzibar Government was the defendant.115

Two Arabs who were subjects of the Nizam of Hydrabad and therefore British protected persons were sentenced to death at the Zanzibar Court for the murder of Mr Hamilton of the IBEAC at Kisamayu. They had rioted with "deadly weapons" and killed Hamilton. The India Office concurred with the sentence and saw no objection to its being carried out, subject to the confirmation of the Bombay High Court.116

It seems that these two Arabs were part of a contingent of 40 Hydrabad troops who had deserted the IBEAC forces and joined with the Somalis on the coast in opposing the IBEAC.

Jurisdiction in the late Victorian era demonstrated firstly the overt political nature of the exercise of legal jurisdiction, especially in the deportation of Sultan Khalifa’s main adviser, Peera Dewji. Secondly, British jurisdiction was extended to the East African mainland using the IBEAC for this purpose. Despite the problems


116. NAI, Foreign Dept (Secret E), Proceedings Nov.1894, No.332-340, I.O. Note to F.O., No.338, 30-8-1894. The prosecution was carried out under Order in Council 1884, as amended by Zanzibar (Jurisdiction) Order in Council 1893, and a jury of five.
between the Foreign Office and the IBEAC, jurisdiction over British Indian subjects especially was not allowed to lapse. The exercise of this jurisdiction was not necessarily carried out with the tacit acceptance of the British Indian subjects. Lastly, this chapter discussed the various assumptions made by mainly legal writers which led to the declaration of Protectorate status over Zanzibar and the Kenya coastal strip, and colonial status over the rest of what later became the Kenya Colony.
CHAPTER VII

COMMERCIAL JURISDICTION

1(a) Indians in the Persian Gulf

Oman had long standing diplomatic and commercial contacts with India. An envoy on behalf of the Mughal Emperor of India was sent to the court of Imam Ahmed of Muscat in 1776 and this Mission lasted until 1800. However, as British influence in the Persian Gulf increased, this contact diminished. The growing rivalry between France and Britain in the Persian Gulf led to increased British vigilance, as exemplified by the interception of a letter from Bonaparte to Tipu Sahib and one to the Imam of Muscat. Increased British influence and intervention weakened the relations between independent Indian States and Muscat. The hitherto free Indian traders began to assume a complex role in commerce and some became agents of the East India Company in Muscat.

In 1763 Mr Price, the Provisional Agent of the East India Company in Persia, visited Muscat to obtain intelligence. He was authorised by the EIC to present "sundries" worth Rupees 200 "in the Hon'ble Company's name as a mark of their favour" to the Indian broker Narotram who, as their local

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2. Ibid., pp 414, 433. The Envoy of India's house continued to be known as the "Nawab's House" until the middle of the 19th century.

3. Ibid., p.429. After the alarming increase of British power in 1805, the Amir of Sind also sent envoys to the Shah of Persia; Ibid., p.1873.
representative, transmitted information to India. 4

When Colonel Capper visited Muscat in 1779 another
Indian, Narain Das, was the East India Company's Agent. The
Agency was transferred to Narotram Chander Ravi in 1797. Narotram
was instructed by the EIC to present a letter from
the Bombay Government to Sultan Seyaid containing British
instructions about the capture of Dutch and French ships
for flying Arab colours. The EIC subsequently felt that
Narotram was favourably disposed towards the French and the
Dutch and he was removed as envoy of the Company in favour
of Visu Das, 5 but this appointment was also abandoned when
it was found that he was in the service of Sultan Seyaid,
who died in 1804.

The Indian Agents, widely referred to as "Native Agents",
were extensively used by the EIC in the Arabian Peninsular
during the early part of the nineteenth century. They were
instructed to preserve the interests of British subjects and
to keep the Indian Government informed of any threats
presented by the other foreign governments. During 1828,
despite the critical relations between Russia, Turkey and
Persia, the "Native Agent" in Turkish-Iraq was not abolished.
In Basrah during 1810-22, when the post of the European Agent
was vacant, an Indian broker Johannes, a Khoja, filled his
place. He was succeeded by his son, Parseigh Johannes, who
held office for thirty years. 6 In Shiraz the Agent Mirza
Khan provided a "very efficient and zealous assistance" to
the Resident in Bushire which suited British political

4. ibid., p.415.
5. ibid., p.427.
The Indian Agents therefore were not totally loyal to the interests of Muscat nor those of the other Persian Gulf States. On the other hand, they were not as efficient as the EIC would have liked in serving its interests in the Gulf. As a group of traders they were caught in a whirl of divided loyalties. Lord Palmerston felt that the EIC had not recognised the value of the Imam as a cooperator since its reliance on its Agents and had not tried to rule indirectly through the Sultan.

This ambiguity in the position of the Indian community was responsible for a strong element of anti-Indian feeling among the Omani Arabs. The role of a certain of their numbers who acted as Agents of the EIC certainly made them even more a community of strangers than their long residence would justify. Their trading habits and social exclusion added to the anti-Indian sentiment. Moreover, at least one European traveller was critical of the Banyan traders because they were responsible for the diminished consumption of imported goods. He felt that the "honest manufacturer" would gain a lot if Aden was to be made the centre of trade for the African market. Instead the much desired articles of hardware reached Eastern Africa through Bombay and Mocha.

7. ibid., Vol.I, Part II, p.2102; see also Chapter IV, n.80.
8. Gavin; Palmerston's Policy, p.61.
9. Further research into this phenomenon outside the scope of this thesis needs to be undertaken. Lorimer's Gazetteer is replete with unnumerable examples of this in states of Abu Dhabi, Qatar, pp 811-39 Trucial Oman, Iman, Dhofar, Bahrain, pp 890-1, 912, 932.
As well, the Banyan traders were the money-changers, changing German Crowns into Mohammedies, a small coin of Muscat. By contrast the "honest manufacturers" were mostly European who felt they were at the mercy of the Indian traders. The main reason why the Indian commercial community was able to function in the Persian Gulf successfully and retain their separate identity was the threat of British intervention. Aden was too near at hand to leave the Muscat Government without a certain apprehension touching the possible designs of Europe on this coast, and of all Europe, England is just the quarter most likely to create alarm.

Barring this fear of European political aims by the Omanis, all traders were welcomed in Muscat, which was described as a thorough Eastern Babel in which the Banyans of western India bear for their number the chief commercial and monetary part.

The content of this Indian trade was varied during the late eighteenth century; "Indian manufactured goods, cotton cloth in particular, were major items of trade" in Muscat.

From Surat came piece goods, tobacco and rice; from Malabar rice, pepper, ginger, cardamoms, areka, betel nuts, timber for planks to be used in house and ship building, cloves, nutmeg and cinnamon; from Bengal came rice, saltpetre, piece goods, china, silk, porcelain, benzoin and camphor; from Madras lingo aloes, opium and piece goods.

13. ibid., p.365.
15. Abraham Parsons: Travels in Asia and Africa, p.284. Port of Surat in Western India carried on a lot of trade with rich port of Mocha; pp 262, 272. Hence the presence of traders from Surat and Gujerat.
The Banyan merchants monopolised the pearl trade, worth fifteen lakhs, and also dealt in grains. Despite their ambiguous loyalties and strange customs, they were accepted by the Muscat authorities because of their contributions to the commerce of Muscat and Oman. As a result of this they left great fortunes to their surviving families, as they are great economists and acute in their commercial transactions, though they are esteemed to be honest... It is much safer to sell goods to the Banyan merchants than either to the Turks or Arabs since if a Banyan becomes bankrupt the other Banyans rather than he should suffer the misfortune, will contribute according to their ability and pay his debt, which neither the Turks or Arabs will do for their countrymen.

On balance therefore the Indian commercial community was extremely useful both in Muscat and Oman, and Sultan Said encouraged their migration to his East African dominions. It is not clear if the EIC affiliations of Indian "Native Agents" were ignored by Sultan Said or not considered important. Nevertheless, the British connection of the Indians was to assume greater importance once Sultan Said moved the capital of the Omani Kingdom to Zanzibar.

1(b) British Jurisdiction and Indians in Zanzibar

The Bombay Government sent an expedition consisting of Captain Sme and Lieutenant Hardy to the African mainland in 1811 on a "voyage of research" whose main purpose was to locate new markets. The results of the voyage were not encouraging. Captain Sme found that the coastal trade was

16. ibid., pp 276, 280.
17. Reports of 1811 voyage were published much later: "Voyage to the Eastern Shores of Africa, 1811", in the Transactions of the Bombay Geographical Society, Vol. VI (Bombay 1844), pp 23-51, hereinafter TSGS.
in the hands of Arabs from Muscat and a few adventurers from Kutch and the coast of Sind. Since these traders were not British subjects they had little desire for British protection. Zanzibar island presented a better prospect with its considerable number of Banyans resident in the town, many of whom appear to be wealthy and hold the best part of the trade in their hands.18

The chief imports in this trade, which were valued at £300,000, were Surat cloth and dungree cloth from Kutch,19 and iron, sugar and rice from Bombay.20 At the same time brisk trade was being transacted from the northern ports of India with Malindi, and this involved extensive trade with the interior.21

The major part of Hardy’s detailed report was compiled from information given by traders at Zanzibar.

In 1824 Captain Owen of HMS “Leven” raised the British flag over Mombasa but was forced to withdraw three years later when Sultan Seyyid Said protested to India and Britain.22

But while there Owen reported that the British flag attracted the Banyans in large numbers to Mombasa who, sure of their protection, gave loose reigns to their mercantile enterprise.23

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18. Ibid., pp 45–65. Sme and Hardy sent their Indian pilot to Patta to inform the Sultan of their impending visit. See R. Burton: Zanzibar (London: 1872), Appendix III, p. 475.

19. Sheriff: Commercial Empire, Seeah Kupra (dark cloth) and brand names Bafta and Kaniki supposedly twice as durable as Manchester cloth.


Lieutenant Emery, a British naval officer actually in charge of Mombasa, 1824-26, succeeded in obtaining permission for Banyans and Arabs to proceed into the interior for trading purposes. During Captain Owen's protectorate over Mombasa uninterrupted and free commerce between Mombasa, Pemba and Zanzibar continued. The Indian business community, in fact, found British protection welcome. This was a period of struggle for the control of the East African coast between Sultan Said and the Mazruiis, one in which the security of British protection seems to have been welcomed. With Owen's departure an English traveller, Nathaniel Isaacs, reported another facet of the role played by the Indians at the port of Lamu:

The whole business of government is conducted by Banyans, who are a shrewd people, and quite au fait in all the details of their official duties. Like officials in other countries, they are not the most civil and obliging individuals with whom one meets... they display as much arrogance as any accomplished scion of an official stock in any nation in Europe.

In other words the role of the Indians in the Oman Empire in Zanzibar was similar to their earlier complex role in Muscat.

Owen noted that "even pagan Hindus (were) amongst (the Sultan's) most confidential servants." Thus, the presence of British Indian subjects was important in Britain's alliance with Sultan Said because it could be used "to

24. R.G.S. Emery MSS, Capt. Owen's letter (copy, 9-11-1831); Emery to Cooley, 20-12-1833 and 18-12-1835.
27. F.O. 54/1, Capt. Owen to F.O. (Secret), 8-9-1834. India Board, however, disapproved of Capt Owen as a Consul.
protect or to destroy him.

When Sultan Said adopted Zanzibar as his capital, he gave it much needed political stability which in turn led to an economic boom during the first half of the nineteenth century. Indeed, Zanzibar began to eclipse Muscat as the main commercial city of the Omani Empire. This stability attracted Omani subjects and Indian merchants who had overseen trade in the Indian Ocean for generations. These newer traders supplemented those who were already present in Zanzibar and were successfully engaged in operating the economy, along with locally resident Swahilis and Omanis. To accommodate them Said suspended the financial restrictions against Indian traders, which was resented by many Omani businessmen. Said was evidently not aware of the implications of the complex position of the Indian merchants. Since he was friendly to both the Hindu and Muslim merchants in Zanzibar, they responded to his overtures because

 Said being quite devoid of narrow racial prejudice, realised that their interests were identical with his own, and that where one trader penetrated ten might follow. said therefore felt that he would gain, rather than lose, by the admission of the Hindu. The Royal Asiatic Society elected Said an honorary member, among other reasons for "the friendly feelings he has on all occasions exhibited


30. ibid.
towards the subjects, Asiatic as well as European, of the British Empire".\(^{31}\)

Using the terms of the 1839 Convention of Commerce, the Indians were able to introduce money economy into Sultan Said's Zanzibar dominions. In 1835 Lieutenant Christopher of the Indian Navy reported that since the Africans could not use money "they were dealt with in barter very much to the advantage of our Indian Subjects".\(^{32}\) Since a significant portion of these Indians were from British India, and could claim the rights of British subjects, a Convention of Commerce was signed in 1839 between Britain and the Sultan of Muscat, which incorporated in toto the anti-slave treaty of 10 September 1822, thus formalising this Muscat engagement. This treaty demonstrated British interest in Seyyid Said's dominions in formal terms without detracting from the principle of British interests in India and the Far East.

The first article of the Convention provided for the freedom of trade, residence and movement for the subjects of each party in the territory of the other. The second article made it possible for British subjects to "purchase, sell or hire land or houses" in Muscat and dominions, and safeguarded their premises against unauthorised entry or search. According to article five, legal disputes between

\(^{31}\) ibid., pp 146-7; The citation of the Royal Asiatic Society.


\(^{33}\) C.U. Aitchison; *Summude*, pp 93-8; see also F.O. 84, 1485, No.63, encl 1\(\text{a}\), Kirk's explanation of the Convention in some detail; "Report on the various Treaties with Zanzibar with Index"; F.O. 84, 1532, Convention of Commerce between Her Majesty and the Imam of Muscat, 31-5-1839. When the Treaty was signed in 1839, the profits of Jairam Sewji were reported as being $100,000.
British subjects and subjects of Christian nations, where the Sultan's subjects were complainants, the case would be heard by the British Consul. If the British subject was the complainant, then the case would be heard in the highest court of the Sultan in the presence of the British Consul or Agent. 34 This in itself was a great limitation on the exercise of the Sultan's jurisdiction over his own subjects, or over those of other Mohammedan powers. Probate and bankruptcy jurisdiction over British subjects was granted in articles six and seven. 35 Bankruptcy was one of the first jurisdictions which was exercised by Hamerton and was contended by Said. In article eight the Sultan was to afford aid necessary to assist his subjects in paying their just debts to British subjects. Article nine provided that no duty would exceed the 5 per cent duty levied on British goods imported on British ships to the Sultan's dominions. This article of the Treaty was not reciprocated by Britain to the Sultan when the Sultan's ship "Caroline" visited London in 1845. Hence there was no real element of reciprocity in the Treaty. 36 With respect to the Indian community, who had been paying only 5 per cent duty for a decade, the Treaty did not affect their interests in this area. Article ten declared that trade would be perfectly free, apart from ivory and copal, on certain parts of the East African coast which were kept for the Sultan.

34. Ibid., for text of Article VI
35. Ibid., for text of Article VII.
36. F.O. 5488; N. Hunt to F.0., 25-7-1845; C.S. Nicholls; The Swahili Coast, p.368. The Americans also charged 40% duty on imports of Zanzibari cloves despite the favourable terms they received from Sultan Said, and violated the Sultan's wishes by trading with Mirima. See Sheriff; Commercial Empire, p.361.
According to this article, a legal Zanzibari owner was perfectly free to sell goods and lands to a foreigner without the interference of Zanzibari authorities, although in the 1870s the purchase of lands by foreigners was prohibited. According to the 1839 Convention, however, Arab jurisdiction was totally removed over real estate and it was subject only to the jurisdiction of the British consular court. In practice, however, the British consulate did not register mortgages or deeds unless they were attested by the Sultan in Zanzibar and a local governor on the coast. The judicial article ten laid down that the Sultan “should not interfere in disputes between British subjects and citizens of other Christian nations”, 37 which showed how wide the commercial relations were envisaged to be.

Treaties like the 1839 Treaty with Zanzibar were meant to have aimed “only at the equality of opportunity and did not always achieve even that”. 38 In the case of Zanzibar the equality of opportunity was denied to the subjects of the Sultan and the exercise of the most favourable nation clause did not enhance the chances of Zanzibari subjects trading with Europe and America.

It has been asserted that Indian traders poured in only after the establishment of Hamerton as British Consul in Zanzibar, 39 and that where the Indians went trade followed. In fact, the major impetus for Indian migration in the second

37. C.J. Aitchison; Sumnuds, for text of Article X. In 1861, 24 & 25 Vict. Chapter XXI, was used to exercise jurisdiction over British subjects dying testate or intestate; see Whitley Stokes; Statutes relating to India, pp 719-20.
39. R.N. Lyne; Zanzibar, p.34.
The Foreign Office, in response to an inquiry by Palmerston, was told by Hamerton that

British Indian subjects, and the subjects of the protected states in India, have for many years back enjoyed the privileges of trade, which the citizens of the United States of America or France have never enjoyed.

Trade in ivory and gum copal, which was used in the manufacture of varnish and lacquer,

has been, and is yet carried on, by British Indian subjects and the subjects of the protected states in India, but under the Imam's flag.

Trade under the English, French or United States flags had never been carried on in Mirima and was prohibited by treaty.

43. F.O. 54.12, No.10, Hamerton to F.O., 15-12-1848, pp 35-41.
Thus the Sultan allowed British Indians to trade under his flag despite the fact that he had disallowed it in the Treaty. The Sultan had two possible reasons for allowing this trade. Firstly because he wanted to woo the Indian trading community and, secondly, because he believed many of them to be his subjects. Captain Hamerton, however, disapproved of these privileges despite the fact that the British Indian subjects and those who were considered to be Omani subjects were allowed this privilege outside the operation of the Treaty. The fundamental concern of Hamerton seemed to have been not the protection and enhancement of the trade privileges of the British Indian subjects but effectively to exercise jurisdiction over them even if it led to curtailing their interests. In this instance extraterritoriality was not exercised to redress a wrong with the support of a consulate, but to restrict a privilege so as effectively to bring the Indian traders under British control.

The East India Company had used Indian native agents in the Persian Gulf to enhance its interests. The appointment of Captain Hamerton as Consul and Political Agent was to enhance the already existent British Indian interests in Zanzibar. It is therefore interesting that while the British Indian community was used to enhance British interests, even a recent writer has asserted:

44. G.S. Graham: Great Britain, pp 204–5, 209, stresses the American participation in Mwina trade but refrains from mentioning that Indians carried on this trade. Hence British subjects as such were not excluded.


46. Sheriff: Commercial Empire, pp 114–5.

47. See G.W. Keeton: Extraterritoriality in International and Comparative Law, p. 355.
The failure of British commercial enterprise in Zanzibar, in contrast to British political influence, is difficult to account for.\textsuperscript{48}

Since the political interests of the East India Company during this period were paramount, the commercial interests of the British Indian community were used to complement these. In fact, based on this sort of acceptance of the Indians as British subjects, it was questionable how seriously they were treated as British subjects and how zealously their interests were guarded. In this respect the attitude of the Bombay authorities, who were supposed to protect British Indian interests in Zanzibar, were of a rather questionable nature. Captain Harris of the Bombay Government wrote back to Bombay that since the Indians were supplying Africans with European goods they must speedily be driven from the market by the British merchant, who will at the same time create a number of new wants, to satisfy which the native will be goaded to industrious habits.\textsuperscript{49}

Hence British consular control over the Indians was not necessarily to protect their interests but to establish firmly English influence and trade over Zanzibar.

Another aspect of minimisation of British Indian interests, despite their commercial importance in Zanzibar, was that Captain Cogan, Sultan Said's close confident who had negotiated the 1839 Treaty, was in favour of employing Indians in the highest posts in civil administration. He was friendly in Bombay Government circles with people like Mountstuart, Elphinstone and Charles Forbes. This group was

\textsuperscript{48} C.S. Nicholls; Swahili Coast, p.337.

\textsuperscript{49} F.O. 54.5, No. 269, enc.29, sub-enc.1, Capt. Harris to Bombay Govt, 20-7-1842.
opposed by Willoughby in India House, who appointed his protege, Hamerton, as the consul in Zanzibar. This group wanted to increase British power and influence in the Persian Gulf, which to a certain extent meant increased conflict with the Sultan. Palmerston and Cogan would have preferred a policy of cooperation and a few aspects of the 1839 Treaty which Cogan negotiated with the Sultan embody this policy. However, basically there was a minimum amount of cooperation between Hamerton and the Sultan, which led to conflict and ultimately increased British political control, not only over the Sultan but also over the Indian community. The influence of Cogan weakened steadily after his successful negotiation of the 1839 Treaty, and upon the death of every member in 1847 the house of Cogan stopped trading. Apart from Newman Hunt & Co, there were no English firms operating in Zanzibar and British influence was furthered by nearly one thousand Indian British subjects who were "chiefly agents for houses in India" and "all the shopkeepers and artisans at Zanzibar are natives of India".

They carried on trade between India and Zanzibar and on the East African mainland:

A lucrative trade is carried on by northern ports such as Lamoo, Mombasa, Mogadishoo, Marsa and Brana (sic) with the Red Sea, Persian Gulf and India.

52. F.O. 54.13, No.6, Hamerton to F.O., 26-7-1849.
53. F.O. 54.17, Rigby to Sec. of State for India, 1-5-1860.
54. TEGS, Vol.XVII (1863-4) (Bombay: 1865), p.277. Administrative Report of Political Agent in Zanzibar; Gavin: Palmerston's Policy, p.283. Ivory was exported to Marwar, Gujerat and Rajputana in the late 1830s, $190,000-$220,000 was exported to Kutch and in 1929 cotton worth $280,000 - $300,000 was imported to Zanzibar. See Sheriff: Commercial Empire, p.118.
The high concentration of British subjects in the occupations of merchants, shopkeeper and artisans placed nearly eighty per cent of the entire commercial field under quasi British control. The encouragement of British control over the Omanis and the Indians, rather than cooperation with them, came from another quarter, namely the American trade.

1(c) The American Influence

The American trade and influence was considered inimical to British interests. In as much as Sultan Said and the Indian merchant class cooperated with the Americans, they increased British concern and led to an intensification of British efforts to control the Sultanate and the Indian merchant community. The attitudes of the EIC towards the American trade in India shed a light over the American involvement in the Indian Ocean area generally. In 1785 John Sinclair wrote:

I am more afraid of the new states of America than any other nation. For unless their Indian trade is nipped in the bud (which nothing can do so effectively as prohibiting all intercourse between our settlements and the ships they send to the East), our Nabobs will encourage their trade by remitting their fortunes home through the medium of Americans.55

The small New England port of Salem was extremely prominent in its trade with the East. In 1799 the Salem East India Marine Society was formed with 282 members and composed of persons navigating beyond the Cape of Good Hope.

55. S.R.O., G.D., 51.192/1, John Sinclair to Mr Dundas, 17-8-1785. For many years Dundas was President of the Board of Control and was accused of giving many posts to Scotsmen. See P. Woodruff: The Founders, p.153.
Various American traders involved in the East African commerce or their relatives were members of the Society. 56

The free access which the Americans had in EIC's ports in India had led to the expansion of their trade at an astonishing rate. 57 This trade later spread to the Persian Gulf and the East African coast. An Arab trader resident in Zanzibar and Lamu had extended his trade as far as Majunga and at the same time had established extensive trading contacts with the Americans. 58 The American interest on the East African mainland grew and they flew the star spangled banner at Lamu. The Treaty between Sultan Said and the Americans signed in 1833 particularly upset the British, and HMS "Imogene" was sent from Bombay to Zanzibar. Captain Roberts, who signed the Treaty on behalf of the United States, was aware that it had provoked Britain which had "already shown herself desirous of thwarting American rivalry in the East", although the absence of the US Navy was considered by Roberts to be detrimental to American interests. 59

In Captain Owen's opinion it was to be regretted that Mombasa was not taken in 1824 since "England would have had a footing in East Africa, well calculated to open new sources of wealth to her enterprise and industry". 60 After the Americans had signed the 1833 Treaty, Owen, in a letter to the Foreign Office, asserted that there was:

56. They included J & G Ropes, D. Hathorne, T.W. Ward, and Waters. The Museum of Salem East India Marine Society contained musical instruments from E. Africa, a letter in Swahili, a war hatchet from Zanzibar, wooden sandals, including a book on "some unknown language". These items were collected mostly by Capt. H. Leavitt. See The East India Marine Society of Salem (Salem, Mass.), n.d.

57. S.R.O., G.D.279/2, John Turnbull to Sir Stephen Cattrell, 28-8-1807, enc. in J. Turnbull to Lord Melville, 7-9-1807. Dundas, President of Board of Control, became Lord Melville see n.55.


60. F.O. 54.1, Capt.Owen to F.O., 8-9-1834 (Secret).
reason to apprehend the interferences of the Americans in their policy which in its result may be anything but beneficial to England.61

The opinion of this view in the EIC argued that the 1833 US Treaty might not be as important as it was considered to be.

The Americans are not objects of political jealousy to us in India and the trifling trade which they may carry in their small vessels with the territory of the Imam of Muscat is not very likely to interfere with our own. We do not seek the monopoly of the trade of Muscat.

However, the East India Company's trade in the Persian Gulf had been thrown open in 1811 and the EIC's licence system had been abolished by the Charter Act of 1833. The Charter made the right to trade and settle free to everyone; therefore the EIC was not in a strong position to demand the exclusion of the Americans from the Imam of Muscat's territories. The East India Company was also not interested in the appointment of Captain Own as a Consul who would be responsible to the Foreign Office. The Secret Committee of the India Board felt that communications between the state of Muscat could only be held through the Governor General of India in Council and a Consul would not be responsible to the EIC.63 Therefore the EIC, because of fear that its interests in the Persian Gulf might be further diminished through Foreign Office interference, probably understated the American presence.

Capt. Cogan for his part referred the EIC to the American President's speech in the Congress in which the alliance with Muscat was mentioned, and Cogan requested

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61. Ibid.
62. Ibid., India Board to F.O., 26-9-1834, enc., Capt. Peacock to S. Mackenzie, EIC House, 27-8-1834.
63. Ibid., India Board to F.O., 26-9-1834.
Britain to increase its intercourse with the Sultan of Muscat. The fear of America's competition further negated ideas of cooperation with the Sultan of Muscat and instead enhanced the tendency to counter it with increased resistance. Unlike the EIC, the British Government, after the loss of the American colonies, had a different perspective of its interests in the Eastern Hemisphere. Greater emphasis was placed on its interests in this area with an added impetus on acquiring more territory, especially in India, to extract raw materials. Therefore the American presence was not favourably viewed. The strong trading links between the Sultan, the Indian community and the US Consul Waters in Zanzibar caused increased British intervention to establish their jurisdiction over the Indians because of the American encroachment in this traditional British area of influence.

Consul Hamerton was convinced that the Banyans were taking a hand in exalting and favouring the Americans at the expense of the English. To a certain extent he was correct in assuming this, since R. Waters, the US Consul in Zanzibar, had very close business connections with the major Zanzibar firms Jairam Sewji and Tharia Topan. Jairam Sewji allowed the Waters' firm to extend its operations and this was a significant factor in the growth and pre-eminence of American trade. For example, 90 per cent of Waters' commercial transactions were with Jairam Sewji. Waters also

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64. F.O. 54.2, I.O. to F.O., enc. Cogan's Memorandum, 3-2-1838.
66. Sheriff: Commercial Empire, pp 346-7, asserts that Sewji and Topan firms were established in Zanzibar and then extended their operations to Muth (Mandavi). There is very little evidence to support this hypothesis.
intervened as a conciliator in conflicts between local firms. In order to prevent Topan from being ruined by a rival firm of Abjee and Ramjee, the former was able to obtain the help of a certain Captain Hassan. The trade compact between Sewji and Waters weakened as Waters' firm became more established through contacts with other firms. By 1842 Waters had reduced his trade with Jairam from 90 per cent of his total trade to 32 per cent and had acquired 79 other customers.67

It is therefore possible that these close contacts between the US Consul-cum-trader, R. Waters, and the British Indian community were seen by the British Consul as an attempt to usurp Britain's proper role of protecting British Indian interests. Hence the avidness with which British Consuls exercised and intensified their jurisdiction resulted partly from the presence of and contacts between the US, the Indian commercial community, and Sultan Said.

British jurisdiction over the Customs Master, Jairam Sewji, brought this firm closer into the British Consul's sphere of influence. After the departure of Waters, Jairam Sewji changed the pattern of his trade. The fact that Waters had widened his trading partners once he had established his trade helped convince Sewji of the extremely limited advantages of a restrictive trade compact. Jairam Sewji also realised that with the increased number of foreign ships

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67. Peabody Museum, Salem, Mass; R.P. Waters Papers, Collection, Box No. 4, Acc. 12 1376. Consul Ward who succeeded Waters did not get along with Topan, the father of the well known Tharia Topan. See also Sheriff: Commercial Empire, pp 263 & 417, who denies that a monopoly of trade was held by Sewji and Waters, while Mangat: Asians in East Africa, p. 4, mentions the monopoly aspect of this trade.
trading with Zanzibar, it was not in his interest to practice restrictive trade as he had done with Waters. As a result of increased British jurisdiction and a commercial decision to stop restrictive trade, Sovji instead of confining his dealings with Waters' successor assumed an independent trading position so as to increase his profits by expanding the Zanzibar market. The American firms which did not accept this policy and did not have a naval presence or jurisdiction over Indians in India to justify their control in Zanzibar, were relegated to a secondary role. Consul Hamerton was able to enhance British commercial interests despite his lack of knowledge of commercial matters. The American consuls, because of their private commercial interests, were not able to enhance American interest in assimilar fashion because "there was sometimes conflict between the consul's private business and his official functions".

The American traders also concealed their trade with Zanzibar so as not to invite competition from their compatriots. The small introverted trading community in Salem considered the dynamic competition from New York and Boston as deadly, and therefore continued to exclude them. American trade, however, continued to increase rapidly in East Africa. They were not able to act directly but only through Indian Banyan middlemen. The fact that the clerks at the American

consulate spoke Swahili also assisted their trade, and by 1859 a quarter of Zanzibar's trade was carried on with America. The United States and Indian between them accounted for two thirds of Zanzibar's import-export trade.

Jairam Sewji, as the Customs Master, had used Waters in his attempts to centralise Zanzibar's trade even further than had hitherto been the case. The Sewji-Waters compact had disintegrated and Salem had been unable to take over Zanzibar's trade partially because of increasing British consular control. The Indian merchant class, however, was instrumental in connecting their own trade and that of Zanzibar with the extra-Indian Ocean powers. This realignment of trade with metropolitan countries was to be a factor in their diminution as a major trading class because they exposed themselves and the East African economy to competition with sources of vast capital which they themselves lacked. The fact that the Sultan had allowed trading privileges to the USA through the treaty in 1833 and had encouraged American trade despite the handicaps he suffered in this trade was the major factor in undermining independent Zanzibari commerce.

The American trade with Zanzibar suffered a set-back because of the American Civil War, since the New England cotton industry could not obtain cotton from the American South. The replacement of the sail with steam, in which the British India Steam Navigation Company led the field in

71. J. Ross Browne; Etchings, pp 345-61. This reprint fails to correct errors like referring to Jairam Sewji as Joraat Sewa, Capt. Hamerton as Capt. Hamilton, p. 329.
72. Ibid., p. 116.
in the Indian Ocean, resulted in an increase in the British share of the trade. In 1881, the American Consul Batchelder reported that out of 58 steamers and 30 sailing vessels which arrived in Zanzibar only 6 sailing vessels were from America. Britain was now leading the world in imports and exports as her facilities by direct steam navigation gave her every advantage.

2(a) **Double Jeopardy of Indian Commerce and Rigby’s Jurisdiction**

Captain Hamerton’s attempts to bring to an end the privileges of the Indian business community under the flag of the Sultan were continued until he had effectively brought the Indians under his jurisdiction, despite the commercial losses they incurred. The process was taken a step further under Consul Rigby.

Legally the important principle in commercial matters regarding the nationality of a merchant was determined not by birth, subsequent naturalisation or adoption, but by his commercial domicile. The Indians had been staying in Zanzibar for a long indefinite period or permanently, and many of them might have acquired the local nationality. However, the arbitrary legal measures by British Consuls did not allow the British Indians to exercise this right. The denial of this right affected their position as political members of Zanzibari society as well as their commercial enterprise. This “protection” was granted to them in extraterritorial terms without any Indian demands for such protection. This

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73. **Ibid.,** p.117.
74. Brady: **Commerce and Conquest,** p.117.
75. Sherston Baker: **International Law,** pp 146-9, sec.6-17.
led to various evasive tactics on the part of British Indians to avoid their commercial interests being threatened.

Consul Rigby sent comprehensive trade reports to the Foreign Office. As a consul he was committed to protecting the commercial interests of British Indian subjects and other British subjects. Privately, however, Rigby continued to encourage English merchants from Bombay and Liverpool to take an active interest in Zanzibar trade.76 The American consuls, predominantly from Salem, were constantly trying to restrict competition from other American traders by keeping their trade secret. In contrast, the British consuls, while protecting British Indian subjects' interests, were constantly trying to increase competition through participation in Zanzibar by English traders who might ultimately replace the Indian traders.

Consul Rigby's main area of concern was the imposition of control over British Indian subjects involved in the slave trade. The exercise of this extraterritorial jurisdiction raised new problems and had ramifications which led to an even greater degree of control. The effect of Consul Hamerton and Rigby's exercise of the slave trade jurisdiction had a detrimental effect on the trade of British Indian subjects. The consuls were supposed to be protecting the interests of British Indian subjects, but it was in fact the interests of the Kutchis, who were not even protected, which did not suffer because the punitive slave trade jurisdiction did not apply to them. Many attempts were made to exercise jurisdiction over them, thereby undermining their interests

as well. Once Sultan Said's Empire had been divided, Sultan Majid in Zanzibar was only able to make weak protests about British jurisdiction. Hence those Indians who sought the Sultan's protection could not expect much help from a politically weak Sultan and, increasingly, Britain's unfettered influence was able to grow without the acquisition of reciprocal obligations.

Consul Rigby, through forceful application of British jurisdiction, had an extremely detrimental effect on Indian commerce. Many wealthy traders were prosecuted and poorer traders made such heavy losses that many left Zanzibar. The arbitrary application of this jurisdiction affected actual trade as well as coastal shipping. Since Indian capital was involved in the caravan trade they suffered heavy losses. The European and American firms which supplied the imports and were involved in the export of ivory, copal, cloves and sesame did not suffer to the same degree as the Indian merchant community, even though they dealt in products grown by slave labour on plantations.

During this period of the transformation of a slave economy the Indian slave owners and financiers of the caravan trade were not compensated for the slaves released as were the British slave owners in the Caribbean. They were in fact fined for the slaves released, hence the punitive aspects of British jurisdiction were more prevalent than was the protection they were to receive from the British Consulate. Rigby's assumptions that by abolishing the slave trade amongst the Indian community he was striking "at the

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77. Sheriff: Commercial Empire, p.426.
very roots of slavery* * were to prove incorrect. Slavery continued to exist because the dominant political class of Arabs were not totally prohibited from this traffic. The Indian trading community therefore, because of the misconception of the "roots of slavery", were trading in a situation of double jeopardy. As a purely commercial class they suffered initially from British jurisdiction, which they were not allowed to choose, and because they had recourse to political influence neither at the British Consulate nor with the Sultan. The politically dominant Arab class was able to withstand anti-slavery pressures for a longer period because of the extra measure of political control they held in the Zanzibar dominions. Ultimately, however, both the Arab and Indian merchants involved in the slave-based economy were to disappear because the Zanzibari Empire was not based on firm political and governmental foundations. The Indo-Arab economic strength was based on influence on the East African mainland. As the sources of slaves and ivory receded more into the interior, the Zanzibari political framework became increasingly incapable of functioning. The British naval activity in destroying coastal shipping and British jurisdiction over the Indians added further impediments which were beyond the capability of the Zanzibar Sultanate.

After Colonel Rigby's departure the price of land dropped and the Zanzibar economy was extremely slack. Investments in fixed assets, especially houses and land, dropped. The

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foreign trade of Zanzibar was also affected.

Year: 1859/60 1861/62 1862/63 1863/64 1864/65
Import: £393,963 £127,439 £218,964 £328,443 £281,374
Export: £290,611 £159,223 £169,205 £264,314 £197,544

The Sultan's weakness was increasingly reflected upon by the Zanzibaris and the foreigners. However, British Consul Pelly, who arrived in 1862, advised the Foreign Office that the total destruction of the Sultan would not help in the opening up of Africa. The anti-slavery policies of Russell and Palmerston had virtually undermined the Sultan's independence.

There is a disagreement amongst researchers on the effect of anti-slave policies on the Indians. One writer mentions that:

It was a very serious state of affairs politically and socially that at a time when the Indian merchants at Zanzibar were waxing rich, the most politically effective members of the community were losing their ability to maintain their social status.

Another writer contends that British power at Zanzibar had undermined "the economic independence of both the Indians and the Sultanate." In fact both the Indian merchant community and the politically dominant Arabs were being superseded by British power. There was, however, a time lag between the disappearance of the traditional Indian merchants and their Arab counterparts. Since the Indians were in a minority the impact of British control over them was less discernable than it was on the dominant Arab community.

Both the traditional Indo-Arab merchants and land-owners

81. ibid.
82. Sheriff: Commercial Empire, p. 364. The claim by Rigby that no slump had been caused in Indian business through the anti-slavery measures is refuted on p. 450.
disappeared, to be replaced by a semi-modernising merchant class. The Indian merchants, however, because of their close contacts with the British, were able to benefit a little more than the Arabs. The ultimate strings of modernisation and technological power were, however, controlled by Britain which was to exercise the absolute control over the political and economic situation. As an important semi-modernising minority, the Indians performed two roles after the end of Sultan Majid's reign. Firstly, those who were able to function in "legitimate" commerce effectively acquired just enough skills to manage to survive as a commercial minority. Secondly, they managed to keep the economy functioning through the transition from a slave-based economy to a "legitimate" economy.

2(b) Sultan Barghash and Alienation of Indian Commerce

Sultan Majid had allowed Indian commerce to function under his patronage. He had tried to defend the interests of those Kutchis and other protected persons under his jurisdiction. With the end of Sultan Majid's reign the romance between the Sultan and his Indian subjects came to an end. One of the first acts of Syed Barghash on his accession to the throne was to issue a proclamation to his subjects, ejecting Indians from plantations they owned, directly or indirectly, and "to prevent them from carrying on their trade beyond the precincts of the town".33 Churchill, as the Consul representing Indian interests, pointed out that such measures

33. F.O. 84.1325, Churchill to Sec. of Bombay Govt, 17-11-1870.
violated the Convention of Commerce of 1839. The Sultan did not reply to the initial communications from Churchill but finally complained that Indians stole cloves and incited slaves to sell cloves at a low price. Churchill's response was that the theft should have been referred to the British Consul rather than thus striking a blow against all Indians. It was alleged that the Sultan had violated Articles I and X of the 1839 Convention.

Sultan Barghash was extremely conscious of British influence over the Zanzibari economy, through their control of the Indian minority. Hitherto the relations between the Customs Master and the Sultan had been close, but in 1871 Sultan Barghash became wary of the Customs Master's connections on the mainland lest these connections lead to further control of his mainland dominions by the British.

It was with the departure of Consul Playfair and Churchill that Consul Kirk, after 1868, established better relations between Britain and the Sultan by imposing a firmer policy, especially after Barghash abandoned "arbitrary and unjust acts by himself and fanatic counsellors". Three months later Kirk announced more explicitly that the order restricting Indians to towns had been rescinded under the new Sultan and:

their status...under the power of the British Government (would be) more fully acknowledged in practice...we now exercise without protest or objection from the Sultan the fullest jurisdiction over all Indians settled.

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84. ibid., Sultan Barghash to Churchill, 31-10-1870, in reply to Churchill's letters of 19-10-1870 and 24-10-1870.
85. ibid., Churchill to Sultan Barghash, 4-11-1870, and 7-11-1870.
86. F.O. 84.1285, Kirk to F.O., 24-12-1870.
87. F.O. 84.1244, Kirk to Sec. of Bombay Govt, 25-3-1871.
Sir Bartle Frere, before the visit of his Mission in 1873, wrote a memorandum based on information collected by Livingstone in which he wrote that Indian trade had been crippled by the advent of European settlement in East Africa. He attributed this decline to the control by the European Nations of the "greatest command of ships of war, fire-arms and artillery". However, he maintained that during the last 40 years, the great Indian immigration to this coast has gone on at a constantly increasing rate, which bids fair to restore the Indian trade with East Africa to more than its old proportions.

In contrast with Frere, Kirk had noticed a totally contrary phenomenon, that the Indians were increasingly trading directly with Europe (also because Salem trade had eclipsed) and were "fast abandoning the old habit of dealing through Bombay". In fact, Kirk wrote that "the appearances at Zanzibar of English, French, German and American houses" had not led to an increase in immigration as Frere said, but of Indian emigration from Zanzibar. In any case, imperial interests had become paramount, either because of European settlement, as Frere said, or because of trading directly with metropolitan countries rather than through Bombay, as Kirk maintained.

Of late it has been clearly seen that the cotton manufacturers of Kutch and Bombay cannot compete.

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89, F.O. 84.1391, Bartle Frere: "Memorandum regarding Natives of India in East Africa", 31-3-1873.
90, P.P. Vol.LXI, No.51, enc.1, 7-5-1873, pp 98-105.
91, F.O. 84.1374, No.5, Kirk to F.O., 13-1-1873.
92, P.P. Vol.LXI (1873), p.99
with cheap cloth of Europe and the natives ascribe the yearly increasing numbers of Kutch immigrants to the ruin of the cotton trade.\textsuperscript{93}

Frere's comment on the Indian monopoly of trade was further disputed by Kazi Shambuddin, who said

Arab merchants receive advances in goods and money, not only from the Banyans, but also from the five or six European and American houses in Zanzibar which, I am told, do about one-half of the business.\textsuperscript{94}

He pointed out that since the Indians could be taken into the consular court for dealing in slaves, they would seem less likely to cooperate with the Arabs in the slave trade.

There was, however, no mention of the role of the Europeans or Americans in the financing of the slave trade by Frere, especially in view of the fact that the American Consul refused to cooperate with Frere. Kirk also investigated the loose accusations of a more sweeping nature made against the Indian traders, and (I) find them to rest on no firmer foundation than that the local capital in trade here is Indian... the Indians are as free of all criminality in the slave traffic as a branch of commerce as the European and American merchants...\textsuperscript{95}

He also affirmed that "...nor is there is single European house in town where slaves are not employed...".\textsuperscript{96}

\textsuperscript{93} F.\textsuperscript{o}, 84, 1344, Administration Report of Zanzibar Agency, 18-7-1870. The American cloth remained a major competitor both for European and Indian traders because of its tough quality. See N.R. Bennett: ETHC (Jan, 1962), Vol. XCVII, p. 37.

\textsuperscript{94} P.\textsuperscript{p}, Vol. LXI (1873), No. 51, enc. 2, p. 106, 9-2-1873; F.\textsuperscript{o}, 84, 1391, "The Banians"; see also G.L. Sullivan: Dhow Chasing in Zanzibar Waters (London: 1873), p. 83, on Spanish and American ships involved in slave trade.

\textsuperscript{95} P.\textsuperscript{p}, Vol. LXII (1874), No. 18, Enc. 1, 31-5-1873; N.R. Bennett: "Americans in Zanzibar", ETHC, pp 41-4.

\textsuperscript{96} F.\textsuperscript{o}, 84, 1344, Kirk to F.\textsuperscript{o}, 27-5-1871.
The new 1873 Treaty stipulated the release of slaves by British Indian subjects. The Indian merchant community had begun to realise that the Sultan's support for the traditional slave based economy was not to be counted upon. Those who could afford to change their trade or wanted to avoid total ruin invited the British Consul to release their slaves. A typical example was the principal village of Pemba called Chak Chak where "Indians generally showed a feeling of extreme satisfaction that the freedom of their slaves" would relieve them of heavy punishment. It was a common feature for the released slaves to continue working with their old masters. This procedure was adopted because it caused the least amount of disruption, and Consul Euan-Smith pointed out that Indian slave holders had lost a sum of $25982 by releasing their slaves. The Indians were also cautioned against the advance of any money for the purchase of slaves used on the estates which were mortgaged to them. This caution curtailed further transactions in matters of trade. Those who could not afford to release their slaves were detained; among them was a Khoja who was interned pending the release of ten slaves held by him. His release was effected after petitions from the Khoja community.97

The British consular staff, however, conceived the incidence of release of slaves differently. Consul Holmwood felt that the ending of the slave trade far from rendering them discontented has on the contrary removed the only bar to their loyalty and they are now becoming more elevated in character and more attached to our rule.98

97. F.O.4517, No.10, Euan-Smith to F.O., 31-7-1875; and No. 117, Euan-Smith to F.O., 14-8-1875.
98. F.O. 841574, No.37, enc.1, Kirk to F.O., 6-3-1880.
Holmwood felt that the Indians desired British protection and supervision to further their trade. The viability of Indian traders was more dependent upon the British Consulate and was used to define the nature and limit of their trade. The British anti-slavery campaign and the desire to check French strategic expansion had led to British political intervention. This influence and intervention had now extended to the control of actual Indian commerce.

With the more effective application of the slave trade regulations, the Indians could not effectively control the land, and therefore circumstance and law hemmed "the Indians to commerce and money-lending". Newman welcomed their money-lending and qualities of trading based on frugal living and hard work, and asked Britain, as a major money-lending nation, to welcome these people and their business acumen.

On the eve of the visit to Britain by Sultan Barghash and Tharia Topan in 1875, Sir Bartle Frere was able to write that the main reason for the British interest was not merely the present extent of a rapidly growing trade, but the necessity which is laid on as rulers of India to maintain a position of influence.

Frere was, however, not at all aware of the effect of British extraterritorial jurisdiction over the Indian population, even after his visit to East Africa as the head of the Frere Mission. He wrote that the British Indian subjects:

form an integral part of the local population, giving to the British Government much indirect

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100. ibid., pp 70-74.

influence in the local government, without exciting jealousy in the local rulers.\footnote{102}

The important fact was that the Indians gave the British government "much direct influence", while the impact of British control over the Indians and their commercial interests was neither examined nor stressed. In fact Frere was interested that "the endless resources of (the Sultan's) African coastline" be open for "every form of application of European enterprise and capital".\footnote{103}

\textit{2(c) The Final Decade of European Control over Indian Commerce, 1884-1892}

The 1873 Treaty had affected the trade of the Indian minority but was increasingly detrimental to the economic interests of the Arab economy. Since the Indians had no political power, those who could afford to transform their interests to legitimate commerce were increasingly able to do so. Their total energies were directed to the transformation of their commercial interests. The effect on the Arabs was slower because they were insulated to a certain extent by the political power they held. As this power was increasingly eroded their economic situation deteriorated correspondingly. For instance, at Pemba Arabs could no longer do well and the foreigners could no longer afford to buy or mortgage estates.\footnote{104} Indians could not give mortgages on estates using slave labour and, if they did, the Arabs would fraudulently get out of these contracts. However, Indians did seek consular assistance

\footnote{102. ibid.}
\footnote{103. ibid.}
\footnote{104. F.O. 84, 1677, No.31, enc.1, Kirk to F.O., 13-3-1884.}
for large amounts of money lost in such ventures. Apart from these types of commercial problems the British Consulate also found difficulty in dealing with certain commercial matters due to political considerations.\(^{105}\) For instance, the claim of Messrs Maclean Morris against Peera Dewji, a highly-placed agent of the Sultan, was to be left to the Sultan's court for a satisfactory decision.\(^{106}\)

Certain commercial issues, such as that of stabilising taxes for a period of five or ten years and making their application uniform, were proposed by Kirk. The case of the French planter who did not pay as heavy a tax as the others, is a case in point, and all the foreign Consuls collaborated to fix the produce tariff.\(^{107}\)

The increased German influence and power in the Sultan's dominions led Kirk to sign another treaty of friendship and commerce between Zanzibar and Britain. This treaty recognised the rights of consuls to preserve commercial interests. The Sultan was entrusted with the powers necessary to preserve peace and to guarantee the inviolability of the Consulate:

At the request of a British Consular Officer, \(^{108}\) to place the police force at his disposal to assist

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\(^{105}\) In a totally different region and as a parallel to Zanzibar, a Consul General wrote of the importance of numerous areas which had "providentially opened" for British "capitalists, bankers, merchants and ship-owners". He does not at all discuss the policy involved nor its political bearings, but stresses need for trade by British merchants. See A Consul General: Cyprus, Syria and Palestine: The Future Emporium of British Trade in Asia (London: 1878). The anonymous pamphlet was consulted in the British Museum.

\(^{106}\) F.O. 84.1726, No.16, Kirk to F.O., 24-6-1885.

\(^{107}\) F.O. 84.1728, No.258, Kirk to F.O., 29-9-1885.
This was a very detailed Treaty which was opposed to any exclusive privilege of trade within the Sultan's dominions: "The IBEAC later on did have a monopoly over the northern dominions of the Sultan." British subjects and their property were entitled to the rights of extraterritoriality. The local and municipal taxes were, however, to be collected by the Sultan and the British subjects were not exempt from these, although the houses and lands remained free of taxation. Many of the clauses in the above Treaty were similar to those in the previous 1839 Convention. It was ratified by the Sultan in August 1886.

Kirk left Zanzibar feeling that France would be persuaded by the Germans and the English to undertake new commercial arrangements. Holmwood warned the Foreign Office not to ratify the Treaty unless France did. The Sultan was also guilty of contravening the Treaty, since he collected taxes from his own subjects and from the Indian traders. Holmwood felt that the effect would be detrimental to the local and retail trade, especially that "carried on by our poorer and hardworking Indians..." Goods would become dearer for the poor and on the coast, where the Sultan was strongly established, the foreign capitalists would be destroyed. Britain and Germany had been doing everything to make this impossible for the Sultan. Thus the option available to these businesses was to conduct their business


109. Ibid.

110. F.O. 84.1775, No.178, Holmwood to F.O., 30-9-1886.
through firms with other jurisdictions, which would in turn lead to the "inevitable ruin of that large community of British Indians who act as traders and middlemen".  

The British consuls had throughout the nineteenth century asserted that the trade of British Indian subjects was British trade since they were British subjects. However, the British consuls could not always see the reasons or the significance of direct British economic activity which was sometimes beyond their control. The increased IBEAC commercial operations which utilised their affiliate shipping line, the British India Steam Navigation, was significant. In the last quarter of the nineteenth century the British pattern of trade was altered because of stiffer competition from industrial countries like Germany and the USA, which was recovering from the Civil War. This competition was especially true in the neutral or unprotected markets, to fill the need for raw materials and food stuffs. 

The IBEAC, despite its numerous handicaps, was one of Britain's answers to the problem of consolidating her economic interests in Eastern Africa, and the British Indian subjects did not figure very prominently in this scheme of cultivating new markets for manufactures and sources for raw materials. Hence Britain's informal control of Eastern Africa was initially formalised by the IBEAC; then there was "a return during this period to the idea of the Empire in the hope of finding salvation in colonial markets", and

111. ibid.


113. ibid., p.228.
an extension of the existing Empire.

The most important British imperialist, William MacKinnon, was in 1888 on the verge of establishing a foothold on the East African coast, after trying to do so for a decade. When he saw the formidable German competition that the IBEAC would face, he recognised the possible use that he could make of the British Indians against the Germans. Thus he recommended not only the retention, but also the extension, of British Indian trade. His concessions were supposed to perpetuate British influence, even "through the medium of Tharia Topan, a British subject". 115

However, once he had used the British Indians and despite the fact that the Indian Government felt that the IBEAC would benefit, rather than injure, the interests of India, MacKinnon denied the Britishness of Indians resident in the Sultan's dominions. The IBEAC's treatment of Indians was put into further disrepute when Colonel Pollock terminated his appointment with the IBEAC and was about to return to England. He accused Mackenzie, of the IBEAC at Mombasa, of oppressing Indians. Euan-Smith, however, sided with the IBEAC and called Colonel Pollock's accusations "bogus". 116

MacKinnon wholeheartedly disagreed with Consuls Holmwood and Macdonald that the bulk of the trade was virtually in British hands:

I hardly admit that trade done by native 117 Indian subjects can be described as in British

114. Brumkey's Yearbook of East Africa (Bombay: 1908), pp 47-8, for list of Directors and Administrators of IBEAC.
116. F.O. 84, 2060, No. 126, Euan-Smith to F.O., 26-3-1890.
117. F.O. 84, 1775, MacKinnon deleted the word "British" and reinserted "native".
hands, nor do I think Manchester would hold a different view from mine.  

It is important to note MacKinnon’s attitudes for two reasons. Firstly, MacKinnon had made his wealth in the British Indian Empire and despite this he did not acknowledge the rights of Indians as British subjects. Secondly, the IBEAC was actively involved in using the British Indians to entrench the IBEAC on the mainland. MacKinnon, however, in order to stress to the Foreign Office the paramount role of the IBEAC, resorted to negating their importance and role in East Africa.  

However, in a short, undated letter Holmwood wrote in support of Macdonald, who regarded this trade as being British:

What Macdonald says regarding trade being virtually in British hands is perfectly true and this is a point I have insisted on in every report on the subject.

Macdonald said that British Indian influence was on the increase, and not on the decrease. Goods consigned to British subjects were five times the quantity consigned to Germans, and goods exported to England and India were six times as numerous:

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The work of the consuls involved a perspective different from that of MacKinnon.

119. ibid., enc.
120. ibid., Macdonald to F.O., 18-12-1887.
Much more is required from (the Consuls) in barbarous or half-civilised communities, where the political character of the Consul cannot be separated from the commercial.\(^{121}\)

Hence the facilitation of the "artificial establishment or maintenance of British financial and commercial supremacy"\(^{122}\) necessitated political action. The different attitudes towards the Indians between Holmwood and Mackinnon were due to political judgments the consuls made, in addition to the commercial interests they protected.

The petition of "British merchants and Indian traders" caused Euan-Smith to seek the assistance of the Foreign Office, since the signatories represented the "wealth, intelligence and respectability of Zanzibar".\(^{123}\) Euan-Smith also accepted that the disadvantages for the British subjects were real and therefore he suggested that negotiations be entered into with the object of applying the law against the use of slave labour. Otherwise the British subjects would remain in their isolated position. However, the Foreign Office informed Euan-Smith that he had not been instructed to issue any proclamation and that the threat of a seven year sentence for employing slave labour was not substantiated by IPC 376. The Foreign Office felt that the proclamation ought to be withdrawn because of its impracticability which was due to the prevalence of employed persons who might indirectly be slaves. The Foreign Office suggested that the wages be paid directly to the labourer. He "would subsequently hand over the wages to his master but nobody

\(^{121}\) F.O. 83,932, No.4, Sir Jacob Behren's Note, in Bradford to F.O., 3-3-1886.

\(^{122}\) ibid., No.670, Consul General Mitchell (Norway) to F.O., 30-4-1886.

\(^{123}\) F.O. 84,1911, No.374, Euan-Smith to F.O., 15-12-1888, enc. George Mackenzie to Euan-Smith, 8-12-1888.
need enquire into that arrangement". William MacKinnon, director of Smith Mackenzie & Co., and a member of the IBEAC, which had signed the petition, took up the cause of this labour in London. The Indians who had lived through the problems of labour shortage did not have the sort of recourse MacKinnon had to officials in London. Those Indians who had signed a petition and handed it along with other English merchants were only able to do so as long as their interests by and large coincided with those of the English merchants.

The Indian merchant community also suffered dislocation through increased crime on the northern mainland under IBEAC’s control and, due to the takeover of the southern dominions of the Sultan by the Germans.

Because of their long stay on the mainland and in towns such as Lamu, the British Indians had extensive interests to protect. They feared burglary, as their shops and stores were well stocked, and also because they held large stocks of money and jewellery in pawn. Many Indians had been killed for their money and about 500 homes in Lamu were destroyed by fire. This was despite the lighting of the Lamu streets.

The transfer of the southern coast to German jurisdiction had serious repercussions on the future commercial prosperity and vitality of Zanzibar. The Indian mercantile houses had their headquarters of this trade in Zanzibar. They dealt with the whole coast as an entity and the coastal agents of Zanzibar merchants were financed on a system of long-term credit; "Their operations upon one position being

124. *ibid.*, Memo by Mr Davidson, Law Officer, F.O., 21-1-1889.
125. F.O. 84, 2059, No.14, Euan-Smith to F.O., 16-1-1890.
dovetailed into their various ventures upon another.\textsuperscript{126} This was based on the fact that Zanzibar would remain the centre of the trade emporium and have large investments in houses and land. With the Imperial German Government controlling the southern coastline, the Indian traders would have to pay double customs, once in Zanzibar and again on the coast. The British Consulate was very concerned at the great inducements that the Germans were offering to the British Indians to move into their territory, since it was felt that such a move would lead to the decay of Zanzibar commercial life. Rather than lose the primacy of Zanzibar as the centre of trade and witness an exodus of Indians to German territory, the Consul recommended that Zanzibar be declared a free port, like Singapore and Hong Kong. To offset the customs dues the Sultan was to be offered the clove monopoly. Kirk and the Foreign Office commended Euan-Smith for this dispatch.\textsuperscript{127}

The Indian merchants were in doubt as to the implications of Article VII of the 1886 Commercial Treaty, and their representations to the Sultan resulted in the Sultan allowing a 48-hour lapse in informing the Customs House which goods were to be trans-shiped to the German coast without specifying the port of destination.\textsuperscript{128} After Gerald Portal had established himself as the Consul General, he found in 1891 that all the merchants wanted a free port,

\textsuperscript{126} F.O. 84,2063, No,341, Enc, 5, Euan-Smith to F.O., 28-8-1890.
\textsuperscript{127} ibid. However, Portal thought that the value of houses and property would go down and solvency of the British community would be affected.
\textsuperscript{128} F.O. 84,2146, No.155, Enc., Euan-Smith to F.O., 21-2-1891; and No.160, G.S. Smith to F.O., 1-6-1891.
and that Zanzibar was a pseudo-free port in that 60 per cent of the goods were trans-shipped to German East Africa.\textsuperscript{129} General Mathews, the first minister in the Sultan's Government, wanted Zanzibar declared a free port at once since the declaration without its implementation affected the solvency of the greater part of the British Indian traders.\textsuperscript{130} When the declaration was finally made, 600 people signed an address to demonstrate their satisfaction.\textsuperscript{131}

The free trade brought other commercial problems in its wake, and a Zanzibar Chamber of Commerce was established consisting of representatives of the major companies. The chairman came from Smith Mackenzie & Co., and the committee was comprised of two Germans, two Englishmen, two Frenchmen, one American and four Indians.\textsuperscript{132} This Chamber of Commerce was to have rules identical to those of the main Chamber of Commerce.

The registration of all deeds of sale or mortgages of houses and land in Zanzibar was to be successful under the Indian Registration Act, the "procedure in force in the Middlesex Registry".\textsuperscript{133} Should the British subjects (79 out of 100 being Indian) not register their property in good time, the Court might decline to receive such deed in evidence. The registration of title deeds was first started in 1866 so that the consulate would know what estates were

\textsuperscript{129} F.O. 84.2149, No.244, Portal to F.O., 9-9-1891.

\textsuperscript{130} F.O. 84.2153, General Mathews: Notes on Free Port.

\textsuperscript{131} F.O. 84.2235, No.31, F.O. to Portal, 5-4-1892; F.O. 107.2, No.5, Rodd to F.O., 2-7-1893.

\textsuperscript{132} F.O. 84.2232, No.148, Portal to F.O., 2-7-1892, & enc., The Gazette, 29-1-1892, Proposed Chamber of Commerce. On 1 February The Gazette, for Zanzibar and East Africa, a weekly newspaper was published by Zanzibar Govt; it contained Govt notices, trade, shipping and weather reports.

\textsuperscript{133} F.O. 84.2233, No.232, Portal to F.O., 7-10-1892, & enc.
subject to British jurisdiction for the purposes of transfer and succession. The clause stating that deeds were acceptable as evidence in the Consular Court was used primarily to compel British Indians to register. Hence, while such registration was made obligatory by the protecting power, it was not necessarily an acceptable legal proof of title. The Consular Judge and the Consul General felt that registration was only a quasi-judicial act. However, as it was considered as a genuine sign by the Indians, because it bore the official seal, it could be exploited by unscrupulous pleaders.\(^{134}\)

A British Indian subject, Hassanbhai Nathoo, asked HM Government for the assistance he considered due to him in his case against Robert Bernard, another British subject. He was advised, however, to use the normal legal channels.\(^{135}\) After Bernard was found guilty Rodd, the Acting Agent, wrote to the Foreign Office asking them to enforce the decision to recover the money.\(^{136}\)

The Foreign Office felt that Britain could not get the most favoured nation status alone, as it had obtained in Zanzibar, since the most favoured nation status infringed the rights of other signatory powers.\(^{137}\) The problems between the British Consul and the other Consuls were due to the "exceptional facilities for obtaining justice in civil suits" between British and Zanzibari subjects.\(^{138}\)

\(^{134}\) ibid., No.128, Kirk to F. O., 16-7-1892.
\(^{135}\) F. O. 107.1, No.60, F. O. to Rodd, 11-4-1893.
\(^{136}\) F. O. 107.2, No.67, Rodd to F. O., 3-3-1893.
\(^{137}\) F. O. 107.1, No.64, F. O. to Rodd, 15-4-1893.
\(^{138}\) F. O. 107.2, Rodd to F. O., No.19, 13-1-1893.
On the death of Sultan Seyyid in 1893 and the succession of Thuwain, the Indians from the Zanzibar Chamber of Commerce expressed their satisfaction at the manner in which their life and property had been protected. The British Consul was commended for the admirable arrangements made to ensure a feeling of peace and security.\(^{139}\) Consul Rodd, however, not only found the Indians "timid" but also established a state bank to minimise the financial role of the "blood-sucking Indian usurer".\(^{140}\)

In the last decade of the nineteenth century the Indians held most of the Arab estates on mortgages, while the plantations were normally held by Arab proprietors who used domestic slave labour to work them.\(^{141}\) An Indian was put on trial for the purchase of a female slave and was defended by a local pleader. The Consul asked the Foreign Office to pay the prosecutor eight guineas because the conviction of the Indian would have "a salutary effect amongst the Indian community here".\(^{142}\)

The Arab has become weaker, constantly increasing his indebtedness to the Indian mortgagee, while the Khoja and the Hindu have acquired a firmer grip than ever on the trade of the island.\(^{143}\)

The Indian traders were themselves subject to replacement by British and European firms. Even the American firm of Hines, which had mutual understanding with Indian traders, was weakening them by playing a "ring" of Indian traders.

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139. F.O. 107.3, Rodd to F.O., 14-3-1893.
140. ibid., No.85, Rodd to F.O., 15-3-1893.
141. F.O. 107.5, Rodd, Confidential Memorandum, 31-12-1893. An attempt to stop the passage of land by practice of "conditional sales" mortgage common to Hindu and Mohammedan law was affected by the Alienation of Land Decree in 1939. See C.K. Meek: Land Law and Custom in the Colonies (London: 1949), 2nd ed., pp 72-5.
142. F.O. 107.4, No.181, Rodd to F.O., 12-7-1893.
(Jairam Sowji, Ibrahim Babany, Esmal Loolah and Nasser Mohammed) off against one another. 144

The Indian trade in the Persian Gulf had extended from Oman to Zanzibar during the first half of the nineteenth century. The tenuous Indian connections with the East India Company through their Native Agents became stronger in Zanzibar. The connections became stronger as British consular control over them increased.

The fact that Indian traders had strong contacts in Zanzibar with Omani and American commerce led to the British consulate exercising greater control over the Indian commercial community. It was the gradual extension of British jurisdiction over the slave trade which began to entrench British control. The British consulate in Zanzibar was forced to intensify control over the Sultan because of the American presence, no matter how weak in this traditionally British sphere of influence, decreased the chances of British cooperation with the Sultanate in Zanzibar and intensified the element of control.

The exercise of British slave trade jurisdiction over the Indian community had a detrimental effect on their political and commercial life. In quantitative terms the share of trade carried on by the Indians with India remained high throughout the nineteenth century. However, this lucrative trade was meaningless since their political base with

the Sultanate of Zanzibar was undermined. The political influence of the Indians over the British consulate was minimal. British extraterritorial jurisdiction over them was not based upon any feedback from them. Britain remained blind to Indian interests and because of Palmerstonian belief "that no economic group could make headway against superior political force", both the Indians and the Sultan became dependent upon Britain.

The Indian commercial community, however, by changing from a slave based economy to the British oriented "legitimate" commerce had become a semi-modernising commercial community. For instance, on the African mainland it was the Indian trader who introduced the application of money-based exchange to the African subsistence economy. Britain, however, had become a pre-eminent modernising commercial nation because of its political power with an extreme need and capacity to create markets.

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147. D.C.M. Platt: Finance, Trade, p.256. See Joseph Chamberlain's concern in 1894 to keep markets open for more goods to maintain high employment at home.
CHAPTER VIII

CUSTOMS HOUSE

The overall and increased British control over the Zanzibar economy was the result of the extension of the anti-slavery campaign. The pattern of commerce became increasingly controlled by Britain because of her superior technology and capital. The necessity for markets and raw materials made it imperative that this pattern became entrenched on the East African coast.

British control over the Zanzibar economy came indirectly through the institution of revenue collection. The British Consulate had no mandate to interfere with customs collection. However, increasingly through the operation of the slave trade treaties and the 1839 Convention of Commerce, the control over British subjects and protected persons strengthened the links with the Customs House. The tentative contacts of 1811, when Captain Smee and Lieutenant Hardy exercised arbitrary protection over British subjects, grew to encompass the political control of the Sultanate, the Customs House and its personnel in the last quarter of the nineteenth century.

In this chapter the growth of British control over the Customs House will be examined more thoroughly. Since the Customs House was the major centralising institution in the Sultan's regime in East Africa, the role of the Customs Master was important in both narrow commercial terms and the wider political perspective. Since Jairam Sewji
controlled the Customs House and claimed that he was a subject of the Sultan, Consul Hamerton tried to reduce his powers. Consul Rigby overtly intervened in the affairs of the Customs House, quite outside the scope of his work, and extended the limits of British control over this important institution. Once British control over the firm of Jairam Sewji was an established fact, Consul General Kirk consolidated British interests by ensuring that this firm remained in charge of the Customs House. In the last decade of the nineteenth century, the British officials played an active role in appointing customs officials, especially since the older Indian firms were now rejected by the Sultan and had resorted to in-fighting. The IBEAC and the German Company added to this eclipse of independent Indian firms involved in the collection of customs.

1(a) Jairam Sewji, Centralisation and the Sultan's "damnosa hereditas"

In 1804 the French Captain Dallon reported that a Hindu was in charge of customs and that an Ethiopian commanded the garrison in Zanzibar.¹ The Earl of Caledon, who was the first governor of the Cape of Good Hope, reported, perhaps incorrectly, that in 1807 black merchants connected with the French collected $47,000 in customs from the Sultan of Muscat.² French involvement in the affairs of the Sultan of Muscat had caused Britain concern. However, despite Britain's general interest in this part of the Indian Ocean, the Indian

branch of the African Association had failed to materialise. It was the Bombay Government which, in 1811, sent Captain Smee and Lieutenant Hardy on their geographical voyage in search of trade.

The customs collection at Zanzibar first involved the British on the East coast of Africa during Captain Smee's and Lt Hardy's visit. Their assessment was that the wealth owned by Indian traders was tempered by the arbitrary exactions made from them by Governor Yacout. The Indians complained to Captain Smee that they were charged a customs duty of at least 20 per cent, while the Sultan had laid down a duty of only 5 per cent. In addition to this higher customs duty, which was not paid by the Arabs, the Indians had to pay a land tax. While Smee was in Zanzibar a ship arrived from Muscat and made a demand for 25,000 crowns (£6,000) to assist the Imam in opposing the Wahhabi. According to the Indian traders Yacout had fixed 3,500 crowns as the share to be paid by them, with the threat of imprisonment if they failed to pay.

As these people were trading under the British flag and were in fact British subjects, Captain Smee did not conceive that a foreign prince had any right to tax them, especially as they had already paid the customary port duties.3

The Governor withdrew his claims on representations by Smee but privately threatened the merchants with a double imposition after Smee's and Hardy's departure. To prevent this from happening Hardy was left, along with "Sylph", a small

3. TGBS, Vol. VI (1844), Capt. Smee, p. 50. See also C.R. Low: History of the Indian Navy (1617-1863) (London, 1905) pp 5-6, discusses the voyage but refrain from mentioning that the fines were exacted from British Indians.
schooner of 78 tons, with 8 guns, to protect the Indians and he escorted three Indian vessels to Surat. This was one of the earliest links involving the British Raj and the East African coast, and it was the first time that "the merchant folks of western India, who from time immemorial had gone trading there, were brought under British rule." The itinerant Indian trading community of 1804 had become more settled and its presence in 1811 had led to the British being involved in a solitary measure of protection. It is possible that since the Indians could not cope with the exactions they requested this intervention. It was, however, the beginning of a long series of events which was to lead to increasing control over them.

By 1819 the Indian community had grown to 214 residents in Zanzibar. However, according to a report of 1825 no illegal exactions were demanded from them, despite the absence of British intervention. The Indian merchant vessels from Bombay and Surat carried Arab or Portuguese colours, although there was no evidence of their involvement in the slave trade.

The Americans landed in Zanzibar in 1825 but they did not formalise their relationship until 1834, when the 1833 Treaty came into operation, and the American Consul succeeded in establishing very friendly relations with the Customs Master, Jairam Sewji. In 1837, for a nominal fee, Consul

Waters became the first foreign consul and began trading with the Customs Master. He was, however, very critical of Jairam Sewji, due to the latter’s practice of compelling the Americans to bring every article which they exported to the Customs House. Waters would have preferred the goods to be taxed in his own warehouse, in order to avoid the extra charges to Jairam’s coolies for transportation. The dispute was reported to the Sultan. Waters complained to the US, but Washington took no action to favour him.\(^7\)

Relations did not, however, always remain strained, and in 1842, when Jairam was badly injured, he appointed Hamerton and Waters the executors of his will.\(^8\)

The Americans were not the only ones critical of Sultan Seyyid Said’s Indian Customs Master. The English traders found the British Indian traders very well established and found trading in Zanzibar difficult, despite the 1839 Treaty. An English trader, Norsworthy, accused the British Consul, Hamerton, of being "equally concerned with Jairam in this monopoly",\(^9\) and was critical of the Sultan. He felt that "a Spanish slave with a hundred men" could take the Sultan’s entire Navy, and he held the Indians in similar contempt. Even when Jairam made some concessions to Norsworthy he felt that it was done because of his unwarrantable monopoly as

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8. Ibid., R. Waters Journals, Box No.4, Acc. 12,376. The excellent relations that existed between Waters and Sewji are also pointed out by N.R. Bennett: EIHG, Vol.XCV, July 1959, pp 239-62, "Americans in Zanzibar 1825-1845". See also G.O. Clardeman & Peter Duignan: Americans in Black Africa up to 1865 (Stanford, 1964), pp 15-44.

9. NAI, Foreign Dept (Secret), No.32A/32C, Norsworthy to the Chairman, Bombay Chamber of Commerce (undated).
Collector of the Port and Master of the Customs, and the full control that he exercised over almost all the Indian merchants. In fact, the Sultan assisted Sewji's monopoly trade and forced small Indian traders to sell goods to Sewji, who in turn would hold all merchandise not sold to him until his terms were accepted. This exclusion of British subjects from trade appeared to throw all of it into the hands of the Americans. Jairam's power stemmed from his position as the exclusive local agent for imported and exported goods, on which he received all duties and profits.

Jairam Sewji had performed two functions. Firstly, he had encouraged the Americans to trade with Zanzibar since 1823. This encouragement had led to a greater interest in Zanzibar by the Bombay Government, who were not very keen on this American interest in the East African trade. The second function Jairam Sewji had performed as Customs Master was to centralise and organise the trade of the Mirima and the East African mainland in Zanzibar. From 1834 to 1853 Jairam Sewji had collected customs in Zanzibar and, in many spheres, had acquired more authority than Sultan Said, who accepted this situation.10 The Sultan had wanted to discourage all foreign traders except his subjects (including many Indian traders) from intervening in the Mirima ports on the mainland littoral. In the 1840s Sewji acquired greater control of the Customs in the Mirima ports11 and, if duties had been paid on the littoral ports, then no further duty was charged in Zanzibar.

10. C.S. Nicholls; Swahili Coast, pp 292-3. In 1853 Ludda Damji became the manager of the Customs House.
11. ibid., p.320, in late 1840 Sewji collected customs at Lindi.
The regularisation and uniform application of customs duties had a beneficial effect on the provision of goods and their collection in one place in amounts large enough to attract foreign buyers.\textsuperscript{12}

Since the Sultan paid no duty on the goods he exported, Jairam Sewji and the American traders did not want to encourage this trade since their trade would be adversely affected.\textsuperscript{13} The Sultan's power was undermined in two ways because of his reliance on personal trade and customs revenue. Firstly, since the Sultan had the advantages of a monopoly of the Mirima coastal trade preserved by Cogan in the British Treaty of 1839, the American traders opposed the wishes of the Sultan by trading in this area. Secondly, the rental of the Customs House was based on an established Muslim custom, but as the Customs House achieved greater economic strength it became an institution particularly vulnerable to British control. The Customs Master had tried to encourage the Indian traders to reject their British nationality, thereby consolidating the legal jurisdiction of the Sultan. The Indians, however, had vital business and family interests in India and they refused to submit, whereupon Sewji tried to levy excessive duty from the local agent. This latter had had to acquiesce to avoid ruin.\textsuperscript{14} On the basis of the 1839 Convention, Hamerton intervened to stop the levy of unauthorised charges, and to curb Sewji's excessive power. Henceforth, after 5 per cent had been charged by the Customs Master in Zanzibar, the goods could be trans-shipped\textsuperscript{15} with

\textsuperscript{12} \textit{ibid.}, p.363, ibn Danin who had rented monopoly of customs collection on the Mirima coast.

\textsuperscript{13} \textit{ibid.}, pp 368-9, ibn Danin ceded the Mirima customs to Jairam Sewji later, with the exception of Pemba and Mombasa.

\textsuperscript{14} F.O. 54.7, Hamerton to F.O., 24-3-1845.

\textsuperscript{15} F.O. 54.12, No.10, Hamerton to F.O., 15-12-1848, p.39. However, Hamerton still had to deal with high customs charges later on. See F.O. 54.15, No.21, Hamerton to F.O. (Russell), 17-2-1853; F.O. 54.14, Malmesbury to Hamerton.
a certificate and without further charges to any part of his dominions. The taxation of goods within the Sultan's dominions was similar to the octroi taxes used in India and the randari in Persia. These transit taxes were generally inhibitive to the furtherance of trade.

The establishment of British jurisdiction over British Indians was a great blow to the Sultan's power in Zanzibar. The pressures which the Sultan had exercised, and continued to exercise in a limited fashion, against Indians (by raising customs duties or arbitrary charges) was mainly done through the Customs Master. Sultan Majid had, on his succession, acute financial problems. He owed the Customs Master $200,000 on loans made to him, and another $M50,000 to Bombay merchants. His assets were not enough to cover these and other major debts. Majid's weakness and separation from Muscat suited Rigby, and the latter could effectively offer protection to Majid against French intervention and at the same time implement slave trade measures. The French wanted Majid weakened because he had refused to supply them with slaves; they thought that Thuwani, at Muscat, would be more amenable to their proposals.

Colonel Rigby used his consular powers to extend British control over Indians through the Customs House, and forbade them to have any commercial dealings with foreign subjects who dealt in slaves. He tried to prevent them from trading with a Spaniard known as "Boura Ventura Mass", who carried on the slave trade as a French subject in Zanzibar. Rigby

16. J.B. Kelly: Britain and Persian Gulf, p. 539. In 1860 the Sultan owed the Customs Master $327,000 and by 1871 it had increased to $540,000. See Sheriff: Commercial Empire, p. 434.
posted a notice in Gujarati at the Customs House stating that
Indian traders could not bring a suit against Mass in the
British Consular Court as Mass would not be admitted there. 17
He further informed the French Consul that since Mass was
breaking French law, the Sultan's law, and British Treaty
obligations to the Sultan, he could not be admitted to the
British Consular Court as a plaintiff since:

By the law of England, if a British subject
residing in a foreign dominion engages in the
traffic of slaves he is debarred from the pro-
tection of English law, and therefore if a
subject of a foreign power engages in this
infamous traffic contrary to the law of his
own country, and of the state in which he is
residing, and in violation of treaties, he cannot
be permitted to claim a privilege denied to a
British subject. 18

The French Consul took very strong exception to Rigby's
action and the Sultan was informed that Rigby
should not issue an order forbidding any foreign
consul from giving publicity to any order or
notice addressed to the subjects of their govern-
ments by posting it at the Customs House. 19

The French were extremely antagonistic towards the British
influence at the Zanzibar Court, and annoyed that the Customs
Master was not only a British protege but also the head of the
Indian community. Rigby was adamant about not changing this
procedure, and charged that the French demand "was an
aggression of the sovereign rights of the Sultan". 20

17. F.O. 84. 1090, Rigby to I.O., 25-11-1859. It has been
contended that Seyyid Said, by farming out his customs,
had made a bad bargain for himself and left behind a
"Dannosa hereditatis" for his successors. See J.W. Gray:
History of Zanzibar (London, 1962), p.144; R.J. Gavin:
Palmerston's Policy, p.325.
18. F.O. 84. 1090, ibid., Rigby to Consul de France (L. Cochet),
24-11-1859.
19. F.O. 84. 1120, Rigby to I.O., 16-4-1860 and 28-8-1860.
In the Notice of 28-8-1860 he warned Indians against
commercial dealings with Arab slavers.
20. ibid.
Rigby's reason for taking such a strong position was that the main revenue of the Sultan came from the Customs House, which Jairam farmed for 196,000 crowns.\textsuperscript{21} After the division of Muscat and Zanzibar, by the 1861 Canning Award, both territories had separate Customs Masters.\textsuperscript{22} Hence the Customs House's position as an institution of the Sultan suffered during Rigby's term of office. He did not refrain from interfering in this institution despite protests from the French.

Consul Playfair, after resuming office as Consul, was informed by Sultan Majid that trade was decreasing. However, Playfair claimed that "the trade of Zanzibar exhibited by my trade return\textsuperscript{23} repudiated Majid's assertion". During his term of office Playfair encouraged a tax on coconuts and cloves in order to bring about municipal improvements, and this led to a falling off of trade between Zanzibar and India. The tax had been levied because Majid had allegedly squandered his money. Consul Kirk instructed Devji Jamal to pay this illegal tax, since three incumbent British agents had not disallowed it.\textsuperscript{24} This tax was abolished because the French, American, German and English traders

\begin{itemize}
  \item [21.] F.O. 54,17, Rigby to I.O., 1-5-1860, p.199. Even after Jairam's death in 1866, the firm continued to operate as previously under the management of Ebji Sewji and Damodar Jairam. See Mangat: \textit{Asians in East Africa}, p.18, the firm continued to be referred to as Jairam.
  \item [22.] R.G. Landen: \textit{Oman}, pp 139-40. During the 1890s in Muscat Rattans! Purhotam, a Hindu, was collector of port customs, an extremely rich import-export man.
  \item [23.] F.O. 84,1245, No.11, Playfair to F.O., 28-6-1865, p.199. Lorimer: \textit{Gazetteer}, Vol.I, p.469. In 1834 Said received a revenue of \$100,000 from Muscat, and \$150,000 from Zanzibar.
  \item [24.] NAI, Foreign Dept (Pol A), No. 70-1, Kirk to Sec. of Bombay Govt.
\end{itemize}
refused to pay it. The Bombay Government said that under Article I of the 1839 Treaty Indians were not liable to the tax. 25

Consul Kirk befriended Ludda Damji, Jairam Sewji's manager, and ascertained that a sum of $MT310,000 was paid by the firm to the Sultan. Kirk was also able to compile a detailed account of the sums at which the Customs House had been farmed in Zanzibar. He discovered that the first renter of the Customs House had been Wat Bhima, 26 who had paid $MT70,000 initially and increased the sum to $MT84,000 two years later. It then passed into the hands of Jairam Sewji, and later on to his son, who paid $MT110,000 in 1834. 27 The principal phenomenon observed by Kirk was that the Customs House under-valued imports and exports, while the Indian and American merchants tended to hide profits so as not to encourage rival businesses. The Sultan discovered that his Customs Master charged "from the Indians and Arabs a tax that had been disallowed in Captain Fraser's case". Representations had been made to Consul Seward and Churchill, but it was Consul Kirk who planned to take firm action against this tax. 28

25. ibid.

26. Sheriff: Commercial Empire, claims that Wat Bhima (sic Wat Buria) was not the first renter of the Customs House. It is possible that the firm of Jairam Sewji collected the customs from about 1819 and that Kirk made a mistake which was repeated by Mangat: Asians in East Africa, pp 25-9.

27. Thereupon the rent advanced every five years to $140,000, (American trader Roberts reported a figure of $150,000), $180,000, $240,000 and in 1870 to $310,000. See F.O. 84. 1344, Kirk to F.O., "Administration Report of Zanzibar Agency, 1870", 18-7-1870. J. Ross Brown: Etchings, p.329, mentions that in 1842-3 the Customs House was rented for $150,000 to Jeram bin Seeva (sic). Brown also refers to Consul Hamerton as Hamilton.

Captain Fraser, who had been accused of using slave labour on his plantations, in turn accused Jairam Sewji of being linked with the East African slave trade. He questioned the validity of J. & E. Sewji and Co. in farming duties on the import and export of slaves, in their capacity as British subjects. Consul Seward had earlier pointed out that Jairam Sewji was making money by taking import tax on slaves:

I cannot conceive however that it can be in unison with the views of government, that any capitalist, under British protection should be allowed to retain that privilege whilst he purchases the right to tax shares.

In reply to Fraser's letter, Seward wrote that members of Sewji's firm were not British subjects,

a fact of which the planter (Fraser) is perfectly aware, but the Kutchis claiming a protection which as matters stand they could instantly renounce.

Hence Seward pointed out the vagueness in British protection of Kutchis, which Rigby had never questioned.

The second incident linking the firm of Sewji with slavery occurred just prior to the visit of Sir Bartle Frere's Mission to Zanzibar. Kirk wrote to Granville at the Foreign Office that the public slave market had been bought by a British protected person of Kutch. Kirk was urged to issue a public proclamation that:

all persons who engage directly or indirectly in such transactions must expect no favour, countenance or protection whatsoever from the British Government so long as they are concerned in any way with a transaction of so questionable a character.

29. F.O. 84.1279, Fraser to Consul Seward, 15-2-1867. 
30. ibid., Seward to Bombay Govt, 20-9-1866. 
31. ibid., Seward to F.O., No.65/4 (1867). 
32. P.P. Vol.LXI (1873), No.21, 6-8-1872, p.40. 
33. ibid., No.26, F.O. to Kirk, 30-12-1872, p.43; and F.O. 84. 1357; R. Oliver & A. Atmore: Africa, p.70, quote Livingstone who accused Indians of controlling all public revenue which was used in form of arms, ammunition and goods to finance the slave trade.
In the meanwhile the new proprietor of the slave market assured Kirk that the property had been purchased to build houses and Kirk issued a notice that slave dealers could not use the site. In fact the site was soon to be presented to Bishop Steere "as a free gift by a Hindu merchant, Jairam Sewji." Until 1871 this seems to be one of the very few public spirited acts by his firm which, during a period of 40 years, is reported to have accumulated £6-10 million as Customs Master and trader.

1(b) Kirk's Consolidating Measures

The Customs House as an institution collecting revenue for the Sultan of Zanzibar should have remained under his tight control. However, since the Customs Master was subject to British extraterritorial jurisdiction the British Consulate could directly bring its influence to bear upon the Customs Master. The Consulate by and large did not use judicial intervention but relied on diplomatic intervention.

The importance of the Customs House at Zanzibar made Kirk go to great lengths to secure British interests through control of Sewji's firm, whose parent company was actually based in Bombay. With the abolition of the slave trade, and the constrictions placed on Sewji's firm, the Sultan wanted to break the five-year contract for customs collection, but Kirk said "No". Since the Customs House brought

34. ibid., No.3, enc., Kirk to Bombay Govt., 17-12-1872, p.68.
36. F.O. 84.1344, No.99, Kirk to F.O., 8-10-1871.
37. R. Coupland: Exploitation, p.211.
advantages to British subjects and consolidated British independence, Kirk wanted to retain control of it. 38

Kirk had taken this decision as early as 1871 and wanted to bring Sewji and his agent, Ludda Damji, more firmly under British protection so as to "expect aid and assistance even when he could not legally enforce the same". 39 The Consul felt that this was important, since Damji could make Britain's influence felt at the "secret councils of the Durbar of which he is a constant and influential member". 40 Attempts by Sultan Barghash to repudiate the debt of $500,000 owed to the firm of Sewji by turning the Customs House over to the firm of Tharia Topan was foiled by Kirk. He said that Sultan Majid's debt was legal and he wanted the Customs House to remain in the "hands of the British subjects". 41 Kirk intervened and stopped the firm of Wat Bhima taking over the Customs House from Sewji, although eventually the Sultan's debt was cancelled.

Ludda Damji had started to respond to these overtures from Kirk. One of the issues on which Kirk obtained Ludda Damji's agreement was that of the unjust transit duty paid...
by the British Indian merchants between the African coast and Zanzibar. Kirk, however, "found His Highness slow to adopt the opinion of his Wuzeer and Customs Master," when Ludda Damji raised this issue with the Sultan.

Damji's death on 21 November 1871 caused Kirk great concern and he wanted the firm to send another agent. Damji had been in Zanzibar for 40 years, since Sultan Said's reign, and throughout the whole of Majid's rule. Kirk said that "no one was more esteemed for his upright conduct by all classes" and had been subject to a "constant succession of petty meannesses on the part of the Sultan." However, Kirk's main worry was that Damji's death would cause the Sultan to repudiate the Customs House Agreement.

The general instructions of the Foreign Office to Consuls contained the provision that

these officers cannot act as agents for particular firms, nor can they with propriety decide upon the merits of rival enterprises. Kirk, however, considered the issue of the control of the Customs House of paramount importance for the enhancement of British interests and openly intervened to preserve and further these interests. To obtain better terms the Sultan invited Bhimji Gopaldas to come to Zanzibar to ascertain whether the firm of Wat Bhima could take over the Customs House. By

42. P.P. Vol.LXII (1871), No.29, enc.1, Kirk to F.O., 7-3-1870; enc. Kirk to Chief Sec., Bombay Govt, 4-3-1870.
43. F.O. 84.1344, Kirk to Bombay Govt, 24-11-1871. Livingstone was, however, extremely critical of Ludda Damji in not delivering his supplies; F.O. 84.1357, Livingstone to Kirk, 19-1-1872, and Kirk to F.O., 9-5-1872. Kirk was worried about these accusations and others that he had recruited slave labour for Livingstone.
44. F.O. 83.932, No.2, F.O. to Association of Chambers of Commerce, Circular Letter, 4-3-1886.
this time, however, Kirk had discovered that Sewji's contract had been renewed, after the cancellation of the debt, and that since Damji had signed the contract in his capacity as Sewji's agent, the firm continued as the Customs Master. The Bombay Government was concerned about Kirk's interference and considered that his intervention had cost the Sultan a good customs contract. They did not want Kirk to support Sewji because it encouraged the Sultan's extravagance. They felt that British interests would have been better served by allowing the Sultan to obtain a fair income through open competition among local firms but Kirk assured them that relations with the Sultan were good.

The direct intervention by Kirk in the allocation of the Customs House was not made in a diplomatic vacuum. The impact of British extraterritorial jurisdiction in slave trade matters had created a dependence of the British Indian commercial community on the British Consulate. To further the interests of this dependent community, and British interests generally, Kirk was Impelled to interfere directly in the affairs of the Customs House. In the case of Zanzibar, therefore, the claim that the Consular Service confined itself to assisting "British trade in general and avoided dealing with individuals" does not hold true. The British

45. F.O. 84,1344, Kirk to Bombay Govt, 9-12-1871; C.S. Nicholls: Swahili Coast, p.292, is incorrect when she claims that the Customs House passed to a separate firm of Ludda Damji in 1853. After Damji's death, he was replaced by Likmidas as the Manager of the firm. See Charles New: Labours in Eastern Africa, p.37.
46. NAI, Foreign Dept, No.11/15, Bombay Govt to Foreign Dept, Govt of India, No.11, 10-11-1871.
47. F.O. 84,1344, pp 17-18; Sheriff: Commercial Empire mentions that the Sultan was offered $450,000 to $500,000 but Kirk forced the Sultan to accept the Customs House rental at $300,000.
Consular Court furthermore dealt with commercial and civil suits from individual firms and had allowed the consular establishment to operate in both general, judicial and individual terms whenever this was considered necessary.

The Sultan had tried to increase his income by reallocating the Customs House to a new agent. When this move was blocked by the British, the Sultan tried to raise his inadequate income through extra taxation. Captain Prideaux, the acting consul, felt that this was an "impolicy" as the Sultan's customs agent collected these taxes in contravention of the 1839 Treaty.49 The Foreign Office approved of Prideaux's analysis of the proposed tax collection.50 In a report Consul Holmwood elaborated on the fact that it was British subjects who suffered from these extra payments, which were "almost prohibitive".51 The British had no steamers to protect the British Indian subjects from paying a duty of 15 per cent on general produce. Holmwood demanded the dismissal of Premji Oderji, the Malindi customs collector, and Khimji Wastani of Lamu, since the taxes they collected were from "the majority of the Indians trading on the coast who are hard workers but not capitalists...".52 Holmwood wanted an end to this taxation because otherwise the Indians would emigrate to Portuguese colonies, and they would carry on the slave trade there.

The Sultan wanted to increase the power of the agents of the Customs House in the various mainland ports by

49. F.O. 84.1415, No.25, Prideaux to F.O., 5-2-1875.
50. ibid., enc., F.O.'s Note, 23-2-1875.
51. ibid., No.25, enc., Holmwood's Memorandum: New Scale of Customs Duties on the Coast, 1-1-1875.
52. ibid.
requiring the captured slaves and dhows to be turned over to the Customs Masters and not to the local Governors, who were alleged to be illiterate and frequently absent from their posts. These increased powers were to be vested in the Customs Masters, who possessed "in their respective posts as great a share of influence as the governors themselves", and were welcomed by the British Consuls, particularly since it would bring increased powers to persons under British protection.

In the meanwhile the House of Sewji and Ebji was divided by internal conflicts, and they could not pay any increased part of the high profits that they made. The decreased influence of the Jairam Sewji firm with the Sultan, along with increased British control over them, weakened their position. The British control exercised over them was not specifically directed to enhancing the private interests of the firm, but to entrenching general British control over Zanzibar. At the expiration of their Customs House control they were succeeded by the equally powerful firm of Tharia Topan. In 1876 the new concessionaires of the Customs House faced new competition from local firms and from a group which was in the process of forming itself into the Imperial British East Africa Company. The IBEAC's draft treaty carried marginal comments by the Sultan to the effect

53. F.O. 54.1399, No.63, Prideaux to F.O., 19-8-1874.
54. J.M. Gray: History, p.256, quotes Hamerton who wrote in 1851 that Ebji was "most insidious, intriguing, dishonest man" and detested the British Govt. The transformation of Ebji during Consul Kirk's period is therefore interesting.
55. F.O. 54.1454, No.139, Kirk to F.O., 25-8-1879; Mangat: History of Asians, gives conflicting figures about Topan's rental of the Customs House for $500,000 (p.18) and $350,000 (p.19).
that IBEAC concessions involved taking over the Customs House, which would be contrary to the interests of Tharia Topan. However, Consul Kirk was not so well disposed towards Topan since not only did he want to reduce the annual lease by $50,000 to $450,000, but he also collaborated with the Americans. A meeting took place with the Sultan, the US Consul and Stanley, during which Stanley warned the Sultan not to sell one inch of his coast to the English, since they would "take the whole and ruin his authority". Topan, an ally of the Americans, sent a message "to show that a new scheme opposed to British interests was afoot".

Hitherto the firm of Jairam Sewji had dealt effectively with competition from European firms. Increasingly, however, European competition was being dealt with by Kirk's interference. In August 1880 the Customs House was not reallocated to Topan, but reverted to Sewji. This time Kirk discovered that the manager of the firm of Messrs Reux de Fraissinet, of Marseilles, had tried to induce the Sultan to allow them to be entered as security for the performance of Sewji. Kirk opposed this on the grounds that Reux de Fraissinet would seek some share in the management of the Customs House, while not having any better credit than Sewji, to whom they owed money. By preventing the French firm from gaining any footing, Kirk felt that he had "kept the advantages

56. F.O. 84.1514, pp 384-392, Draft Treaty, 6, 15, and 30 May 1878.
57. ibid., No.82, Kirk to F.O., 31-5-1878.
58. F.O. 84.1547, No.79, Kirk to F.O., 29-5-1879. Topan literally controlled the American traders but they regained their independence by playing off Indian traders against one another. See N.R. Bennett: EIHC, Jan.1962, p.46, Topan like his predecessor Sewji also made some losses on the Customs House because he allowed Sultan Barghash to overdraw from it.
and prestige of the control of the Customs House in the exclusive hands of the British subjects". 59

Kirk then noticed that the Sultan was about to grant M. Rabaud of Marseilles extensive concessions on the mainland. With the assistance of the Customs Agent Kirk again intervened pointing out to the Sultan "how narrowly (he) escaped falling into the hands of foreign speculators and losing the control of his country". Kirk feared that this would lead to a furtherance of French influence. 60 He considered the French Consulate with a strong staff and fleet "as our active political rivals". 61

The overt British consular intervention in preserving British control only assisted the firm of Jairam Sewji's interests in the short term, since the Consulate would resort to English companies like the IBEAC for furthering British interests in the long term. Furthermore, such extra-legal measures to preserve the interests of a few powerful firms created a commercial climate in which wealthy British subjects who were merchants and money lenders could charge exorbitant interests and seek British consular protection. Such abusive practices were not limited to Zanzibar but were also recorded in Damascus, 62 where British extraterritorial jurisdiction was also exercised. While British protection led to strained relations between the Sultan and Jairam Sewji, the Sultan's losses were extremely heavy. British control

59. PRO, Granville Papers, 30/29/264, Kirk to Granville, No.56, 3-3-1881.

60. F.O. 84, 1599, No.33, enc.1, 3-3-1881, "Draft Agreement for the construction of Railway and other concessions between Sultan and M. Rabaud".

61. F.O. 84, 1600, No.12, Kirk to F.O., 25-5-1881.

over the Customs Master had undermined his authority over a major bureaucratic and revenue collecting institution of his Empire. Since the British consular interference had led to the Sultan also losing revenues because he could not contract the Customs House to the highest bidder, he increasingly resorted to arbitrary taxation to collect revenue.

This collection of arbitrary customs and taxes by the Sultan's Customs Houses on the coast did not decrease. Judge Cracknell had collected voluminous evidence at Lamu that "allegations made by the Indian traders against the Customs House were not without foundation". Miles felt that extensive

exactions and overcharges are made by customs farmers all over the coast; the Indians not being fully aware of their position under the Treaty. The Lamu Indians signed a petition that they were subjected to great hardship by Khimji Vastani, who was Sewji's agent and who had charged them duties of 25-30 per cent and subjected them to "insult and inconvenience". The Customs Master would charge duty and not release the goods, and then charge duty a second time; duty free goods from Zanzibar were also subject to tax. He treated the Bohra sub-caste with greater severity than the Bhattias. His success in these exactions was due to his alliance with the Wali at Lamu, who was the administrative agent of the Sultan, and took no action against Vastani. The centralisation and regularisation of the Customs House, for which Jairam Sewji had been responsible in the second quarter of the nineteenth

63. F.O. 84.1621, No.33, Miles to F.O., 6-4-1882.
64. ibid.
65. ibid., enc. Petition of British Subjects at Lamu, n.d.
century, was now beginning to disintegrate. The economic power of the vested interests on the East African coast had increased. However, the Sultan's administrative system was unable to cope and revenue collection had become more arbitrary. The intervention of the British Consulate in the affairs of Zanzibar had not necessarily enhanced the Sultan's systematic administration of the coast.

2(a) The Eclipse of Indian Firms

To assist in the solution of the problems raised by arbitrary taxation and other matters, a draft Treaty of Commerce was drawn up in 1885. It granted the status of "most favoured nation" to traders of Britain in Zanzibar, and vice versa. The second article laid down that British subjects were not liable to other or more onerous duties, imposts, restrictions or obligations of whatever description, than those to which subjects or citizens of the most favoured nation.66

The signatories would have the right to station consuls in order to preserve these commercial interests and enjoy the privileges of the most favoured nation. Article IV preserved the total freedom of trade in all the territories, and for all the goods which were being imported or exported.

Under Article VII the Sultan was to charge a duty of 5 per cent on all goods and merchandise imported by sea and landed at any port in the islands or on the coast. Once the duty had been paid they would be exempt from any further

duties during trans-shipment to other parts of the dominions. The duty on spirits and liquor was to be fixed at 25 per cent, and that on wine and beer at 20 per cent. These two taxes caused grave problems soon after the Treaty was implemented.

This Treaty really reflected the loss that the Sultan had suffered in commercial terms. He had, under the previous Treaty, enjoyed monopoly rights in ivory and copal. Under Article IX of the current Treaty he lost these rights, and any goods brought from areas in the West of his dominions on the African continent were not subject to duty.

Under Article XI British subjects were to pay duty in cash, or by equivalent amounts of goods or produce at their assessed market price in Zanzibar. The local goods were to be assessed for duty at the place where the duty was to be paid.

The Sultan promised to build a new Customs House, under Article XII, which would be safe from fire and provide facilities for distressed vessels. Under Article XV the British Consul pledged that if British subjects declared their goods falsely to evade payment of tax, then the Consulate would condemn or confiscate the whole or part of the goods for the benefit of the Sultan, and the fines would be paid to the Sultan.

Just before the implementation of the above Treaty, the House of Sewji farmed the Customs House for $560,000 per annum. This included taxes on cloves.67

As soon as the above Treaty was implemented the British merchants were subject to a 25 per cent duty on spirits.

67. F.O. 84, 1799, No. 11, Copy of Proces Verbal, 18-5-1856.
This tax led to a threat of reversion to French citizenship by the merchants, since the French only paid a 5 per cent duty and the British merchants could not compete with them. The Foreign Office telegraphed Holmwood and advised him to insist on British subjects "not being placed at a disadvantage as regards other foreigners on any point whatsoever". The French Consul fully supported the local French traders, holding their tax on spirits at 5 per cent, and also defended the French planter, M. Cottoni, against payment of any taxes on cloves and coconuts. This caused great embarrassment to the Indian traders and the Foreign Office, after consulting Kirk, decided that Germany and England should revert to the old commercial treaties, since France would not follow regulated import and export duties.

The tax collection itself was not entrusted to British Indians, since it was not very lucrative, but to a "promiscuous staff of untrained and irresponsible retainers" who were described by Kirk as hangers-on, undisciplined mercenaries who robbed, practised violence and bribery. The effect of all this was described as leading to a doubling of the market price of the goods, and a depreciation of property values and rent.

On the expiration of the customs contract between Sewji and the Sultan in 1887, a turning point in their relationship was reached. The Sultan had withheld $40,000, which he owed to the firm, and the British Consul's suggestion

68. F.O. 84.1774, No.58, Kirk to F.O. (Telegram), 23-8-1886.
69. F.O. 84.1777, F.O. to Holmwood, 8-12-1886.
70. F.O. 84.1775, No.171, Holmwood to F.O., 23-9-1886.
71. Ibid., F.O.'s Opinion, 26-10-1886.
72. Ibid., No.170, Holmwood to F.O., 23-9-1886; Mangat: Asians in East Africa, p.18, claims that N. Lillani and Peera Dewji were part of this group.
that the matter be settled by a court made the Sultan furious. The British Consul attributed the attempt to injure Sewji's business to some secret influence. The Sultan sued the firm for occupying his property illegally. Consul Holmwood's counter case against the Sultan broke down, since the "secret influence" was a serious reality, and "injurious to trade and subversive of justice". It is not possible to establish the nature of this "secret influence".

Sewji regretted that half a century of good business connections with the Sultan had been abruptly ended. He claimed that there was no intercourse between the Sultan and himself, and that a sum of $185,000 was owed to him by the Sultan. Extensive business losses were also suffered because he had innumerable business dealings with the Arabs, but the Sultan disallowed the use of his courts by Sewji.

Kirk recommended the use of independent arbitration, in which Britain would not be involved, to help Sewji collect vast quantities of loans and capital from the subjects of the Sultan. The latter had "boycotted" Sewji and had no interest in settling the debt of Rs 100,000 by submitting it for arbitration.

A Kadi of the Sultan passed judgment on a mortgage owed to Sewji by an Arab in favour of the former. The Sultan intervened and reversed the decision. Macdonald, the Acting Consul, who was a friend of the Sultan, took "very serious notice of the arbitrary and unjust manner in which he was conducting his government". Kirk also wrote that

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73. F.O. 84.1853, No.110, Holmwood to F.O., 10-7-1887.
74. Ibid., enc. Jairam Sewji to F.O., n.d.
75. Ibid., enc. Memoranda by John Kirk, 10-9-1887.
76. F.O. 84.1854, No.130, Macdonald to F.O., 21-11-1887.
the Sultan "must be treated firmly in matters such as these".77

The position of Sewji as the Sultan's banker and Customs
Master meant that only a person free from all trade could
effect settlement. However, the Sultan refused to accept
arbitration, and the Kadi's courts were rendered ineffectual
under the direct orders of the Sultan.78 Since the Sultan
was also the executor of rich Arab estates mortgaged to
Sewji, the situation remained serious until the end of the
Sultan's reign.

2(b) IBEAC and German Competition

Sewji's claims were settled in 1886 by the next Sultan,
Khalifa, who favourably impressed the British Indian com-
community.79 However, the position of Topan and Sewji was altered,
since the German East Africa Company had entered the southern
dominions of the Sultan, and the concessions over the northern
East African mainland had been signed over to the British
East Africa Association. The two traders petitioned the
Foreign Office concerning the hardships they were suffering
on the mainland and the Foreign Office viewed their complaints
with "entire sympathy"80 but would not help them. The
Sultan had, in turn, given assurances that the Customs House
would only be hired to Zanzibari and British subjects. He
was, however, powerless in the face of German persistence
in establishing themselves on the mainland.81

77. ibid., No.186, Macdonald to F.O., 19-12-1887.
78. F.O. 84.1906, No.26, Macdonald to F.O., 3-3-1886.
79. ibid., No.66, Euan-Smith to F.O., 17-4-1888.
80. F.O. 84.1904, No.152, F.O. to Euan-Smith, 18-10-1888,
while Topan's major competitors were Germans, they were
together competing with the Americans.
81. F.O. 93/116/58, Sultan Khalifa bin Saeed to Euan-Smith,
26-8-1888, "Customs Houses of Zanzibar and Pemba".
The German East Africa Company attempted to exercise control over the Zanzibar Customs House. Euan-Smith wrote to his German Consul colleague, Dr Michaelles, that if the GEAC did not withdraw the unauthorised charges he would be forced into "taking active measures for protection of British subjects in Zanzibar". The British Indians sent a deputation to see Consul Euan-Smith about this German intrusion into Zanzibar customs. On considering these representations the German Consul disagreed with the GEAC and their charges were withdrawn.

The poor treatment which the Sultan received at the hands of the Italians and Germans prompted him to grant the mainland concessions to MacKinnon's IBEAC. In any case Euan-Smith wanted the Zanzibar and Pemba Customs Houses to fall into the hands of the IBEAC. The Sultan offered the Zanzibar Customs House to the IBEAC for two to three years on the same terms that it had been leased to Topan and Sewji. Euan-Smith wrote recommending that the IBEAC's offer be accepted.

The IBEAC foothold thus obtained, combined with the active encouragement of the British Consul, brought to a close the era of Indian firms acting as independent agents. Indian control over the economic factors became absolutely minimal after this point and they had to operate, circumscribed, within the imperial framework. In order to increase its trade, the IBEAC wanted to use "Tharia Topan, a British subject, who for ten years, and until recently,

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82. F.O. 84.1909, No.257, Euan-Smith to F.O., 15-9-1888, & enc. 83. ibid., No.244, Euan-Smith to F.O., 1-9-1888. 84. ibid., No.28, Euan-Smith to F.O., 25-9-1888.
farmed the whole of the Sultan's revenues. The Indian Government was oblivious of this because it felt that the IBEAC's control of the scheme of customs collection in Zanzibar "is one chiefly affected imperial interests. Still we are of the opinion that its accomplishment would benefit rather than injure those of India. However, since they had no direct formal role to play, this opinion was not based on the actual situation in Zanzibar.

Once the IBEAC had established itself, it worked closely with the British Consul. The British subjects at Lamu brought complaints to Mackenzie, the IBEAC agent, because the Germans had established a customs house on the north bank of the Belsoi Canal. This control of the Customs House hurt Indian trade, and the German Consul declined to change the situation. Euan-Smith demanded from them "effective protection of the lives and property of British subjects situated on the British coastline." The Sultan declined any responsibility for this situation, while Euan-Smith asserted that the Sultan exerted "sovereign rights" and had stationed garrisons on the coast and collected taxes. Further trouble at the Lamu Customs House emerged later in the year when the grains were about to be exported, and the German agent Toeppen imposed a 5 per cent duty on

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85. F.O. 84,1976, No.54, Euan-Smith to F.O., 2-2-1889, enc.2, MacKinnon's Memorandum of Zanzibar Affairs to F.O., 13-5-1887.
86. F.O. 84,2012, Governor General in Council of Indian to F.O., 11-10-1877. Tharia Topan began to shift his trade to China.
87. F.O. 84,1975, No.9, Euan-Smith to F.O., 2-1-1889, enc.1, Mackenzie, IBEAC's Agent at Lamu, to Euan-Smith, 27-12-1888.
89. ibid., No.107, & enc.1, Euan-Smith to F.O., 27-2-1889.
"British, British Indian, and British-protected subjects" without informing the British Government. On being challenged by the local British Consul, Simon, the German challenged him to try to stop it. Forty-one Indian merchants sent a memorial to Her Majesty's Zanzibar Consul, requesting protection against this double tax, which was also opposed by local Wazas. The British sent HMS "Turquoise" to Lamu to quell the disturbances.90

The conflict between the IBEAC and the Indians was demonstrated by Buchanan, the IBEAC administrator, who lodged a complaint against a British Indian subject, Jaddojee Pewjee, who took over as Customs Master of Mombasa. Buchanan felt that it was an IBEAC concession.91 The Sultan felt that he had authority over all the customs houses and had appointed Hansraj as the overall Customs Master until such time as he wished to appoint Mackenzie, of the IBEAC, as Customs Master. Consul Hawes was not as enthusiastic about the IBEAC taking over the customs collection. He agreed with the Sultan on the grounds that the IBEAC had been rather passive on the customs issue.92 The Sultan felt that since the Customs Master was a British subject, he would not "do anything that would be against the interests of the British Government or the Company".93 After checking through the Mombasa customs books, Consul Portal found that the previous Customs Master had been careless, if not dishonest, and that the Sultan was

92. ibid., Sultan to Hawes, enc. 4, 20-4-1889.
93. ibid., enc. 8, Sultan to Hawes, 25-4-1889.
justified in changing the Customs Master at Mombasa. Portal noticed certain instances where duty had been charged from Mombasa merchants which did not appear on the books.

The Sultan informed Euan-Smith that a notice would be issued which would withdraw the privilege by which British subjects and protected persons removed goods to their houses and stores and the Customs Master charged them duty according to invoices. The Sultan accused the traders of paying less duty than the market price and revealed that certain goods arrived concealed in packages. The Foreign Office approved of this action taken by the Sultan and Euan-Smith.

After the death of Sultan Khalifa in 1890, the new Sultan, Syed, wanted to transfer the Customs House from Jairam Sewji to Ebji Sewji, since the latter was an old friend of the Sultan. The British Consul, Euan-Smith, had no objection to this change. Now that the firm of Sewji was not that important, and the IBEAC had taken over the pre-eminent position in furthering British interest, Euan-Smith did not want overtly to interfere in the wishes of the Sultan.

The German Consul was also interested in replacing the British Indian Customs Master with a person of his own choice, who would serve German interests. He refuted Euan-Smith's

94. F.O. 84.1979, No.271, Portal to F.O., 15-7-1889.
95. F.O. 84.2058, No.46, F.O. to Euan-Smith, 4-3-1890.
96. F.O. 84.2059, No.19, Euan-Smith to F.O., 17-1-1890. Upon the death of Sultan Khalifa, the new Sultan Syed had the Customs House transferred to Ebji Sewji from Jairam Sewji, because of Jairam's financial difficulties after the division of the firm. This was done with the concurrence of C.S. Smith. ibid., No.71, Euan-Smith to F.O., 24-2-1890.
97. ibid., No.71.
charge that the Indians, who controlled 90 per cent of the trade, had not complained. Michaelles further said that Ebji Sewji was a British subject. Euan-Smith disagreed with the German Consul and told him that he could not have a German Customs House because the Sultan had the sole authority to collect customs. If the Customs House worked unsatisfactorily then the blame had to be placed on the Sultan’s Government, and not on the Customs Master. Moreover, the Sultan had a plan to reorganise the Customs House.

The Deutsch Ostafrikanische Gesellschaft duly informed Ebji Sewji that he was “totally unfit for the place you occupy”. The German Consul, while agreeing that the latter was rude, stood by its contents. He pointedly told Euan-Smith that the Customs Master would get in touch with the Sultan, as his master, and not with his Consul, Euan-Smith.

The IBEAC and the German Company had effectively divided up the source of Customs House income into their own respective spheres of influence. This led to the fragmentation of the Customs House machinery as it had operated hitherto.

By this time the Sultan was also thinking of having the Customs House reorganised by a European and subject to the approval of the Secretary of State for the Foreign Office. He proposed hiring the Customs Houses in the coastal ports, including Lamu, to British or Zanzibar subjects, and the Zanzibar Customs House to Mackinnon of

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98. F.O. 84.2062, No.262, Euan-Smith to F.O., 23-6-1890, encs.
99. Ibid., enc. Deutsch Ostafrikanische Gesellschaft to Ebji, 30-5-1890; Michaelles to Euan-Smith, 5-6-1890.
100. F.O. 84.2070, No.258, Euan-Smith to F.O. (Telegram), 24-9-1890.
Hence Sultan Syed identified his interests with those of the British company and its representatives.

The English merchant houses were the first to complain against the English Customs Master, Mr Robertson, apparently for his business connections with Messrs Forward Bros and Peera Dewji. However, Smith Mackenzie & Co. and Charlesworth did agree that "this post renders the appointment of a European Customs Master imperative". The British Indian merchants, including Tharia Topan, held Robertson in higher esteem, for his "great skill, justice and impartiality". The English merchants followed suit and withdrew their complaints. Smith Mackenzie & Co. might have resented Mr Robertson's connections with Peera Dewji, who was considered inimical to Smith Mackenzie & Co's interests. However, generally the British Indian community and the English firms had become dependent upon British officials appointed through the Sultan.

Until Robertson took over the Customs House in 1890 it was farmed at a fixed rent by the Indians; then only fixed salaries were to be paid and the Sultan wanted to control expenditures. At the same time Ebji Sewji was appointed to the office of Clove Royalty, with the announcement of a 5 per cent reduction on clove duties.

On 1 February 1892, Zanzibar was, at the instigation of Portal, declared a free port. Duty was eliminated on

101. F.O. 84.2012, Cases on behalf of IBEAC from Lama, Sultan to Euan-Smith, 26-8-1888.
102. F.O. 84.2146, No. 53, and encls, Euan-Smith to F.O., 20-2-1891.
103. F.O. 84.2149, No. 245, Portal to F.O., 9-9-1891.
104. F.O. 84.2153, Gen. Mathews: Notes on Free Port.
105. F.O. 84.2228, No. 36, F.O. to Portal, 26-2-1892.
wine and beer, but not on strong liquor, arms or ammunition. 106

The British merchants, both Indian and English, complained against the import duties, which were not levied on the value of the goods or their market prices in Zanzibar, but on an arbitrary value fixed by the IBEAC Customs Master at Mombasa. This was 20-30 per cent higher than the actual market price, thereby making the actual duty not 5 per cent but 6 or 7 per cent. Portal made Berkeley discontinue this practice, and Zanzibar prices were to be published in the Zanzibar Gazette.

The IBEAC was also accused of recovering their advances made to caravans for the storage of their goods at the Mombasa Customs House. Thus they repaid to themselves their own loan and interest before Indians were allowed to claim repayment. Hence the IBEAC was always repaid in full, while the Indian merchants suffered losses when caravans were unsuccessful. Portal wanted to discontinue this system because of its unfairness to private businessmen. 107 The Indian merchants made representations regarding the above claims and expected continued protection from Portal for British subjects. 108 The Indians said that the taxes were inadvisable and illegal. They contended that even if the assessments were legal the people were too poor to pay, and thus the IBEAC was discouraging rather

106. F.0. 84.2229, No. 30, Portal to F.0., 2-2-1892, & enc.
107. F.0. 84.2230, No. 72, Portal to F.0., 25-3-1892.
108. Ibid., enc. Jeevanji and others to Portal, 22-3-1892, and Dick to Portal, 22-3-1892.
than encouraging traders.\textsuperscript{109}

The Sultan felt that the promises made by Euan-Smith on the establishment of the Protectorate had not been fulfilled, and that Sir Gerald Portal had been even harder, if not "a little violent".\textsuperscript{110} However, Consul Rodd made a few concessions regarding the Customs House but on no other demands. Strickland, the Collector of Customs, was also not very happy with his salary, which was paid in rupees. Hence the port officer was made subordinate to the Customs Master.\textsuperscript{111}

The end of the nineteenth century had wrought a diminution of control by the Indians at the Customs House. This was reflected in the resentments against an Anglo-Indian employee, Palmer, who had made the mistake of marrying an English woman (Mrs Gray, a Salvation Army majoress).\textsuperscript{112} As an old employee of the IBEAC and the East African Protectorate, he

\begin{table}
\centering
\begin{tabular}{|c|c|c|}
\hline
From & Packages & Value (Rupees) \\
\hline
Europe & 12,659 & 363,744 \\
Bombay & 44,983 & 584,277 \\
Karachi & 1,719 & 5,165 \\
Aden & 39 & 2,135 \\
\hline
\end{tabular}
\caption{Figures for packages received by the Customs House (1891)}
\end{table}

\textsuperscript{109} ibid., No.72, enc. Two Indians, Tharia Topan and Dowjee Jamal (Jumell, sic) paid these taxes and the fines.
During this period the Customs House issued the following figures for packages received by them (1891):

\textsuperscript{110} F.O. 107.2, No.8, Rodd to F.O., 7-1-1893.

\textsuperscript{111} ibid., Rodd to F.O., 9-1-1893. In 1895, the Sultan of Muscat was granted loans to prop up his regime by the Govt of India, on the security of the "Zanzibar" Subsidy. It was held that to require him to place his Customs Dept under the British Govt would be a violation of the Anglo-French Declaration of 1862. See Lorimer: \textit{Gazetteer}, Vol.I, p.312.

\textsuperscript{112} F.O. 2,288, No.180, Hardinge to F.O., 31-5-1900. Governor Crawford called Palmer a "half-caste office boy", and an official in the provincial Court, MacDougall, referred to him as a "pumpkin headed subordinate".
was not paid any pension or gratuity, even though most of the subordinate staff had liked him and his work at the Customs House.113 The sustained prejudices that Palmer experienced contained the forebodings of the intense racial prejudice which British Indian subjects were to experience in the East African Protectorate during the twentieth century.

Palmer turned to attacking the "unworthy agents" of Her Majesty's Government, but the Foreign Office concurred in neither granting him a pension nor a gratuity. As the editor of the East African and Uganda Mail, Palmer proceeded to attack the principal officials of the East African administration, including Governor Crawford. He accused the new Customs Master, Marsden, of receiving a gold-plated casket and an address from the mercantile community.114 The old Indian commercial elite headed by Sewji and Topan had disappeared and Jevanjee, the new Indian entrepreneur, was cited by Palmer as the chief Indian trader who partook in this corruption.

A letter in the East African and Uganda Mail,115 signed "Derelict", accused Marsden of having dispensed favours to merchants who had signed an address from which "Derelict" was excluded. The editorial in the same issue accused Marsden of accepting Rupees 12,000 before leaving for England.

113. ibid.; Palmer was also the Governor of the Jail before resigning.
114. F.O. 2.467, A. Marsden to F.O. (C. Hill), 25-4-1901. Palmer attacked Crawford and Marsden for their connections with Jevanjee. The F.O. wrote to Marsden, 27-5-1901, asking him to refuse the gold casket and a Persian carpet from the mercantile community at Mombasa and Zanzibar, since he was a Vice-Consul and chief officer of Customs.
115. East African and Uganda Mail, 30-3-1901.
The Consulate, however, absolved the European section of the mercantile community and said that "subscriptions were raised only amongst timid British Indians". 116

The economic and customs control passed to the East African Protectorate. Consequently, the importance of Zanzibar faded since the power base of subsequent expansion was on the mainland. Henceforth the Indian community were to play the role of manipulated middlemen.

116. F.0. 2.454, Basil Cave to F.O., No.113, 9-8-1901.
CHAPTER IX

EXTRATERRITORIAL JURISDICTION

Political, Commercial and Customary Implications

The Indians had migrated freely to Zanzibar. A significant segment of the community had retained the commercial advantage of their Indian connection while functioning in the dominions of the Sultan. While they had not anticipated British consular control over them, their British nationality made it obvious that once the British Consulate was established they would be subjected to its extraterritorial control. They were therefore placed in the difficult position of being answerable to two different political authorities. On the one hand they were subject to the jurisdiction of the territorial sovereign of Zanzibar, and on the other hand to the British Consulate since they retained British nationality.

1(a) British Nationality and Jurisdiction

Consul Hamerton's first charges after his arrival on 4 May 1841 were the British subjects, almost all of whom originated in British India. To the Arabs and the Swahilis this must have been confusing since Hamerton concerned himself with people who were not his countrymen. The Governor ofBuyeni was surprised about this, and asked Krapf about it, who told the Governor that the "Banyans", while not Hamerton's countrymen, were "the subjects of the British Crown. This reply delighted the Banyan who was seated by
the Governor's side.1

The Sultan was perturbed by Hamerton's presence and his policies.2 On 23 September 1841 he summoned those principal merchants who were British subjects and asked them to sign a declaration renouncing British protection and to become citizens of Zanzibar. Since most of the merchants had family and property in India, all except three refused to sign the declaration. Two days later Hamerton went to see Said to lodge a complaint. Said's arguments were: That the long residence of Indians entitled them to become Zanzibar citizens; that the people of India were the subjects of the East India Company, and not the Queen of England. Hamerton told Said that he could not exercise control even over the three who renounced their British citizenship, and that "the Government would protect them as though they had not signed the paper".3 He further told Said that British citizenship could not be lost through residence abroad. Later Lord Aberdeen affirmed the statement of Hamerton's that children or grandchildren of British subjects "born out of the British Dominions are, by law of the country, equally entitled to British consular protection".4

Towards the end of 1845 Said was even more restive about Hamerton's intervention on the Indian issue. He was

2. F.O. 54.6, F.O. to Hamerton, 27-11-1844. See also India Board to Viscount Canning, 25-11-1844; F.O. 54.7, No.5, Hamerton to F.O., 24-3-1845.
3. F.O. 54.5, Hamerton to Secret Committee, Court of Directors, East India Company, 9-2-1842.
especially insistent on his jurisdiction over Indians born in Zanzibar, and he now raised the additional problem of the people of Kutch, as he had been assured by Captain Cogan that they would be the subjects of the Sultan. Said complained that Hamerton had "interfered with me in respect of all people so that my authority here is weakened." Said expected Cogan to make representations to Lord Aberdeen at the Foreign Office on his behalf. He also wrote directly to the Foreign Office, and Aberdeen wrote to the India Board suggesting that "British subjects going to the dominions of the Sultan of Muscat should provide themselves with passport and with documents proving their nationality." As his precedent, Aberdeen used the laws passed with respect to the Ionian Senate in April 1827.

A memorandum written by Captain Cogan claimed that the Bohra community gave a lot of trouble to the Sultan by claiming British or Zanzibar protection, depending on what suited their interests. They apparently also flew English or Arab flags aboard their vessels to evade duties at the ports of the Sultan. To reduce tension between the British Consul and the Sultan's government, the memorandum proposed that British Indians be granted a letter of identity before departing from India, and that the British Consul at Zanzibar keep a register of all British subjects residing in Zanzibar and its dependencies. Hamerton disagreed with the memorandum.

5. F.O. 54.7, Said to Cogan, 28-9-1845.
6. F.O. 54.9, F.O. (Addington) to India Board (Lord Jocalyn), 29-12-1845.
8. ibid., Capt. Cogan's "Memorandum relating to British Indian Subjects residing in Zanzibar", 29-1-1846. Cogan proposed that a letter proving their British citizenship should be provided for those going to Zanzibar.
and with the assertion by Said that Indian Muslims called themselves Arabs at one time and British subjects at another. He mentioned noticing Indian boats arriving from Bombay flying English colours but without any register or papers; a stop was put to this by making representations to Bombay. On the issue of change of nationality, Hamerton said that he had received very few applications for British protection. The only exception had been at the time of death of British subjects who wanted their estates to be administered by the British Consul, a suggestion to which the Sultan had readily acceded.  

The India Board agreed to the necessity of having a proof of nationality for the purpose of seeking British protection. It mentioned that people already resident in Zanzibar did not have any documentation to prove their nationality. The Board therefore recommended that Lord Aberdeen and the Foreign Office, when writing to the Sultan of Muscat, should substitute the words "to the satisfaction of Her Majesty's Consul" for the original demand for "a document substantiating their national character", since such a document would be difficult to provide. While the Court of Directors of the East India Company recommended that all British subjects ought to get a passport before embarkation from India, it also felt that in a country "like India to make the obligation of procuring them universally known" would be impossible. The Indians therefore carried no proof of their nationality to Zanzibar;

9. ibid., Hamerton to F.O., 24-9-1846.
10. ibid., I.O. to F.O., 9-2-1846.
11. ibid., I.O. to Hamerton, 26-3-1846.
even though the Consulate continued to assert that they were British subjects. Sultan Said and Majid also continued to assert their right to control the Indian community. However, while Majid attempted to protect the British Indian community, this protection was minimal because, as Dr Livingstone had said, "it must never be left out of view for a moment that Sultan Majid is a creature of British power alone". 

Despite the fact that many were eligible for Sultan Majid's protection under the Naturalisation Act of 1847, they were not allowed this protection. It was Consul Churchill who again tried to exercise control over protected Indians and faced intense problems with the Sultan. Since Churchill worked aggressively, and with very confusing legal structures, he created grave legal problems for the India and Foreign Offices.

Churchill proposed that the children of Indian parents settled in Zanzibar were to be allowed to elect their nationality after they came of age. Those Kutchis settled in Zanzibar before the 1836 Proclamation forbidding the slave trade by the Rao of Kutch in his country were to be allowed the privilege of the Sultan's subjects. The Sultan promptly sent an envoy to India to clarify the issue of nationality and jurisdiction over the Kutchis, but complained that Churchill's position was in contradiction to the correspondence that passed between our Government and Colonels Pelly and Playfair, sometime back, acknowledges our right to protect all natives of

12. F.O. 84.1265, Livingstone to F.O., 18-5-1866, p.460.
Kutch whose names are not inscribed in the Consular Register Books kept in Zanzibar, and to consider them our subjects in every way.

He acknowledged British jurisdiction over natives of Bombay and Surat

but that those who come from states that have not been conquered should be amenable to British law is at variance with the explanation previously given...namely, that if they have not elected that protection of the British Consulate, by writing their names in the Consular Register Books kept in Zanzibar, that their status shall be that of Arabs, our subjects.15

The Bombay Government told the envoy, Hamud bin Suliman, that the Viceroy's Council understood his representations, but since the Rao of Kutch ruled "an Indian state under the paramount power of (the) British Government..." they would be subject to British control.16 The Bombay Government had persuaded the Rao of Kutch to issue a proclamation soon after the departure of this emissary for Zanzibar.17 This proclamation dealt a blow to the Sultan's attempt to control the Kutchis in Zanzibar. The Rao's proclamation to his subjects by birth said that the British "Government will, by the virtue of the aforesaid permission, treat you who reside at Zanzibar as its own subjects", and Kirk felt that its impact would make British influence "in all matters paramount".18 Hence Consul Kirk began to regularise the position of Kutchis resident in Zanzibar.19

15. ibid., enc.5, Majid to Churchill, 26-2-1869.
16. ibid., Secretary of Bombay Govt to Hamud bin Suliman, 28-7-1869.
17. ibid., 24-4-1869, Translation of Rao of Kutch's Proclamation, 20-10-1869, Lord Clarendon to Kirk, congratulating him for putting it into effect.
18. P.P. Vol.LXI (1870), No.47, enc.4, pp 54-6, 24-4-1869.
19. F.O. 84.1307, Kirk to F.O., 24-8-1869.
Sultan Majid was extremely upset by the Rao of Kutch's proclamation. He laid a letter before Kirk which was later withdrawn:

In this letter, His Highness denied the right of the Rao of Kutch to issue any Proclamation whatever to the residents in Zanzibar, on the assumed ground that no treaty existed between the two states. He then set forth the terms of the proclamation which could not be conceded.20

Kirk told the Wazir of the Sultan that the Rao was bound by the treaty to Britain to have no diplomatic relations abroad, and the Wazirs were told to avoid direct confrontation, which made the Sultan relent. The Sultan very grudgingly wrote, saying that he "understood" the Rao's Proclamation and believed that the case would be put to the British Government by Consul Kirk.21

While the Indians had been increasingly brought under consular control in Zanzibar, the provision of a document or system acceptable to the Indian Government about the ability of the Indians to prove their nationality had not been provided. This was illustrated in the case of Indian refugees from Menangai where, after bombardment by the Portuguese, they were asked to prove their place of origin as being India, in the absence of Indian documents, so as to be able to claim a living allowance in Zanzibar.22

1(b) Political Constraints of British Nationality

British extraterritorial jurisdiction was based on the British nationality of Indians in Zanzibar. The exercise

20. Ibid.
21. Ibid., Majid to Kirk, 14-8-1869.
22. F.O. 84.1907, No.87, Euan-Smith to F.O., 5-5-1888.
of this jurisdiction had far reaching implications on the Indian community in East Africa during the twentieth century. Since the roots of the problems of Indians lie in their British nationality in the nineteenth century it is incorrect to state that "the thought of nationality and diverse allegiance was remote from the minds of early settlers in East Africa."23

The British imperial establishment, especially the Foreign Office, contained a strong contingent of lawyers who provided the "authoritarian mentality"24 which was so necessary in strengthening the allegiance of British Indian subjects to the Crown.

From the point of view of this study a large segment of the British Indian community in nineteenth century Zanzibar was not able to understand the raison d'être for the application of extraterritorial jurisdiction in Zanzibar. A small segment of the community which understood the implications of British extraterritorial jurisdiction took advantage of this situation by asserting a nationality that suited them.

The larger section of the community was faced with an extremely complex political situation and they were accused of being apolitical, or of not expressing dissent in political terms.


A recent researcher claims that during the first half of the nineteenth century "many of the slave dealers were Indians who were uninterested in political dissent because they were not permanent residents on the Swahili coast."  \(^{25}\)

This cannot be accepted as a total answer because during Colonel Rigby's tenure as British Consul, the Indians protested in 1860-61 against his anti-slavery measures. \(^{26}\)

Secondly, while the Hindu merchants might have been non-permanent residents because they did not emigrate with their wives and families, the Khojas, Parsis and Memons did bring their families. Hence, this does not totally explain the lack of political activity or dissent.

Sultan Said found the apolitical aspect of the Indians particularly useful on the East Africa coast, especially during the Mazrui revolt, since, in not taking sides, the Indians helped Sultan Said to entrench his control on the coast. As far as their own long-term interests were concerned, the apolitical behaviour of the Indians adversely affected their future in Zanzibar and East Africa.

The apolitical nature of the Indian traders in East Africa has been widely acknowledged. For instance, in 1854 Musa Muzuri, a powerful Khoja trader, enlisted the support of Kabaka Suna of Buganda on the side of Rumanika, the ruler of Karagwe, by giving him a bribe of ivory.

Hence, while the Indian traders played an important part in the political affairs of East African kingdoms with whom they came into contact, they "did not wish to set up any

\(^{25}\) C.S. Nicholls: *Swahili Coast*, p. 322.

\(^{26}\) See Chapter V on Criminal Jurisdiction.
There is not much evidence about Indian response to political changes on the African mainland, and the same holds true of their response to the European presence.

Since the majority of Indian traders came from various parts of western India and from diverse classes, they remained politically inarticulate. The recorded responses are mainly from the small group of wealthy articulate settlers who contacted consular officials to protect their interests. Their direct economic power grew with the strength of the Zanzibar Sultans, but as the strength of British interests grew, so their economic strength was siphoned into the entrenchment of British imperial interests. Since the Sultan could not exercise any countervailing power, even those Indians who wanted to remain under his jurisdiction had no alternative but to accept European control, which increased throughout the century.

Within the paternalistic regime of the Sultan there was very limited scope for political participation by Indians. They were primarily merchants and bankers, and they not only devoted most of their time to accumulating wealth, but were also viewed as merely a commercial class by the Sultan's subjects and the British Consulate. This image of them reinforced their apolitical tendencies. Hence, because of being considered alien and strange they were left out of the general political process. Their main role was not that of initiator, but to provide a

defensive reaction to the politics of the dominant class, seeking concessions from it. Political action was only taken in crises which directly affected them.

The British impact through the British Consulate represented an alien ideology concerning the distinction between religion and the state. This post-Reformation dichotomy between religious and temporal powers was totally alien to the holistic concepts of the Hindus and Muslims, who found it extremely difficult to operate within this alien tradition. For the Indians the totality of their actions in this world was the basis for spiritual salvation or reincarnation in a higher form. They did not separate the social and political relations into separate religious and secular spheres. Nevertheless, the legal system of the Victorian Consular Corps did succeed in undermining whatever traditional elements of Indian life were subjected to its scrutiny.

The Hindus and Muslims who had emigrated to Zanzibar from India do not provide examples of millenarian rejection of the European influence, because their socio-religious customs were only threatened by secular legal traditions, but not by Christian missionaries. Apart from the small Goan Christian community in Zanzibar, the Indians were averse to conversion to Christianity, and their insularity strengthened their attachment to their respective religious practices. The subjection to British legal control in

28. For similarities with the conditions of Indians in Trinidad, See Brinsley Samroo: Tapia (Tanapuna: Trinidad) No. 25, 2-4-1973.
29. Friends House Library, Euston Road, London. See H.S. Newman, Ms. Vol. 206, "Pemba" p.20. Newman worked as a missionary in Pemba, and wanted India to spread the Gospel both east and west. He was opposed to the use of Indian troops only in subduing East Africa.
civil and criminal spheres was the major alienating factor to which the Indians were exposed. However, even in this respect the laws which were applied were a result of legal syncretism between English and Indian laws. While its basis was

...the law of England strait of its local peculiarities and modified with regard to the condition, institutions and climate of India, and the character, religion and usages of the populations

the Indian method of political organization, the panchayat, was the matrix on which the holistic Indian way of life was based. In rural India, the panchayat governed by means of a council of elders, which included distinguished younger members of the community. Since no representative cross-section from any district in India lived in the Zanzibar dominions, this mode of political organization could not function at all. This "failure of the Indian immigrants to transplant any cross-section of their traditional society in Africa is a fact of capital importance." Furthermore, in the strange surroundings of the Sultan's local government and the British Consular court, this Indian institution was made redundant as an instrument for adjusting social and legal relations. The Ismaili community who came to East Africa were a little better organized as a sect, and consequently fared better in making political representations. However, generally the Indian traders and merchants were pioneers who had not come on an organized basis and, because they could not establish self-contained communities, they negated their own institutions.

In matters of control by the British Consulate, the consular officials were to use a system of government while the Indians were apt to look to persons, since they were not used to a bureaucracy. The officials, however, tended to move at the completion of their term, leaving behind an established pattern of control, including systematic court circulars.

Since the British Consulate only exercised the negative function of controlling the British Indian community, there was little scope for channelling political energies.

The void created by the lack of political institutions was filled by men like Sewji and Tharia Topan, who retained religious fervour and at the same time had risen to positions of material wealth in an alien and sometimes hostile society. It was this acquisitive motive which prompted people like Sewji to be "politically impartial", and which resulted in them being offered "influential offices" by the Sultan. Offices such as that of Customs Master were an essential element for conducting successful commerce because they could not rely on the active support of the British or Indian governments. The Customs Masters were, however, not averse to advising the Sultan on political matters. For instance, Sultan Majid accepted the advice of the Customs Master to appoint an Arab agent or Liwali to Ubuyambe.

Lack of political commitment among Zanzibar Indians was accentuated by the desperate conditions in India itself. A series of nineteenth century famines had

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led to the death of four million people, and the Indian economy was ravaged by British industrial goods. Indian traders had emigrated to escape these calamities. Furthermore, uprisings against the British in Poona in 1822 and 1827, and the Revolt of 1857 had been bloodily suppressed. Hence, incentives for political participation in a situation where they were a tiny minority, were few. The west coast of India was particularly aware of this repression, especially since the Indian Army's revolt in Bombay in 1857.

1(c) Induced Division within the Indian Community

The ethnic and religious differences within the Indian community had not been plastered over in the nineteenth century. However, in as much as the Sultan and the British Consulate had treated them as a single community, they had maintained a common front. Once jurisdiction had become an accomplished fact, the various sections of the Indian community tried to compete for favours from the British Consulate. Hence their dependence on British power to survive in East Africa had become more pronounced. The strong leadership of the Ismaili community, and the

35. S.B. Chauduri: Civil Rebellion in Indian Mutiny
participation of the Parsi community in the service of
the Zanzibar Government, further marked out these communities.

The loyalty to the British Crown of various communities
in India was repeated towards the British authorities in
Zanzibar. Of the few prominent Indian leaders to visit
Zanzibar in the nineteenth century, the Aga Khan was the
most important and loyal British Indian visitor. He
thanked Consul Kirk in 1881 for protecting his community,
the Khojas, at Zanzibar. He considered himself to be
a "loyal and faithful ally of the British Government,
and (to) have been so since the year 1840," and, in return,
he asked for Kirk's assistance for his representative in
Zanzibar, Sir Tharia Topan. 

Kirk felt that
there can be no doubt (that) the real source of
our paramount influence here is in the hold we have
kept over immigrants from India in whose hands
the trade of the mainland rests, and to whom half
the property in this island is hypothicated.

Kirk was grateful that the Aga Khan, for whom the Khojas
had "implicit obedience," had appreciated the British
protection accorded to them as British subjects. Kirk
wanted to encourage the education of younger Khojas,
as they would otherwise "inherit considerable fortunes
without the knowledge or training" to enable them to
make good use of their advantage.

While Kirk was in the United Kingdom for a short
period, the Indians sent him an address of appreciation
for the fact that he had applied British rule in a firm
and impartial manner:

37. NAI, Foreign Dept., (General B) April 1881, No. 336/337,
Aga Khan to Kirk, 9-2-1881.

38. ibid., Kirk to Govt. of India, 6-3-1881.

39. ibid.
the manner with which you have upheld the interests of British subjects is to be attributed to the paramount position the community has attained in the country. 40

The address was signed by members of all the castes of Indians, who totalled five hundred and seventy-one. They applauded his assistance in giving them "British protection", and his role in the abolition of the slave trade. 41 The Indians on the coast, at Kilwa, gained the confidence of Lieutenant Smith, who was the consul there, and, on the eve of his departure, sent him a memorial regretting his departure and praying for his return. 42

Besides their spontaneous response of affection for the consular officials who protected their essential interests, the Indian community generally responded on the birthday of Queen Victoria. While the Indians used this as an occasion to express their fears or ask for favours, the British Consul used it for a show of British power on the east coast. On Queen Victoria's Fiftieth Jubilee Holmwood reported that, despite the great problems the Indians faced with the establishment of the Germans and Portuguese on the coast, there was a massive display of solidarity by the Indian community. It surprised the European community to see the "very clear manifestation of great wealth and influence of the British subjects, and of the vast extent of British interest in East Africa." 43 In view of the resources of the interior it might be anticipated that the insight thus

40. This address was signed by 571 Indians of all castes.
41. F.O. 84.1601, enc.1, Kirk to F.O., 21-11-1881.
42. F.O. 84.1724, No. 60, Kirk to F.O., 16-3-1885.
43. F.O. 84.1853, No. 116, Holmwood to F.O., 10-7-1887.
gained into the practical strength which the large and wealthy British community on the coast, adds British imperial policy in East Africa.

The Indian address presented to the Queen pledged the loyalty of the most important section, in terms of population and trade, so that the Zanzibar dominions "might almost be called a British colony."

The Indians did not, however, receive warm treatment from all consular officials. Consul Euan-Smith openly discriminated against them. While Dr. Charlesworth, the Zanzibar Agency Surgeon, was on six months leave in England, Euan-Smith wrote to the Foreign Office that "for other than medical reasons it would be most undesirable to appoint a Parsi or Goanese doctor to the medical charge of this agency." Hence, an officer of the fleet was to provide such services. He referred to the Indian refugees from Kilwa in the most derogatory terms, calling them "half-starved natives" and "poor creatures."

These references were made despite the fact that the Indians rose against the Germans in Kilwa, and one of them died while trying to protect British property. Hence the Indians, despite the fact that they were British subjects, were subjected to prejudice by the very officials who were supposed to protect their interests.

The seventy-first birthday of Queen Victoria was again an opportunity for the Indian community to illuminate

44. Ibid. Similar displays of loyalty were made by the Indians in the Persian Gulf during the 1887 Jubilee celebrations. See Lorimer: Gazetteer, Vol. 1, p.296.

45. F.O. 84.2062, No. 175, Euan-Smith to F.O., 20-4-1890.

46. F.O. 84.2061, No. 199, Euan-Smith to F.O., 15-5-1890, and enc. Berkeley to Euan-Smith, 7-5-1890.
their part of the town, and to attend the British Consulate en masse to offer congratulations and to present an address. This address described their general condition, and requested that legitimate trade be restored on the mainland. The Queen was thanked for securing the safety of the Kilwa Indians. Despite the Consul's treatment of them they showed great confidence in the Queen and in her consular administration's protection of their interests and advancement of their prosperity.

The decline of Indian commercial power in terms of the total Zanzibar trade, and the virtual annexation of Zanzibar by Britain had the effect of accentuating the divisions amongst various Indian castes. They began to compete separately for British attention. The visit of the Aga Khan and his appeal to the Consul General to safeguard the interests of the Ismaili community did nothing to weld the Indians as a commercial unit, and only served to widen the gulf with the Shia Ithnasheri community. During 1891 the Indians came by castes to the British Consulate to offer congratulations to the Queen on her birthday. The Parsis thanked the Queen for her "gracious protection," and said, "we are sure that in the course of time the British administration in Africa will be marked with results as brilliant as in India." A third group thanked the Crown for assistance rendered to

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47. *ibid.*, No. 227, Euan-Smith to F.O., 26-5-1890; F.O. 84.2059, No. 154, Euan-Smith to F.O., 24-5-1890.
their commercial prosperity and hoped that it would be sustained. By the last decade of the nineteenth century the Indians had effectively been made dependent upon British power and, because of their commercial interests, they had accepted this position. They were also insulated from the Sultan's regime, which was itself totally dependent on Britain. There were many Parsis who worked for the Sultan's government, but they owed their allegiance to the British. Since the Parsis were compradors in India, their loyalty was easily obtained. In Zanzibar they worked for the Sultanate and were decorated for their services.

Dr. Nariman, a Parsi doctor, was awarded a fourth class order of the Brilliant Star, in recognition of his services to the Sultanate. He had, however, to request permission from Her Majesty's Government to wear this decoration.49 The second decoration was given to Cursatji Cawasji, who was awarded the Kobab Dowr (Shining Star) for his services as secretary to General Mathews. Since the reigns of Syed Barghash and Khalifa he had worked for the "utmost amity between the Governments of Her Majesty the Queen and of the Sultan of Zanzibar."50 However, it is clear that even these decorations were not devoid of British interest and influence.

In 1896 Bomanjee Manekjee, a Parsi, was the Minister of Works and Cusetji Cawasji was the Registrar in the Zanzibar Government. This government of Zanzibar consisted

49. F.O. 34.2146, No. 54, Euan-Smith to F.O., 20-2-1891.
exclusively of British and Indian officials, and there were no Arabs or Zanzibaris represented.  

The intensification of the dependence of Indians on Britain reflected the similar overwhelming dependence of Zanzibar on Britain. A new status, between alliance and annexation had to be worked out, and the British authorities in the Protectorate began to use constitutions "as devices for preserving the political status quo, for turning the Sultanate into an Arab constitutional oligarchy."  

Sultan Seyyid Ali accepted Britain's decision to declare protectorate over Zanzibar at a date to be fixed by Her Majesty's Government. While the Sultan was to be allowed to retain his throne; his successors would have to have Her Majesty's Government's approval. With the impending protectorate status, the Sultan and two of his officials sought assistance from the British Government for cheap labour from India or elsewhere. Euan-Smith felt that with protectorate status in Zanzibar "the

51. Friends House, Duston Road, London, H.S. Newman, Ms. Vol. 206, Times, 1-9-1896. Other Parsi officials included Sorabji Manockji, the Sanitary Inspector; Dr. Nariman, the Assistant Medical Officer; Maneckji Bomani, the Inspector of Police. Of the senior officials E. Barretto, the Port Master, was a Goan. See Handbook for East Africa, Uganda and Zanzibar (Mombasa: 1906), p. 227. Of the eight pleaders in the Court at Zanzibar most were Parsis.


53. F.O. 84,2062, No. 1, enc. Euan-Smith to F.O., 26-5-1890. Provisional Protectorate Agreement and Lord Salisbury's acceptance of it.
objection raised by the Government of India to Zanzibar may be overcome."

Portal replaced C.S. Smith, who was acting as Consul General but he was apprehensive lest sharp Indian lawyers dispute his commission, as it was as "Consul General for the dominions of the Sultan of Zanzibar, exclusive of portions under administration of the British East Africa Company." So in fact his writ did not apply to coastal towns and territories. General Mathews was also appointed Commissioner and Consul General in the British Sphere, north of that of the Germans.

The Indian commercial community had access, or actually held, certain political powers as long as the Sultan himself had political control, or the Zanzibar Consulate was answerable to the Indian Government. This was particularly applicable where Zanzibar Indian businesses were branches of Bombay firms. Once the Foreign Office had taken over, the Indian commercial interests were used only as a means of demonstrating effective British control of the coast, then the Indian interests declined in total terms, and the Indian merchants became a politically isolated class - isolated from the enfeebled Sultanate of Zanzibar, from the marginal interests of the Indian Government, and from the British Government whose legal subjects they were acclaimed to be, but which now treated them on a lower level than a patriarchal British.

54. Ibid., No. 252, Euan-Smith to F.O., 20-6-1890.
55. F.O. 84.2149, No. 219, Portal to F.O., 6-8-1891.
56. Ibid., Portal to F.O., 20-9-1891.
57. F.O. 84.2153, F.O. to Gen. Mathews, 21-4-1892.
There were very few formally educated Indians, and the few western-educated pleaders who formed part of the Indian elite did not arrive until late in the century. This uneducated community of traders\(^5\) did not effectively utilise the system of litigation they little understood, particularly since it tended to change radically the traditional relationships amongst them. This lack of education, accompanied by social insulation from the rest of the community, was partly responsible for the Indians reverting to the tranquil waters of sectarian life. This futile exclusiveness based on caste had no organic substance. It was minimally lifted in the cases of educated Indians who tried to mobilise Indians politically across sectarian lines but failed to involve the mass of Indian residents.

In the last analysis it was the apolitical nature of the Indians in the nineteenth century which led to the negation of the enormous economic influence they had built up in the Sultan's empire. The lack of Indian political commitment, and Britain's overwhelming power and legal control, negated the coalescence of Indo-Zanzibari economic links. Their apolitical tendencies and, in the later period their political misjudgements, led not only to a decline in their influence, but to a virtual annihilation of their presence in East Africa.

2(a) Repercussions on Commerce and Communications

The Indo-Omani system of commerce and maritime activity in Zanzibar was typical of the coastal trading states.

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58. F.O. 34, 2146, No. 1, Euan-Smith to F.O., 1-1-1891. Sir Euan-Smith Madrassa was opened on 1-1-1891, with 200 pupils and a staff of Indian teachers teaching Gujarati and English.
Hence the wide maritime and commercial contacts in the Indian Ocean were of prime importance for the existence of the coastal trading state and the Indian minority trading within it.

British political control spilled over into fields of commerce and communications in the Indian Ocean. Here it is necessary to examine some of the effects of legal control over commercial matters, and in particular on the decline of the traditional Indo-Omani shipping in the Indian Ocean. The effect of the British Navy, the Suez Canal, telegraph and steamships was to bring the East African coast more directly in contact with England. With the traditional pattern of Indian Ocean commerce and communications undermined, the Indians in Zanzibar were brought more firmly under British control.

When Sultan Said had encouraged the settlement of Indian traders in his Muscat and Zanzibar kingdoms, he did not bargain for their connections in India and Europe leading to the introduction of modern commerce, which would eclipse the traditional Omani pattern of trade. During the reign of Imam Ahmed the Indian traders in Muscat had acted as agents of the East India Company. The methods of Indian commerce were not basically modern, but the fact that they were agents of foreign businesses resulted in transforming the local economy.

In legal terms, had the Indians been allowed to remain the Sultan's subjects, he might have contained the changes brought in by modern commerce, but British control over Indians negated the beneficial effects of even this
element in his kingdom. The Omani, and later the Zanzibar kingdom, could not survive the dislocations wrought by modern commerce and imperial control of the commercial class. These dislocations brought disruptions without the benefit of any viable alternative modern institutions which could be operated by the Sultan's subjects. A situation was created in which Zanzibar became an appendage in the field of technology. Said's attempts to establish a steam-driven sugar mill and an indigo dye factory failed. 59

Before the arrival of the British and the spread of British commerce the Indians and Omanis were partners in the fields of commerce and maritime activity. This large-scale business activity entailed an exchange of Indian grain, spices, cloth, hardware and luxury goods, which was reciprocated by the merchants and seamen of the Gulf.

Before the European manufactures and traders finally captured the economic supremacy of the region during the nineteenth century, Indian manufacturing, distributing and marketing activities were the key elements in the economic life of a great expanse of Asia and Africa.

India had wealthy resources and exported the excess of her food, raw materials, manufactures, capital and skills to the neighbouring countries. The economy of Oman was subsidiary to India, but its seamen owned and sailed a large segment of this trade from India to many parts of the Indian Ocean. The state of Oman became the distribution centre for this trade in the western Indian Ocean.

59. C.S. Nicholls: Swahili Coast, p. 252. Sultan Said also sent a Parsi to France to learn about watch making.
60. R.G. Landen: Oman, p. 82.
India's ancient ties with the Omani kingdom were also the channels for contacts with the West. The British intervened in the Persian Gulf to protect their Indian routes, especially against the Portuguese. The spread of British enterprise in India had repercussions on the area where India had previously held influence. With the death of Indian manufactures, British goods and ships became increasingly important. The Indian middlemen now became agents for British firms and, with the abolition of the monopoly of the East India Company, the Indian system of managing agents became increasingly important in carrying on foreign trade. The new function of Indian traders and Omani mariners was to distribute European goods. The devastating effect of British industrial penetration in India drove increasing numbers of traders firstly to migrate abroad, and secondly to change the content of their trade from the distribution of Indian goods to that of British goods.

This being the case, Indians began to plead for equality within the Imperial framework. One such writer argued that

from the real imperial commercial point of view how impolitic it is for imperial authorities to

61. This system had existed for about a century and a half in India. On the twentieth century ramifications of this system, see National Council for Applied Economic Research: (Preface: P.S. Lokanathan) The Managing Agency System (New Delhi: 1959)

give their sanction to a measure directed against
the Asiatics.  

He stressed that wholesale commerce in India was in British
hands, and that distribution was in the hands of the
Banyan commercial agencies who acted as "commercial links
between the wholesale British importer and the actual consumer." 

He articulated a position, contradicting his earlier demand
for equality when he wrote

England alone among the western powers need not dread
competition with Asiatic cheap labour. When England
realises her position properly and joins English
white heads to Indian brown hands, British imperial
industries will enter upon an era of prosperity
undreamt of yet.

This appeal was directed to the British statesmen who were
unfortunately, blind to the fact that Imperial
Preference in goods cannot possibly undo the
mischief that the want of Imperial Preference in
British subjects is bound to create. They forget
that out of the four hundred million people who
constitute the British Empire, three hundred million
are British Indians. While British statesmen are
busy in devising means to consolidate the fifty-two
million people with the Imperial Preference in goods,
through their neglect they are loosening the bond
of loyalty of three hundred million of their Indian
subjects.

The appeal was therefore directed to grant equality to

asserts that the Uganda Railway was built by Indian labour-
ers, p.155.

64. ibid., pp156-7. This point is further made as follows:
"Cheap capital and cheap labour will win in the long run,
England possesses both. The cheapest capital in the
world is in London. The cheapest and most abundant
labour in the world is in India. Join English capital
and Indian labour, and the problem is solved. Through
colour prejudice refuse to do this and the days of
England's commercial expansion are numbered." (p.307).

65. ibid., p. 227.

66. ibid., p. 296.
Indians as a subordinate class of "brown hands" and in fact, that became the position of Indians in East Africa at the end of the nineteenth century.

Indian businesses in Zanzibar were branches of parent companies in Bombay, and their new adjustment to British power made it possible for them to expand their interests. The advantages of this network of large Indian firms were that they had vast information of unknown markets, they had sources of capital on both a short and long term basis, and the scope of their merchandise was extensive. The division of business risk amongst a large number of partners also insulated these firms against heavy losses. Increasingly these Indian agencies became intermediaries of European commerce.

The Canning Award, which separated Oman from Zanzibar, was imposed by the British Indian Government, and had broken "a first-rate Asiatic maritime power", smashed the power's economic as well as political unity, and contributed to the diminution of much of the active trade of her seafarers.\(^67\) The culmination of these disturbances led to the Ibadhi takeover in Oman. Indian merchants were threatened; those who could afford to move did so.

The owner of the ship Calcutta Merchant, an Indian whose family had lived in Masqat for fifty years, put his household aboard his ship and moved his business to Zanzibar.\(^68\)

Less fortunate ones stayed in Oman.

The work of Indian traders during the second half of the nineteenth century has two facets. Firstly, through the British revolution in communications, steam

\(^{67}\) R.G. Landen; Oman, p. 154.

\(^{68}\) ibid., p. 114.
boats and telegraphic system they had initially assumed a greater role in the trade of the Indian Ocean.
Secondly, the steam boat and the telegraphic system rendered them redundant because they did not control the communications network. The British firms could now eliminate them even as middle- and linkmen. Trade no longer came to Zanzibar from India, but directly from Europe. The Indians did prosper in terms of rising trade, but their percentage share of the increased trade had begun to drop. Indian traders were used as local agents by European firms where it was absolutely necessary.69

The Indian traders were used as mediators between modern and traditional sectors of the economy. Within its modern sector they staffed the clerical grades of the bureaucracy. Once colonial and protectorate status was declared "this pattern of occupation was constricted by explicit political disabilities."70

The European agents and resident Indian merchants undercut Arab business and seafaring activities and alienated them from their ships and lands through mortgages, thus controlling a major sector of the economy. The powerful

Indian firms not only caused Arab businessmen to lose control over their lands and businesses, but also contributed to the bankruptcy of a large number of smaller Indian traders in Zanzibar.

Indians were the intermediaries who brought European goods and used semi-modern business methods. They remained important in the over-all picture as long as their connection with Indian firms was supported by the Indian Government. Once the Indian Government relinquished its control over the Zanzibar Political Agent, the Indian traders, instead of becoming a springboard of major economic power, were rapidly replaced by powerful British and European businesses. These operated with far greater political backing and financial resources. Since the Indians did not possess the resources to compete with European industry or international trading companies, they exploited what was left to them - clerical and technical jobs, professions and, above all, the internal distribution of goods.

The one advantage that the Indians had vis-a-vis the traditional Zanzibar community was that they conducted their business on a territory, and with a people they knew. They incorporated some of the local business customs into their own business habits, which were not as blatantly different as British methods.

Some attempts have been made by European capitalists to supplant the Indian, the former are too cautious and will not risk enough.

For instance, the Europeans had no regard for an Arab losing

hashima (respect) by not following through on a business transaction. An Indian moneylender was also a trader and hence compromised with the Arab in one way or another, although the Arab paid dearly for this service to Indian businessmen.

However, when the British acquired ascendancy, and based their businesses on totally modern methods, the very strength of the Indian retailers, wholesale merchants and financiers became their greatest drawback. The dominant European commercial culture gained wider acceptance than the minority culture of the Indian commercial class. Their competition as petty traders was directed towards the Arabs and the Africans. In order to control the major sectors of the economy the Indians would have needed access to capital in the London market. They, however, did not have a British base, nor a western education which would have assisted them in negotiations with British firms. Furthermore, they lacked a political foothold which was necessary in influencing their interests. The relative success of the Ismaili community resulted from the westernization of the Aga Khan and his residence in Europe. The Aga Khan established a political career unprecedented among any of the leaders of the other Indian communities. As a European aristocrat and politician, the Aga Khan was able to assist the East African Ismailis in westernizing their commercial and social customs, and helped them to align their interests with those of Europe. In contrast, the more traditional Patidar community operated in the modern commercial world, with tenuous and traditional
motivations. Once Protectorate status had been established the western businesses could operate with no fear of flaunting local commercial customs. In the new commercial situation that arose throughout East Africa Indians, as a commercial class of longstanding, and as a group which helped to lay the foundations for a vast network of new economic enterprise, only managed a middle position and could not assume a new and larger role.

The scope of the economy of the mainland increased to incorporate plantation agriculture, mining, banking, and in all these spheres Indian participation was only supportive. Within the constraints of the colonial society in which they held no ultimate political power, and were insulated from social and cooperative commercial intercourse, they became a series of introverted and self-reliant communities. They tried to protect their own commercial interests from outside competition. They therefore tried to tread a narrow middle path which "reinforced the strength of narrow mutually-protective ties." This narrow mentality became a handicap because they could not look beyond their narrow communal or commercial interests. They were unable to protect their common interests in a cohesive manner because of their inability to establish a common political front.

2(b) Indian Ocean Communications

In this section some of the factors which undermined

the growth of the longstanding Indo-Omani maritime links will be examined. The fact that the British maritime and naval presence superseded these links helped to make the Indian community in East Africa more dependent on Britain.

The Indo-Omani links with East Africa were dependent on the monsoon winds. The northeast winds between December and March helped Indian vessels sail to East Africa, while the second set of winds, the southwesterlies between June and September, enabled the vessels to return to return to Oman and India. The Swahili boats called mtepes, were built from mangrove timber and had common features with boats built in Gujerat, the Laccadive and Maldives Islands, and the Upper Nile area. The square-rigged mtepes were mainly involved in carrying the intercoastal trade. The Indian kotiyehs, dhows and ganjas were larger and carried the oceanic trade. The Arab baggalas were similar to the kotiyehs. They were large boats averaging from one to two hundred tons, but then they have high stems and pointed prows, one large cabin on a somewhat inclined plane, galleries and stern windows. They usually carry two large lantern sails and occasionally a jib, are generally built at Cochin and other


78. C.S. Nicholls: Swahili Coast, pp 74-5. See also C.N. Parkinson: Trade in the Eastern Seas (Cambridge: 1937) esp. Chapter IV.

places on the Malabar coast, and are employed by the Arabs and Hindoo merchants on the trade between Arabia, Persia and the Indian coast.\textsuperscript{80}

The Banyan and Bhattia traders used Hindu and Muslim crews for the boats trading with Arabia and Africa:

As sailors they are bold and skillful, the Rajputs notably so, their mualims (the pilots of Kutch) are a race deservedly famous for skill and daring, many of them have quadrants and nautical tables and can determine latitude by sun and pole star, and their longitude by dead reckoning.\textsuperscript{81}

Many Indian states had a tradition of maritime trade with the Persian Gulf. A state like Mysore under Tipu Sultan had based a Vakil at the Muscat court, and Mysore vessels plied their trade between Muscat and Mysore under Mysore colours.\textsuperscript{82} The trade along the west coast of India and the Persian Gulf was vulnerable to pirates like Kidd, who were forerunners of the native pirates of Malabar.\textsuperscript{83}

The major weakness of native Indian states vis-a-vis their maritime trade was that, unlike the East India Company, they had no naval protection. The East India Company had a maritime squadron to protect its trade and, in

\textsuperscript{80} J.H. Stocqueler: Fifteen Months Pilgrimage through Khazistan and Persia (London: 1832) Vol. 1, pp 1-2. J.R. Wellsted: Travels to the City of the Caliphs (London: 1840) pp 5-8, stated that the baggalas were made on the Malabar coast because there was no timber in Arabia and they had mixed Indian and Arab crews.

\textsuperscript{81} A.D. Taylor: India Directory (London: 1874) Part 1, p.342, mentions that the other Indian boats sailing on the East African coast were batela and grab. Royal Geographical Society: J.B. Emery Letters and MSS. J.B. Emery to Cooley, 18-12-1835, mentions that vessels from Mombasa had Arab masters and African crews. Those going to Bombay had Indian navigators.

\textsuperscript{82} Lorimer: Gazetteer, Vol. 1, p. 156, mentions that in 1797, 5 or 6 vessels were known to visit the Oman capital every year. W.A. Spray: "Surveying and Charting the Indian Ocean: British Contribution 1775-1838" (University of London: PhD. thesis 1966) p.216. An early survey of the islands held by Tipu Tib was avoided for fear of offending Tipu Tib.

addition, after 1770 periodically employed the Royal Navy to assist in this work. The British involvement in suppressing the Qawasim pirates in the Persian Gulf strengthened the British naval presence in the area and led to the consequent dependence of Indo-Omani shipping on it. The piratical attacks on Indian vessels weakened Indian trade but, since the Qawasim were extremely poor, piracy was their mainstay. Their actions on the one hand destroyed a large segment of Indo-Omani shipping and on the other hand, caused their own shipping to be destroyed by the Indian Navy, since the Qawasim represented a threat to the East India Company. Since Arab shipbuilding relied on Indian timber, the East India Company withheld supplies of this because of the piracy. There was a steady elimination of piracy after the 1820 Treaty, signed by the Qawasim and the British, and by the middle of the

84. Lorimer: Gazetteer, Vol. 1, pp 182-3. During 1808 a score of Indian craft fell victim to Indian pirates while in Indian waters.

85. Ibid. In 1809 2 British naval vessels, 10 East India Company vessels and 1,000 European troops had orders to destroy all Qawasim craft. In the early part of the 19th century, Muscat and Indian ships under a neutral flag carried on foreign trade. See J.S. Buckingham: "Voyage from Bushire to Persian Gulf" Oriental Herald Vol. XXII, July-Sept. 1829, (London), p.89. Admiral G.A. Ballard: Rulers of the Indian Ocean (London: 1927) pp 269-319, explains the rise of British power in the Indian Ocean.

nineteenth century the term "piracy" was replaced by "maritime irregularity." 87

The work of patrolling the Indian Ocean was carried on by the Bombay Marine, the task being taken over by the Indian Navy from 1830 to 1863, when it was disbanded and its function was taken over by the Royal Navy. After the dissolution of the Indian Navy one of its members wrote about the Indian Ocean as follows:

It appears to me as not a little singular that the further one travels from the centre of our strength, which is naturally the United Kingdom, so not only our military power, but our prestige, gains in strength. This is doubtless owing to our naval or rather our nautical eminence. 88

The Sultan of Zanzibar, in addition to his duties as a sovereign, involved himself in maritime trade and had a commercial and naval fleet. 89 He had also encouraged other shipowners, both Arab and Indian, to trade by granting them protection. 90 The pirates and the Wahhabi incursions had weakened Sultan Said's sea power but he was able to re-establish his mercantile and naval fleet with the help of the British. Said had therefore incurred obligations even when he moved his empire to East Africa. Hence, when Said presented Queen Victoria with his ship the "Liverpool", the officials of the Bombay Government

87. Lorimer: Gazetteer, p. 235. Although isolated Indian vessels like the "Kallian" were still being plundered in 1855 (p.120). See also H. Moyer-Bartlett: The Pirates of Trucial Oman (London: 1966) relating to Capt. T. Ferronat Thompson, the architect of the 1820 Treaty.


89. Lorimer: Gazetteer, Vol.1, p.469. In 1847 Said had 15 vessels of war, one of which "Shah Alam" had 54 guns.

90. C.S. Nicholls: Swahili Coast, pp261-2, 97.
interpreted this as ingratiating himself with superior British power. There were other limitations on the Sultan's sea power. Apart from the few vessels built at Muscat, his vessels were built in Bombay, the U.S.A. and in Europe. Said also possessed very few well trained sailors from Bombay and Calcutta who were skilled in using lunar observations and in the use of chronometers. This dependence on British India did not bode well for his shipping interests, and after the division of Muscat and Zanzibar in 1861, Omani power on the Ocean was divided and became exceedingly weak.

Unlike the Omani sea power, the East India Company and British vessels had dry docks at Bombay to support their shipping. These dry docks were considered superior to any in Europe, and could simultaneously repair three ships. Many of the East India Company ships were also built at Bombay.

Ships built at Bombay are not only as strong, but as handsome, are as well finished as ships built in any part of Europe; the timber and plank of which they are built so far exceeds any in Europe.

These ships were built at Bombay because of the access to hard timbers like teak from Malabar and Gujerat, and the availability of cheap skilled craftsmen.

At Bombay the Wadias, a Parsi family, built some of the finest vessels in the Indian trade. They had

91. ibid., pp 156-7. Edmund Roberts: Embassy to Eastern Courts of Cochin, China, Siam and Muscat 1832-34 (New York: 1837) wrote that Said was a very powerful prince possessing a more efficient naval force than all the native princes combined from the Cape of Good Hope to Japan (p. 361)


94. A. Parsons: Travels in Asia, p. 215. See also C.E. Carrington: The British Overseas (Cambridge: 1968) who asserts that British ships used in the early period of country trade were inferior to Arabian dhows and Chinese junks, and that British Indiamen built at Bombay by the Wadias, improved the construction of British ships.
built Indiamen for a hundred years before the East India Company came to an end. They held this honourable position so long because they were conscientious craftsmen who put the best ships on the Indian Ocean.  

The Wadias built ships in conjunction with the Indian and Royal Navy for the Admiralty. These ships were not only durable but were built at a quarter the cost of those built in England. When the Indian Navy ceased to exist in 1863, and possibly with the advent of the steamboat, these shipyards virtually closed down. Since Indian shipping interests were neither independent nor powerful, India became dependent upon Britain for sea-borne trade, and in 1912 only eight percent of the total capacity of national shipping, ninety-five thousand out of eleven million eight hundred thousand tons, was under Indian control. Hence, India had become a country without this most important organ of national life. There can hardly be conceived of a more serious obstacle in the path of her industrial development than this most complete extinction of her shipping and shipbuilding. And yet India is one of the countries that can ill spare a national indigenous shipping. The sea-borne traffic of India is continually expanding with the result of increasing our dependence on foreign shipping.  

The collapse of Indian shipping and shipbuilding on the peripheral community in East Africa was even more devastating. They had become totally dependent on the sophisticated British shipping.

The other extra-Indian shipping power to compete with Britain was the United States. During the first half of the nineteenth century only a handful of American warships touched at Zanzibar. Therefore:

Consul Ward felt that this absence of a show of force was a contributing factor in his adverse treatment by Said.97

This inability of America to develop its sea power in the Indian Ocean can partly be attributed to the absence of naval and port facilities of the type that Britain enjoyed in the Indian Ocean. There was certainly goodwill towards the Americans from the Indian merchant community on both sides of the Ocean. In 1838 the Rao of Kutch reported that Jairam Thakoer, a native of Kutch, would transport American and European merchandise from Zanzibar. While contacts between India and American traders remained strong well into the nineteenth century the Indians never achieved a commercially viable fleet, and Sir Tharia Topan’s wish for a steamer link between London, Bombay and Mozambique and Maculla did not materialise.98 The Secretary of the Government of India had no objections to American ships trading in the Indian Ocean if the trade was lucrative. He felt that if the trade became lucrative, then Indian and English shipping interests would take over the lead.99 In the first half

97. C.S. Nicholls: Swahili Coast, p. 179.
99. NAI Foreign Dept. (Pol), Secretary of Govt. of India to Bombay Govt., No. 27, 31-1-1838. The American ships used Zanzibar as their main port when they visited East Africa. From the coast they sailed to Zanzibar before they left for Bombay, Muscat and the United States. See Peabody Museum, Acc. 12,376, Box 11, R.P. Waters: "Consular Reports and Correspondence 1832-1834."
of the nineteenth century English shipping off East Africa was negligible. Despite the relaxation of the closed trading practices of the Americans, British shipping did not grow in Zanzibar. It was reported that even to get a letter to Zanzibar an American or a Hamburg ship was used since "no English trade vessel trades there at any time." However the break for English shipping came soon after the outbreak of the American Civil War, and easy access to Zanzibar resulted from the opening of the Suez Canal and the use of steamships.

This increase in British shipping depended on many factors. The Indian Ocean was being surveyed and charted, and voyages of exploration published their reports. British shipping became safer because of the increased availability of charts, maps and printed materials. There was a paucity of such information for the Indian and Arab sailors. The helpful effects of the reports published by Captain Sme and Lieutenant Hardy of their voyage to Zanzibar in 1811 were felt only by English speaking British subjects. There was a very small minority of Indian British subjects who read the Transactions of the Bombay Geographical Society and derived commercial benefit from such reports. The

100. F.O. 54.18, Rigby to W. Coglan, 15-10-1860.
F.O. 54.17, Admiral Trotter to A. Scott, 26-9-1857.
As a result of Commander Guillian's Report, French naval activity had also intensified.
various guides and directories 101 mapped the East African coast elaborately, and British shipping began to take advantage of these materials after the opening of the Suez Canal and the development of the steamship.

While Captain Owen's political imposition of control over Mombasa had failed, unlike that of Raffles at Singapore, his surveys of the African and Arabian coasts conferred incalculable benefits on British shipping. The surveys of the Indian Ocean consolidated British power for the following reasons. Firstly, it eliminated the dangers presented to shipping between the Cape and India; secondly, the strategic control of the routes to the East was enhanced, especially when there were conflicts in Europe; lastly, the East India Company wanted to expand, and to locate markets for English goods on the East African coast, and these objectives became easier. 102

The English sailors also benefited from the advantages which accrued from effectively transmitting their instructions to Indian sailors. This was facilitated by the production of a dictionary for them in Hindustani. 103 This edition was completed


103. This dictionary was produced by Capt. Thomas Robuck: An English and Hindoostane Naval Dictionary (London:1848) p.1.
with the help of a Kutchi, and words in Asian nautical science had a Kutchi-Gujerati slant. It had the basic advantage of consolidating the secondary role of Indian sailors on British ships.

In the case of complicated legal tangles involving Indian and Arab vessels in the slave trade, there was a dearth of qualified interpreters. Many Indian dhows and Arab barracans were destroyed on the basis of extremely shallow evidence. Another writer had acknowledged that the captains of cruisers generally ignored the circulars, Acts of Parliament, treaties, conventions and rules of conduct because they were considered to be tedious and inaccurate. Indisputable proof was required before Arab craft could be detained, and if their approach had been one of technical obedience to the law very few Arab craft would have been condemned or destroyed.

Since many of the dhows were burnt on the spot, the evidence of the capture of the dhows was taken on trust. The legitimate Indo-Omani shipping suffered, not only because the Arab and Indian masters of the vessels were not familiar with the treaty engagements and the state's rights, but also because they paid undue penalties if they

104. Lascar Indians were not considered to be as good sailors as Arabs, but both understood Hindustani language. See J.S. Buckingham: Oriental Herald (London: 1809) p. 99.
107. G.S. Graham: Britain in the Indian Ocean, p. 137. This "piratical spirit" of the crews of the Royal Navy and the competitive games it involved is further discussed pp 140-3.
"overstepped the legal mark by a hair's breadth".  

The French, Portuguese, Spanish and American competitors of the English trade felt that

the Englishman was a hypocrite, enriching himself by the manufacture of cheap trading goods and the capture of helpless Moslem traders under the guise of humanitarianism.

American Consul Webb in Zanzibar reported that in 1868-69 about seventy vessels were burnt, and that not all were guilty of trading in slaves. Hence, Indian and Zanzibari shipping suffered heavy losses, and by the time the Admiralty Courts pursuant of the Slave Trade Act of 1873 were established, their shipping was too overwhelmed to make a major comeback.

The advantages which accrued to Indian and Zanzibari shipping from the monsoon winds were considerably lessened with the introduction of steamships. The "country trade", which stretched from the Red Sea to China, was eventually reduced to a tertiary role. The introduction of the steamships led to a qualitative change in the Indian Ocean system because of the powerful steam-powered ships, and the use of scientific nomenclature in Admiralty charts which was not comprehended by the Indian and Arab

108. ibid., p.146.
109. ibid.
111. Gainsford Bruce & Charles Jemmett: Admiralty Actions and Appeals (London:1886) p.221. See also P.P.(1871) Vol. LXII Table of Vessels captured by Commodore L. Heath, No. 54. Commodore L. Heath to Admiralty, 22-1-1870; No. 7, Earl Granville (F.O.) to Kirk, 10-7-1871. Recommendations for fair trial in presence of interested parties because legal commerce "has doubtless suffered from the system hitherto pursued."
112. W.H. Coates: The Old 'Country Trade' of the East Indies (London: 1911) p.1, trade involving especially the keen Gujerati traders was coming to an end. (p.14).
seamen. Hence, the reina of Indian Ocean communication passed on to Britain and Europe, who had begun to make their communications systematic and regular. 113

The Industrial Revolution had led to the rapidly increased size of the East Indiamen 114 and by 1800, there were several ships of twelve hundred tons. The clippers of the 1840s bettered the performances of the East Indiamen, 115 but sailing ships were not generally superseded until the 1880s, when steamships finally replaced them.

Steam itself had not become competitive in shipping until about 1869, when the Suez Canal opened. This double coincidence was welcomed by the British authorities because of the grave fears which had been aroused about the Indian Empire after the 1857 Revolt, since it was Britain's "grandest acquisition." 116

113. The steamer "Hugh Lindsay" is a case in point as this very large war vessel effectively put an end to organised piracy in 1839 and helped take over Aden as a coaling station. See G.S. Graham: Britain in the Indian Ocean, pp 300-1. A.T. Wilson: The Persian Gulf, p.206, reports the Indian ship, "Daria Dowlut" had been plundered in January 1816. 17 were killed by the Qawasim. Its women and children passengers mistreated, and £20,000 in cargo belonging to Navab of Madras stolen. See Hoskins: British pp 196-207. The "Hugh Lindsay" is further interesting, because it was built in Bombay by Novrjee Jamaetjee and Cursetjee Rustomjee with Indian teak, but fitted with engines from England for the successful 1830 Red Sea voyage (pp 101-2). See also J.H. Wilson: Steam Communication between Bombay and Suez (Bombay: 1833). J.H. Wilson was the Commander of the "Hugh Lindsay".

114. J.S. Buckingham: Oriental Herald (London: 1829) July-Sept, pp 54-61, advocated the use of steam because it had resulted in the Industrial Revolution and needed to be harnessed to facilitate the extensive distribution of industrial goods.


116. See W.F. Vesey Fitzgerald: The Suez Canal, the Eastern Question and Abyssinia (London: 1867) p.29. The Suez Canal was welcomed to protect India because it "annually yielded a large revenue beyond the expenses incurred in governing it." The Canal would also neutralise the East and pay large dividends in obtaining raw materials for British manufactures, pp34, 62-70. Stanley Rodgers: Indian Ocean, p.26 mentions that the Canal "brought down the cost of Australian and Asiatic goods. It is also of enormous strategic value to the Royal Navy."
The small English firm of Newman, Hunt and Christopher in Zanzibar had closed down in the 1840s because English commercial interests were relegated to a secondary place when compared to the British interest in western India. However, with the opening of the Suez Canal, British commerce with Zanzibar and East Africa acquired direct contact with London and was not viewed as a reflection of dominant British interests in western India. The Foreign Office asserted that aid is constantly afforded to British merchants and shipowners and in many cases this assistance is fully acknowledged.\footnote{117}

It was therefore, not surprising that Sir William Mackinnon's British India Steam Navigation Company was in the forefront of steam shipping in the Indian Ocean. Richard Burton observed:

> How long this absurd monopoly will last is hard to say....The inevitable "canny Scot" rules the roost, and doubtless will fight hard to keep rivals out of the kitchen.\footnote{118}

The BISN monthly mail service from Aden to Zanzibar had started in 1872. The increased activity by the BISN in Zanzibar involved it in a large number of civil suits. In the same period until 1895, there were only five civil cases dealing with problems of shipping on indigenous Indian craft.\footnote{119} The BISN established a Zanzibari Agency called Smith Mackenzie and Company in 1877, and H.A. Fraser

\footnotesize{\textit{F. O. 83, 932, No. 4, F. O. to K. Murray, Secretary of London Chamber of Commerce, 22-2-1886.}}

\footnotesize{\textit{Richard Burton: Sind Revisited, Vol. 1, p.11.}}

\footnotesize{\textit{William Murison: Zanzibar Protectorate, Vol. 1. See Civil Cases No. 342, Coorji v. BISN (1877); No. 296, Coorji v. Smith Mackenzie and Co. (1877); No. 371, Furani v. BISN (1878); Smith Mackenzie as Agents of BISN v. Topan; No. 128, (1895) Ramji v. BISN, pp24-5, 51-7.}}
was the first Agent.  

Although the British Indian traders continued to be the predominant trading class, the content and carriers of their trade were increasingly British.  

The BISN was able to establish this pre-eminence in shipping partly due to the fact that they received mail subsidies from the government.

With the introduction of the steamers there was the beginning of the "falling off in native craft", although the indigenous sailing vessels have continued to trade. Between 1871 and 1879 British tonnage had increased sevenfold, while that of other countries either remained stationary or declined.

During 1877 modern amenities in the form of police, water supply and street lighting were organised in Zanzibar. The same year Sultan Barghash strengthened British contacts with Zanzibar in a new field. He opened the telegraphic link which was laid by the Eastern Telegraph Company. These links primarily benefited companies such as Smith Mackenzie and Company, although the telegraph had "forged yet another valuable link with the outside world" and "proved of inestimable value to the firm in its general business activities." Therefore


123. R. Oliver (ed.): East Africa. See chapter by Gray, p.241.

the general pattern of cohesiveness that had occurred in India as a result of the railway and telegraph, had occurred in the Indian Ocean because of the telegraph and the steamship. Both had made British power pre-eminent in the Indian subcontinent and the Indian Ocean.

In the final analysis Indian shipping belonging to British subjects and protected persons, because of British control over the area, constituted a part of British shipping. In the Persian Gulf the precise status of Kutchi ships had not been determined:

As they are not owned by British subjects they cannot be registered as British ships, nor can they hoist the British merchant flag. If therefore the Persian Gulf and its shores were not so completely as they are under the influence of this country disagreeable consequences might easily occur.  

Since this was the position in the Persian Gulf where "no jurisdiction was assumed, no internal or external sovereign powers were taken out of the hands of the tribal chief," in Zanzibar, where there was a definite acquisition of jurisdiction, Indian shipping was more closely part of British shipping.

Consuls Kirk and Pelly had first granted passes to ships owned by British Indian subjects, but at the insistence of the Bombay Government these were withdrawn in 1868. Kirk requested the Indian Government to issue flags to Indian ships and the Indian Government agreed to the "right of Indian vessels when carrying passes from the British Consul at Zanzibar to fly the British ensign," but concluded that Zanzibar was not within the legislative

126. ibid., p.228.
127. F.O. 84.1307,Kirk to F.O., 29-11-1869, Resolution No. 361, Nov. 1868.
128. ibid., No. 85, Jan. 1869.
powers of India. Kirk was therefore requested to "address his request to the Foreign Office or the Lord of the Admiralty." Kirk had requested the grant of flags to British Indian shipping lest they opted for the French flag. The Foreign Office, after conferring with the India Office and Lord Derby, decided that the Kutchi flag did not constitute a vessel belonging to a "foreign state", since it was a British protectorate.

3 The Effect on Indian Customs and Usage

The control of commercial life and customs collection was virtually complete as the East Africa mainland was opening up. This led to a decrease in the importance of Zanzibar as a centre of commerce. Within Zanzibar, one of the repercussions of the Indian presence and British control of the commercial life had been the change in the customary trading practices. Both the social and commercial customs and usages of the various communities were brought under close scrutiny, and the pattern of commerce was changed. There was a gradual change through decided cases and subsequent enactments, so that ultimately these civil matters were brought within the statute law and many customary usages faded, as illustrated by the cases mentioned herein. Hence, statute law was more widely used.

129. *ibid.*, No. 2781, Govt of India to Kirk, 28-8-1869.
130. F.O. 84.1383, No. 51, F.O. to Kirk, 31-8-1871. This was determined within the meaning of the Act 36 & 37 Vict. cap. 59.
131. See George Cornewall Lewis: Government of Dependencies (London: 1841) pp 252-256 for a discussion on the introduction of laws, religion and language of the dominant country into a dependency.
while the previously dominant Islamic law was reduced in importance. Sir George Gray had suggested that although the natives should as far as the persons and property of Europeans were concerned be made amenable to British laws, yet so long as they only exercised their own customs among themselves, and not too immediately in the presence of Europeans, they should be allowed to do so with impunity.132

Since the Indian immigrant community in Zanzibar was a minority in a foreign situation, there were very few customs which they could exercise "with impunity". This was especially true since, as British subjects, they traded extensively with the British and were subject to British consular control.

The "privilege" of being subject to British extraterritorial jurisdiction had arrested any dynamic change that might have occurred in social and cultural terms amongst the Indians at Zanzibar. As British subjects they were subject to the myth of equality, while extraterritorial jurisdiction reduced the status and customs of British Indian subjects by insulating them from the Zanzibari society, and yet total westernization was also closed to them. They were, therefore, superficially westernized or anglicized, and assumed a macabre and bizarre identity which was subject to caricature by the imperialists themselves. The concept of the equality of British subjects was criticized, since it was not true to imagine that proclaiming that all fellow subjects of whatever race are equal in the eye of the law, we really make them so. There cannot be greater error, nor one calculated to inflict evil on those classes whom it is intended to benefit.133

133. ibid., Sir George Gray quoted in Appendix of lecture, p.522.
Since Indian interests were not represented in the House of Commons, the East India Company had been encouraged to rule by carrying the Muftis, Kazis and Pundits with them, rather than converting them to Christianity as the French and Portuguese had tried unsuccessfully to do.  

However, the East India Company had not governed Indians through "truth and honesty" since "we systematically lie to them at every turn." This lack of consultation with the governed by the governors had led to increased dissatisfaction with the British. An Indian writer, while discussing the causes of the 1857 Indian Revolt, mentioned that, because of this arbitrary rule, every act of the government was misconstrued:

Such acts as were repugnant to native customs and character whether in themselves good or bad increased this suspicion.

The Indian community in Zanzibar was too removed even to be aware of the Indian legislation which was being promulgated. They were so remote from any consultative process that they were only subject to legal statutes, which they little understood.

134. See SRO G.D.51.180, T. Cookburn to Lord Merivale, 26-6-1813.
135. SRO G.D.183/1, John Jacob (Bushire) to Viscount Melville, 31-8-1857. It was considered dangerous to introduce religion to the body politic since it was a "fatal disease".
136. Syed Ahmad Khan: The Causes of the Indian Revolt (Benares: 1873) p.14. This is an English translation of a sober manuscript about the 1857 Revolt written in Urdu, especially from a Muslim point of view. One of the reasons for the Revolt was the fear of being converted to Christianity, p.37. See also Appendix 1, pp.55-9.
137. Ahmad Husain Khan: Law Technicalities (Lahore: 1898). This dictionary of legal technicalities from Urdu to English was produced by a translator of the Sessions Court, Lahore. However no such dictionary in Gujarati or Kutchi languages was available to Indians in Zanzibar. H.K. Ahmad also translated Shakespeare's "Othello" into Hindustani (Lahore: 1895).
In India the application of English law to the adjudication of cases had been subject to controversy. The matter was settled by an enactment of Indian codes some of which were applicable to Zanzibar. The settlement of civil matters, such as inheritance, succession to lands or goods, marriage and to some extent, even ordinary contracts, depended on the use of local or personal law. However, despite this, in India, "under British rule the customs have changed more and more."

In Zanzibar, custom had a totally different significance, even though Zanzibar was considered to be a district of the Bombay Presidency. Customary and personal laws were given currency by Regulation IV of 1827. Reference was made to decisions of the Bombay High Court in which the legal recognition of the customs at variance with the recognized systematic law of the community had been made. While in cases amongst Zanzibar Indians

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138. See Chapter IV, last section: Legal Framework.
139. See Lindsay Robertson: "The Judicial Recognition of Custom in India" JCLIL 3rd series, Vol.4, (London 1922) pp 218-28. No distinction is made between "custom" and "usage" and recognition was given to it as attached to various religious sects or communities but not to districts. In India amongst the Hindus especially, local and territorial customs are quite important. They were not used because there was no comprehensive digest of them. In U.P. and Punjab tribal and village customs on succession and land were collected by settlement officers. See C.L. Tupper: Punjab Customary Law (London: 1881); W.H. Rattigan: Notes on Customary Law of the Punjab (London: 1876); W.H. Rattigan: A Digest of Civil Law for the Punjab, chiefly based on customary law (London: 1896).
custom was used, they were settled by the judge at the
Consular Court. Hence the judge could question whether the
custom was of long standing, whether it had universality,
and, in certain cases overrule the existence of such customs.\textsuperscript{142}

As a result of this:

It is hardly surprising that large numbers abandoned
many traditional practices, and began to model their
behaviour not on Brahanical or Islamic ideals
which they had observed in India, but those they
believed to be held by Europeans.\textsuperscript{143}

These were the beginnings of the situation, for instance
amongst the Hindus, where caste exclusiveness remained
an attitude of mind while communal substance began to
disappear.

The polymorphous nature of Zanzibar society was
another factor which had an effect on the customary usage
of the Indians and the local populace. The law of
Zanzibar, even after the American, Austrian, Belgian, French,
German, Italian and Portuguese systems had been eliminated,
remained polymorphous. First, in certain circumstances,
it incorporated the substance of common law, the doctrines
of equity, and statutes of general application in England.
Secondly, many Zanzibar decrees were based upon Indian codes
and acts, with the result that a great part of the law
of India was in force in Zanzibar. Thirdly, the Muslim
law, with its variations for Ibadhi, Sunni and Hanfi sects
(and further sub-variations for different Sunni sub-sects),
was used. The followers of the Hanafi school (Memons and
Punjabis) and those of Shia persuasion were, almost without
exception, British subjects or under British protection.

\textsuperscript{142} W. Murison: Zanzibar Protectorate, pp 7–9, Case No. 249
of 1878, Premji Khimji v. Tyabji Mamooji.

\textsuperscript{143} H.S. Morris: Indians in Uganda, p. 27.
Fourthly, in certain circumstances, Hindu law was applied. Under this system of law clear proof of usage was to outweigh the written text of the law unless it had been declared void because it was contrary to justice, equity and good conscience. For those Hindus who came from Gujerat and Bombay Island it was the Mayukha Hindu law which applied. Those from the rest of Bombay Province were subject to the Mitakshara division of Hindu law. This was one of the two codifications of Brahmin rule and precept which was accepted by the courts of law and in the formulation of legislation by the Government of India. Finally, there was in addition, the multiplicity of customs prevailing among the various communities of Zanzibar, especially the Muslim, sheria. The Chinese community was a non-Christian, non-Muslim element which was therefore subject to His Highness the Sultan of Zanzibar’s Courts. While section 12 of the Courts Decree of 1899 contained a provision for trial by special courts in cases like the Chinese, there is no clear indication that this jurisdiction was ever exercised. As in China, similarly in Zanzibar

144. The general principle used while applying the Indian Penal Code and Codes of Civil and Criminal Procedure was that due regard would be paid to "Mohammedan law, native law or custom not repugnant to justice or morality." Peace Handbook issued by the Historical Division of the Foreign Office. Vol. XVI, British Possessions II. The Congo. No. 96 (New York: 1969) reprint, p. 56.

145. See H.L.B. Stokes: Hindu Law Books (Madras: 1865), published by H.L.B. Stokes, Translation of Mayukha Law by Borrodale; Mitakshara Law by Colebrooke, p.90. In Kenya during the 20th century the Dayabhaga School of Hindu Law was also represented. In a conflict between Mitakshara and Dayabhaga law the European judge was empowered to determine which particular school governed the district since clear proof of usage outweighed the written text of law. Edward Trevelyan: East Africa Court of Appeal: Civil Appeals Digest 1868-1956 (Nairobi: n.d.) p.104, Jani v. Jani (1952).

146. J.H. Vaughan: Dual Jurisdiction, Intro. p.x. Extensive use was made of "Christian common sense" by the judges.

147. ibid., pp 43-44.
British courts sometimes applied a personal law. Thus to Hindus or Mohammedans, Hindu or Mohammedan law would be applied in questions of marriage, status or succession. ¹⁴⁸

Of the dozen languages used in the Zanzibar courts, the chief ones were English, Gujarati, Arabic and Swahili. Nearly all the Indian merchants used the Gujarati language, and very few spoke Hindostani.

The effect of this polymorphism on Indian customs was to detract from the certainty and reasonableness of some of the customs, as can be illustrated by the following case. General Mathews, a Welshman, and a Minister in the Sultan’s Government, Binti Masood, an Arab, and Vissonji, a Hindu, opposed the construction of a Parsi “tower of silence” for the disposal of their deceased members. The plaintiffs, who owned the neighbouring shambas (farms), tried to stop the construction through the Consular Court, on the grounds of discomfort and nuisance to the neighbours. On the intervention of Judge Cracknell, the Parsis had to forego the construction of the tower. He substantiated his judgement with the advice of Dr. Gregory and Dr. Hussey, who declared the tower a danger to public health. ¹⁴⁹ Hindu and Muslim customs were based on the existence of divine laws. In a case of the customs deviating from divine laws the British trained jurists, operating within a secular

¹⁴⁸ G.W. Keeton: Extraterritoriality in International and Comparative Law, p. 316.
outlook, could not seek recourse to divine law. Even when a custom was upheld the fact remained that such a custom was sanctioned by a British court after strict scrutiny, substantiating that it had existed since time immemorial and did not conflict with any express law of Britain.

According to the English law, as I conceive it, and to the sound principle of universal law, the custom would require the sanction of the court, as representing the sovereign authority, before it obtained any legal validity.

Concerning inter-caste problems, certain castes contended that these were not justiciable by either Consular or Indian Courts. This contention was overruled by Judge Cracknall on the grounds that grave "discretionary powers" could not be left to one sect of the Memon Khatri and Dauli sect.

Another complicating factor was the litigation involving the subjects of the Sultan of Zanzibar and Indians who tried to invoke their respective customs to settle disputes. For instance, in Nasur Jesa versus Hirbayu, a Khoja Indian subject was sued by one of the Sultan's subjects, who was the Khoja's illegitimate son. The case involved a conflict between Khoja customs and the Muhammedan law of inheritance. The Khoja custom conflicted with the local inheritance law, and could not stand in the British Consular Court. In India, custom was

151. ibid., p.119.
153. ibid. Some of the customs which were allowed to stand in court did not do so as a matter of right, but in conflict with other laws. See Rambye v. Karmal Bhaloo, Civil Case No. 186 (1880), p.16.
repeatedly brought to the notice of the courts, and it was easier to introduce it into the law, since it was easier to prove the existence of a custom. When situations arose in Zanzibar because of the prevailing polymorphous conditions, Indian precedents were not likely to be applicable, and the custom was less likely to be proved.

An Indian judge in India in the nineteenth century, commenting on Muslim matrimonial law, referred to a case in which the Privy Council referred to Macnaughten, an authority on Muslim law:

The counsel for the parties had no opportunity to refer to original textbooks, as many have not been translated. If my knowledge of the parties is correct, they were of the Shia sect, but the case was argued on the principles of Sunni law. By chance, however, the decision was passed in accordance with the right principles of the Shia sect.

This case illustrated the inadequate knowledge of Indian customs displayed by certain members of the British Judiciary. In Zanzibar, where there were no experts on the legalities of Indian customs, this was an even greater danger. Matrimonial matters in an extraterritorial context lost the traditional sanctions which, in an Indian context, were extremely powerful. During the absence of the Portuguese Consul General, Sir Arthur Hardinge sat as a judge in the Portuguese Consular Court. One case involved two Goans who wanted to marry two Arab women. This was contrary to Muslim law which required them to become Muslims and undergo the rite of circumcision. While the Goans were prepared to do so, the Portuguese code at their


155. ibid.
Consular Court forbade wilful apostacy from the Catholic faith on punishment of excommunication and the forfeiture of civil and electoral rights in Portugal. Sir Arthur wrote:

I explained to them that an appeal on the subject from my own decision to that effect lay in the High Court in Lisbon; but if it failed they would apparently lose the municipal and parliamentary franchise in Portugal which they had never had an opportunity of exercising. They decided to take the risk for what it was worth of becoming Moslems and I left them in the joyous prospect of espousing, should they wish it, two other attractive Arab wives.156

However, an extraordinary judgement on marriage law was delivered in Uganda in 1923 by Justice Guthrie Smith, which was later described by the Governor of Uganda as "Hopelessly and utterly wrong,"157 but this type of judgement did not fail to leave its mark on the marriage customs. In Bishen Singh versus Regina, the former was sued by a Ugandan Roman Catholic whose Christian wife had left him and moved in with Bishen Singh. A magistrate convicted the Sikh under the Indian Penal Code, but Judge Guthrie said that the Sikh had committed no offence since the Ugandan Catholic and his Protestant wife had not acquired any rights because "marriage between Christians celebrated according to native custom is a nullity."158

This sort of decision did not affect the Indian marriages basically, as endogamy prevailed. It however, did point out the situation in an unequal colonial society where an Indian male could more easily have a liazon with an

156. A.H. Hardinge: A Diplomatist, p.106.
158. Ibid.
African woman, whereas an African male and an Indian woman were at a distinct disadvantage in establishing such a liaison. This situation came to a head in Zanzibar under Sheikh Karume who forced daughters of Persian and Indian origin to marry ageing members of his cabinet. It was also one of the facts that perturbed General Amin in Uganda, since there were so few Indo-African marriages in Uganda.159

The question of immovable property was settled by the case of the Secretary of State for Foreign Affairs versus Charlesworth, Pilling and Company. The Privy Council laid down a clear rule that incidents concerning land were to be governed by the local Muslim law of Zanzibar, irrespective of religion, nationality, or the fact that the party had extraterritorial jurisdiction conferred on them.160

The importance of such decisions was not the fact that the local Muslim law was upheld, but that


160. J.H. Vaughan: Dual Jurisdiction, pp 53-57; See G.W. Keeton: Extraterritoriality in China, Vol. II, pp 100-2; extensively quoted the Charlesworth Pilling case, but makes conclusions which are different from Sir Francis Piggott: Extraterritoriality, Chapter 1, Keeton writes: "so long as territorial sovereign remains beyond the pale of nations subjected to international law, the Crown is bound only by expediency..." and the Crown does not need to obtain formal grant when the community can acquire a government with which the Crown can properly deal. pp 103-104.
the treaty powers always reserved to themselves the right to say which regulations of the local sovereign should be applied in their courts.161

However, Zanzibar courts did not apply this rule from the Charlesworth, Pilling and Company case consistently, especially when they came into conflict with Khoja Shia gift law.162 Legal claims between the Ismaili Khojas and the Shia Ithna‘asharías who questioned the right of the Aga Khan to hold the mosque and other common property personally were settled against the secessionist Ithna‘ashari sect. In 1905 the Aga Khan executed a power of attorney appointing three of his followers to settle matters relating to property.

The major conflicts were, however, in matters of trade. The conflict between the local Zanzibari of an Indian firm which used the custom of Zanzibar, was not allowed to stand when it was brought before the Consular Court against a European company using codified commercial laws.163 Hence custom, or alleged custom, of Zanzibar began to lose ground against the law applied by the Consular Court. Thus, because of the complex environment within which transactions were carried on, custom, especially in matters of commerce, became increasingly insignificant.

Another dimension in the use of local custom was its use by European firms for suing Zanzibar or Indian firms when it suited their interests. For instance, the British


162. This was demonstrated in a later case following a decision of the Privy Council. See W. Murison: Zanzibar Protectorate, A. Jam Mohammed v. M.V. Dharsi, Case No. 258, pp 59-60.

163. Ibid. A few cases in point were: Fleury & King v. Mohammed Wall & Co., pp 69A-69B, Civil Case No. 443 (1894); Sivji Somji v. George Ropes, Civil Case No. 274 (1880) p.17.
India Steam Navigation Company, a British firm, invoked local custom when it sued the firm of Topan for the repairs of a house they held on perpetual lease. In this case custom was overruled because it was felt that, even if the custom existed, it was unreasonable to apply it on a perpetual basis. 164

Hence a wide cross-section of British Indian life became circumscribed by the Consular Court, and their customs were subjected to rational discussion in a court of law. While narrow caste matters were not justiciable in court, those that concerned trade, the civil rights of a person, and libel all fell within the jurisdiction of the court. One of the reasons for the reduction in the use of custom in the Zanzibar Consular Court was the fact that it was confined to specific groups. The trading community as a composite unit accepted very few general customs. Customary practices were also overruled by a judge when varying interpretations were given to a custom in court, or when certain customs used for transactions relating to one commodity could not be applied to other commodities.

The definition of items also caused difficulty. Hence in the case of Valabdas Nasanji and Company versus Fazal Allarakha, Judge de Sausmarez had to seek the confirmation of the Bombay High Court on the definition of the Gujarati word rokda (sic: Rokra). 165

The customs which were used in Zanzibar emanated from traditional methods of trade, whereas the British,

165. ibid., Civil Appeal No. 162 (1894), and Zanzibar Consular Case No. 377 (1893), pp 42-44.
as a "nation of shopkeepers", had very important commercial customs which, while not having universal applicability, had been extensively codified. These codified rules were more effective than the traditional customary methods of trade used by traders from the west coast of India.

A problem which caused great unfairness to the Zanzibari subjects was that, however small a civil business or the amount at stake, amongst British subjects the suit was brought before the judge at the British Consular Court. However large an amount the Sultan's subjects were suing one another for, the suit was brought before the kadi. Hence it created the impression among the Sultan's subjects that the foreigners received better judgement than they did. This can be illustrated by the example of an Arab suing another Arab for an amount of less than Rupees 500.

The case first went to the kadi, then he had to make appeals in order to reach the court at the magistrate level. If, however, the same Arab sued an Indian for a similar sum, then the case would of necessity be brought before the British judge. This unique situation lasted until 1923, long after the establishment of Protectorate status, when the court system was organised with parallel British and Zanzibari courts, so as to eliminate the false valuation between Indian and Zanzibari subjects.


The existence of extraterritorial, and later dual, jurisdiction itself mitigated against the customary practices. Few common practices could persist beyond the level of the courts, where the Sultan's and British Courts would judge the customs separately, since the litigants were separated on the basis of their citizenship.

The exercise of jurisdiction in matters of bankruptcy, probate and administration raised a fundamental problem since a British subject could not acquire a domicile in a country in which he had extra-territorial privileges.168

Powers of bankruptcy acquired by the British in the 1839 Treaty were also acquired in the 1886 Treaty, in Article XVIII, as were powers for probate and administration in Article XX. Since the consular powers in this respect mainly increased British control, but did not necessarily benefit the British Indian subjects, their inability to acquire domicile as "British subjects in oriental countries though they had their fixed abode there"169 was contrary to their interests.

Their freedom within the legal framework of the Sultan's regime was negated, while simultaneously the sovereign powers of the Sultan were also eroded.

A precedent for interference in religious matters was set in January 1862, when the Hindu sect "Vallabhachā was unsuccessful in obtaining exemption from the jurisdiction of the Supreme Court in Bombay. The sect had sued an educated and anglicized member of their caste,

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168. F. Piggott: Extraterritoriality, p.127. The decision of the Tootal Case (Law Reports, 23, Chancery Division 532), established that "no extraterritorial domicile can be acquired by long residence in an extraterritorial community." ibid., note.

169. ibid., p. 138.
Karsandas Mulji, for expressing the moral bankruptcy of this sect in his paper *Light of Truth*. The Chief Justice of the Bombay Court, Sir Joseph Arnould, in his judgement, laid down the rule that "what is morally wrong cannot be theologically right" and looked "custom and error boldly in the face." This judgement against the Bhattia sect set the precedent of separating the various elements of Hindu religion (i.e., morality and theology) into separate components. Sir Bartle Frere felt that the Bhattias were slavishly subject to "spiritual tyrants" leading "scandalously immoral lives." He further stated:

Of the Hindu Banyans the most important class in East Africa belong to the Bhattia caste. They too have had their history and tenets thoroughly sifted in a celebrated judicial trial in Bombay, and the result is in its way quite as curious as in the case of the Khojas.... It was a satisfactory result that our law upheld the cause of truth and purity against the marvellous combination of wealth and caste power.

This decision by the Bombay High Court on a class of Hindu schismatics who were exclusively devoted to foreign trade, had validity in Zanzibar, whose Consular Court was a division of the Bombay courts. The traditional and conservative leadership of the Bhattia community received very little sympathy from the English establishment in Bombay.

Sir Bartle Frere supported the dissident Karsandas Mulji against the traditional caste leadership. In the case of

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170. See Sorabji Jehangir: *Men of India*, p. 102, for the actions of K. Mulji and Sir Mungaldas Nathooobhooy in the case against the 'Maharajas'.

171. Bartle Frere: "The Banians - Traders of the Indian Seas" *Macmillan's Magazine*, Vol. XXXII, Oct. 1875, pp 553-562. Frere considered them a "sect of Hindu Epicurians, among whom are to be found the keenest of traders, the most sensual of voluptuaries, intellects remarkable even among Hindus for acuteness and subtlety, sometimes an obtuseness of moral consciousness which would startle galley slaves."

the Ismaili community, which was considered less fanatic, Frere identified with the Aga Khan, whose history he found to be "adventurous and romantic" 173 and whose stables of the best Arabian horses were run at Epsom Downs.

The most important case to affect customary law was that which made the Khoja community subject to the British Consular Court. This was the well-known judgement of Judge Arnould, in the Aga Khan case heard in Bombay, in which the Ismaili community was defined in "formal and constitutional terms." 174 This remarkable judgement detailed the division of the Muslim sects, and was used by Zanzibar judges when hearing Muslim cases in Zanzibar.

In this case the Aga Khan had submitted that the problem of the Sunni Khojas and the Shia Ismailis was a sectarian problem, and not justiciable in the court. Judge Arnould, however, ruled that the court did have jurisdiction in the case. The Zanzibar Khoja community had become implicated in the case because of the four hundred families resident in Zanzibar. Four hundred and forty-five members of these families had "signed a paper of adhesion to the Aga Khan", and to the views he represented. 175 On this occasion the court not only accepted that the Khojas were not Sunnis, but also the Shias of Imami Ismaili persuasion. However, it also described the Khoja sect as being of Hindu

174. See A.E. Esmail: Satpanth, esp. Chapters III and IV for detailed description of the Arnould case and its religious implications. See also Chapter I, Part 3(b) of this study.
origin, which had been converted to the faith of Shia Imami Ismaili. The Aga Khan who had helped the British in the Afghan War (1841-42), had his spiritual allegiance of this community in the East, including Zanzibar, confirmed by the Indian Court. The Aga Khan's contacts with the Duke of Edinburgh and the Prince of Wales were basically due to the fact that he remained on cordial terms with British imperial policy in India, and his role in Indian politics was largely based on an acceptance of the principle of imperial rule.

This case not only made the Khojas religious customs justiciable in a British court, but also was used by the judges in Zanzibar as a guide in dealing with the Muslim community. The members of the increasingly large Khoja community in Zanzibar were mainly followers of the Aga Khan, and the religious head of the community, Tharia Topan, had strong contacts with him.

One of the implications of the Aga Khan case in Zanzibar was to entrench the separateness of the Ismaili community by the definition of its identity in a court of law and the negation of the Sufi-Hindu symbiosis by asserting its


177. A.E. Esrailx Satpenth, p.137. This was also true of Aga Khan III who was born in 1877.

178. The Khojas were governed by Hindu law of succession and inheritance 4 centuries ago, until their conversion to Islam, but they had continued to retain some Hindu usages. The Memons from Kutch were also converted from Hindus 4 centuries ago, and were governed by Hindu law of succession throughout India, unless a local custom to the contrary was proved. See Mayne: Treatise on Hindu Law and Usage (Madras: 1953) 11th ed., pp 95-97 for further discussion on Memons and Khojas. See W. Burges (ed.) Renton and Phillimore: Colonial Laws and Courts, pp 60-62.
Shia character. The Bhattia and Ismaili identities had been defined separately. The third community to be subject to a court decision was the Memons, who had no cohesive political and social organization to articulate their position, unlike the Ismailis. The decision of the court affected them adversely. 179

In the Memom case, the problem of the change of customary law as applicable to Indians in India, and Indians in East Africa, was influenced by a very important decision of the Privy Council, in the case of Abdulrahim Nathu versus Halimbhai. It involved a Memon claiming the application of Hindu law so that only maintenance, and not an eighth of the estate would go to the deceased Memon's widow. The Privy Council ruled that Memons moving from one part of India to another would carry their personal law, but that once they migrated to another country, and being themselves Muslims and settled amongst Muslims, the presumption was that they had accepted the law of the people amongst whom they lived. Since the Memons living in Mombasa had no separate political or social organization there, apart from those of worship, which

as a body claimed to be outside the system of law which naturally follows from that religion, and prevails among Mohammedans at Mombasa, 180 they were subject to the laws of the local Muslim community.

The definition of the Bhattia, Ismaili and Memon communities


as separate entities did not encourage a horizontal cohesiveness among the three communities. Since the British courts had contributed to this in defining them as a vertical relationship of individual sects, the separate identities of the communities became more pronounced. These few interventions were not generally accompanied by legislative action to remove exclusiveness. Hence exclusionary practices continued.

A problem did exist, however, at the level of local law, because both the Ibadhi and Shafi schools existed side by side, and the kadi applied the law of the school to which they belonged. However, in East Africa, the Memon community had to follow the general customs of the local Muslim community when they were in conflict. Their personal laws did not apply, and, increasingly, the territorial principle would be applicable. One of the main impediments to the existence of custom, as demonstrated by the above case, was the lack of continuity due to migration. The break in territorial continuity weakened the existence of customs. Another factor was that since many families who migrated had no ancient records, which could be verified, their ability to prove usage and continuity was made difficult. An Indian legal authority asserted:

> Even where the succession to Muslims is in general governed by Mohammedan law, it would have probably been open to immigrants to prove that they had brought with them and preserved a custom establishing a special law of succession.\(^{181}\)

In Article 49 of the 1884 Order in Council there was

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a proviso for the enforcement of "any reasonable custom existing in Zanzibar", but this article was omitted from the Order in Council of 1897 and the subsequent orders. In default of any applied Indian enactments, the courts were increasingly to use common law and statutes in force in England on 7 July 1897. Procedures and practices of Bombay Mufassal (especially Regulation IV of 1827) were omitted, and Indian Acts were increasingly replaced or incorporated in Decrees issued by the Sultan and the British Resident. 182

The application of "reasonable" personal or customary law was nowhere mentioned in the above article for use in Her Britannic Majesty's Courts. However, despite this non-recognition, the Muslim laws of Divorce, Marriage and Succession were applied in rationalised forms in the East African territories, while the Muslim law of Evidence was excluded from the Zanzibar Court. 183

In matters of probate and administration, laws of Hindus, Buddhists and Muslims were allowed to exist. Hindu marriages were particularly subject to their personal

182. Vaughan: Dual Jurisdiction, pp 90-91. See Article 24 of the Order in Council 1924, Appendix II.

law, despite the application of the Orders of 1897, 1906, 1914 and 1924, and the fact that the link between the Zanzibar and Bombay judicial systems was terminated in 1914. In 1937, in the case of Rana Ramji versus Radhabhai, the judge decided to uphold the Hindu laws of marriage because the Sultan had not drawn up a Decree, countersigned by the British Resident to construct a new law. However, while allowance for the application of these laws was made, in many cases the family structure was so fragmented that the application of such laws was minimised. Since only individuals and not patrilineal relatives moved together, the effectiveness of these laws was also minimised, particularly since such individuals were not even aware of their laws.

A provision was made in Kenya for the appointment of assessors to advise the courts on Indian customs, but personal laws outside the purview of the British courts had effectively come to an end.

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185. NAI, Dept. of Commerce and Industry (Emigration Branch) No. 5B, C.C. Bowring to C.O., 4-3-1903.
CHAPTER X

THE BROADER IMPLICATIONS

This study has attempted an examination of the impact of British policy on the Omani Empire in the nineteenth century. In this concluding chapter reference will be made to the implications for the Omani Empire and the impact on the Indian community in this context. The structural changes brought about in the nineteenth century were responsible for the position of the Indians in the twentieth century; therefore a final comment will be directed on this issue.

Sultan Said had depended on British power to eliminate the threats to his kingdom in Muscat from the Qawasim pirates and the Wahhabi fanatics. When Said established his East African Empire the overwhelming British power in the Indian Ocean began to assert itself informally in East Africa. This informal control was enforced through the implementation of the provisions of the British and Omani treaties.

The British had virtually kept the French and the Americans out of the Indian Ocean throughout the nineteenth century. The presence of the French in Muscat had led to the British engagements with the Sultan and eventually forced the French out of Muscat by 1798. The American presence in Zanzibar, however, was another dimension to the problem, because the Americans were intruding into a traditional area of British interest, but they were also successfully displaced.

This metropolitan activity placed Zanzibar Sultans in an extremely precarious position; they were caught between
conflicting demands from Britain and their Arab elites. Sultan Barghash, too late, tried to strengthen the political base of the Omani Empire but by the 1870s the metropolitan powers had acquired a stranglehold over it. After the Berlin Conference of 1884-5, Germany acquired a foothold in East Africa, and in 1886 a delimitation of spheres of influence was signed with Britain. This Anglo-German intervention led to the destruction of the Omani Empire in East Africa.

The introduction of British jurisdiction over their British subjects in 1841 to prevent the slave trade was gradually extended to the commerce of Zanzibar:

Put it bluntly the strategy involved the activation of a serious anti-slave trade campaign as a means of establishing British economic and political hegemony.

Thus two changes occurred: the extension of British control over the political and commercial affairs of Zanzibar went hand in hand with the penetration of the Zanzibari-East Africa trade and commerce by British and Indian subjects. This led to a restructuring of the economy and brought both the Indian merchants and the East African mainland under formal British control.

The role of one institution was significant in transforming the economy of Zanzibar. The collection of customs at Zanzibar was carried out in accordance with the similar systems of customs collections in Asia and, particularly, in Oman and Persia until 1899. The rental of the customs house

to a customs master was based on an arbitrary fixed sum payable to the Sultan. The customs accounts were not audited by a financial expert employed by the Sultan. Hence the Sultan had no system of appraising the state of his economy. The main drawback of this system was that the collection did not conform to a uniform system to benefit the indigenous traders. Except where merchants were covered by treaty, customs duties were not uniformly applied. The Sultan tried to raise further revenues by levying further taxes on indigenous traders, thus undermining their trade. The customs collection of the Sultans in Zanzibar was inefficient because it involved a customs master who was not always subject to the Sultan's control. As commerce grew and the revenue of the Customs House increased, the British consuls attempted to exercise greater control over the administration of the Customs House. British control over this institution drove the Sultan to seek revenue from other sources. The burden of this irregular taxation fell most heavily upon the Arab trading classes as the ruler was by treaty prevented from taxing British subjects. The more the British Consulate assumed control over the Customs House, the higher the "illegal" taxation levied by the Sultan. For instance, Sultan Barghash confiscated landed property of British Indian subjects in an attempt to assert his control over the economy, an act which was disallowed by the British under the Convention of 1839. Therefore the Sultan's control of the economy began to crumble. The Customs House was therefore rightly described as the Sultan's "damnosa hereditas", especially since the consuls adopted extra-legal, and particularly political, modes of control.
The net result of European imperial efforts in East Africa was that it had become "an extraterritorial adjunct of the metropole". The effect of this was that the Zanzibar dominions could not use international trade for their own benefit, unlike Japan, which had escaped foreign domination. This dependence on export trade during the nineteenth century had led to a colonial dependence. The export of slaves, ivory, cloves and, later on, the cash crop economies on the East African mainland gave rise to the rapid expansion of Zanzibar's export industry. As these markets were either European or controlled by European transport systems, the Zanzibar trade became intimately integrated into the expanding economy of European countries. The European industrialised economies were centres of all trade, finance and consumption. Their need for primary goods made the once expanding and dynamic Zanzibar economy over into a dependent economy.

Many historians, including D.K. Fieldhouse, W.W. Rostow, R.E. Robinson, J. Gallaghar and M.B. Brown, have argued that since trade with the new Empire was very small its influence was insignificant in explaining the extension of British control to Africa. A recent study has asserted that during the phase of new imperialism the fact that the trade would be small was presumably neither known nor expected when imperialistic decisions were made.

4. ibid., pp 85-6.
5. Richard D. Wolff: The Economics of Colonialism, p.3.
Hence, while the actual volume remained small, the strength of economic motivation was responsible for the control acquired during the nineteenth century being extended in the twentieth to exploit the economic potential of East Africa.

The powers acquired through slave trade treaties were not enforced against Omani citizens by the British because the Omani Empire was nominally a sovereign state. Nevertheless, as Omani sovereignty was circumscribed by its treaty relations with Britain and its trade became more fully integrated into the expanding commerce of Britain, the Omani elite was increasingly forced to conform with British desires in the slave trade. This was achieved by Britain asserting its authority over an increasing number of matters of a "purely imperial character". Moreover, interests of the British Indian Government did not extend to anti-slave trade measures. This was a London subject and London based interests therefore came to control Imperial affairs in both India and East Africa. The abolition of the slave trade had brought about structural changes in the economy of Zanzibar which only the Government in London could successfully supervise. After the control of the Consulate in Zanzibar had passed to the Foreign Office in 1883, and the "scramble for Africa" began, then the interests of the locally-resident British Indian subjects assumed less importance than those of Europeans in the official mind.

In economic terms the application of British jurisdiction was detrimental to the Sultan’s interests. British jurisdiction over the Indian merchant community reinforced the

6. NAI, Foreign Dept (Secret), No.101 (June 1872), Govt of India to F.O., 1-3-1872.
already-existent foundations for "outward growth" laid by
the Omani Empire in Zanzibar. British jurisdiction
encouraged what Ehrensaft has called the "external orientation" of
the economy which had been forged by the Omani elite and
the Indian minority.

The position of the Indians in Zanzibar has been
commented upon by a number of scholars. Mangat asserts that
both the liberal policy of the Sultanate and the increase in
British influence provided support for Indian merchants. He
further argues that Indian commercial development both
stimulated and was stimulated by British policy in Zanzibar.
While the Indian presence did stimulate British commerce, the
converse has not necessarily been proved. As Sheriff has
written:

The British Consuls at Zanzibar regularly exer-
cised their suzerainty over Indians to convert
the most powerful economic group at Zanzibar and
undermine the economic independence of both the
Indians and the Sultanate.

Hence the imperial nature of British policy only stimulated
Indian trade to further its own interests, but not Indian
commerce per se, as has been shown by this study.

Another assertion by Sherrif about the nineteenth century
Indians is that:

8. Ibid., p. 51. External orientation is described as "the
rate of interchange between segments within the same
national society is low relative to the interchange
between those segments and external units".
and Records, 72 (1973), pp 75-80.
10. J.S. Mangat: "Aspects of nineteenth century Indian
Commerce in Zanzibar", Journal of African and Asian
Studies, 2, No. 1 (1968), pp 17-27.
The extent to which the Indians had indigenised and had freed themselves from the narrower more specifically Indian economic forces made them increasingly immune from the Indian branch of the trade and in harmony with East African sources.¹²

This study has shown that a measure of accommodation had existed between the Indians and the Omani Empire, but there does not seem to be ample evidence that they were "indigenised". On theoretical grounds the existence of the process of "indigenisation" assumes that there were functionalist and integrationist influences which interpreted social change.¹³ Hence the migrants are assumed to have been integrated or "indigenised", and on the other hand to have become a deviant personality - a marginal man or outsider. The weakness of this model is that it assumes that people remain static. As has been pointed out earlier,¹⁴ the people living around the Indian Ocean had immigrated to and fro since time immemorial. Since the monsoons linked, rather than separated, the Zanzibar dominions with the west coast of India, "indigenisation" did not take place as a matter of course. The Indian Ocean trade was dependent upon a cohesioneness of capital and goods markets in India, the Persian Gulf and the Zanzibar dominions. Therefore, in as much as the Indians can be construed as having been "indigenised" and to have broken away from Indian trade, they were succeeding in destroying the Indian Ocean based trade and becoming increasingly vulnerable to metropolitan control. Their strength while functioning in the

¹⁴. See Chapter I, Part 3, Section 1. While the Indians mediated between the British and the Omanis in Zanzibar, the Parsi community performed a similar role in India. See Eckhard Kulke: *The Parsees in India; A minority as Agents of Social Change* (Munich, 1974), pp 78-133.
Zanzibar dominions had been their connections with western Indian business houses and their families. They became commercially weaker as a community in direct proportion to the severance of their Indian connections.

The supposition that the Indians had "indigenised" in the Zanzibar dominions presupposes that the Omani coastal trading system was an "indigenous" empire, and that its interests coincided with local interests. However, in as much as the Indian Ocean oriented Omani Empire imposed itself on the local populace, was exploitative in nature, helped in recruiting slaves, and was based on ivory, it could not have remained secure or part of the indigenous interests. Within this system the Indian trading class held little political power. They only held commercial power and either had to ingratiate themselves with the rulers or be politically skilful to survive.

Sultan Said's lack of political framework for his commercial empire in East Africa detracted from its cohesiveness and curtailed the Indians within it from "indigenising" as a community. In as much as the commercial base of this empire became stable, the Indians and their trade within that limited commercial framework became secure. It remained up to the succeeding Sultans to realise the grave limitations of the Zanzibari Empire.

Sultan Said himself was not particularly keen to have the Indians "indigenise" because then they could provide his commercial empire with no advantages which the Arab traders could not provide. The only advantages he gained at the risk of the Indians' strong British connections with the East India Company were their trading contacts with the
Indian commodity and capital markets, and the fact that the merchants came from a trading culture. It is therefore submitted that while a measure of accommodation between the Indians and the Omaniis existed, they did not "indigenise".

It has been asserted that Indians claimed nationality as "British or Zanzibari according to their immediate commercial purposes". In fact the shaky political framework of the Zanzibari Empire and the complex application of extraterritorial jurisdiction by the British Consulate was responsible for this state of affairs. The Indian residents were in the situation of constantly trying to distinguish between two different and conflicting political authorities exercising legal control over them. Since the Indians were not educated they were unable to articulate coherently their response.

The various sects and communities from India lived according to highly complex norms. Their responses to the challenges of living in the Zanzibar dominions were different. The case of the Khojas illustrates the typical dilemma faced by a minority which felt persecuted as a Shia sect among a predominantly Sunni Ibadhi community from Oman. Burton, when visiting Zanzibar, noticed that the Khojas chose to be Sunnis or Shias as the case required and assumed Hindu or Muslim names. This tendency to adopt alien customs and rites was a result of a history of persecution. As the Arnould decision illustrates, the adoption of Sunni and Hindu customs, however, did not detract from the Shia identity of the Khojas. In the context of Zanzibar the practice of

17. A.A. Esmail: Satpanth, p.82.
18. See Chapter I, Part 3, Section II.
"taqiyya" by the Khojas, and the adoption of local prevailing customs, were a matter of form - to enable survival. However, it did not fundamentally indigenise or change the content or identity of Muslim sects.

The fundamental changes amongst the Indian community occurred because of their involvement in the East African slave trade. The extraterritorial jurisdiction was exercised over the British subjects because of their citizenship. British law was extended and applied to them since the slave trade was illegal.

The Political Agents appointed by the Indian Government were only interested in those matters which related to its own political influence in the Persian Gulf. The same officials simultaneously performed functions as consuls for the Foreign Office. One of their duties was to implement the anti-slave trade regulations against the Indian minority, who were also an important trading community. Control over the British Indian subjects removed the Sultan's effective control over them, but not the Indian influence over the Sultan, and this gave the British a local weapon against the Sultan's power. The Indians were increasingly made into a class of "political aliens" and were used to undermine the political independence of his state, and the relationship between the Sultan and the British Indian subjects.

Predominant British political influence and naval presence overwhelmed Zanzibar. The powers of the Zanzibar Sultanate were being corroded throughout the nineteenth century, and with the formal establishment of British power in 1890 the Indians had become a dependent class. Their power within the Sultanate had decreased and the Indian community
became alienated from the Sultanate. The Indian minority at the end of the nineteenth century began to perform appendage functions. They had less complementarity with the local community and, as an appendage, supplied primary products and profits to India, and later to the metropolitan economies. Hence not only had the Indians assisted the already politically weak Omanis in creating a situation of dependence in East Africa, but because of superior British power they themselves had begun to perform dependent functions.

The status of Indians as British subjects and protected persons became more clearly defined. Within the framework of the British colonial system the Indian community acquired considerable influence in the lower and middle ranks of the civil service, and retained their influence in the retail trade. However, while their numbers increased, their influence only increased in quantitative terms at the lower and middle levels of society. It was not accompanied by any qualitative increase in the amount of political power they wielded. The Indian community therefore did not possess any power to control their destiny. By the end of the nineteenth century they were legally British subjects, but on the other hand they lacked the other attributes like education which ought to have accrued to them as citizens of Britain.

The extension of consular control of the nineteenth century was formalised during the colonial period. Studies of this period have hitherto omitted to trace the complicated roots and implications of British jurisdiction in the nineteenth century on the Indians in East Africa. The "peculiar privileges" which the British consuls acquired not only had
implications for the nationality of Indians, but also had far-reaching political and economic implications for them. The interests of the Indian community in Zanzibar were made manageable within the larger framework of British power.

During the nineteenth century, and more so during the twentieth, British laws prevented the Indians from submitting to local legal systems and from being subjected to the burdens and benefits which might accrue from them. They were unable to accept local remedies for local injustices. The special status acquired through extraterritorial jurisdiction by the Indians was contrary to the principle of territorial jurisdiction, and this status rapidly evaporated during the colonial era. The concept of British nationality was used to bring Indians within British control. They were induced to exercise this nationality by being granted the privileges of a special status. At certain other times coercion was used to enforce the duties incurred through British nationality. Apart from the limited advantages that their British nationality bestowed upon them, they did not acquire a total British personality either in terms of vested commercial interests or in terms of socialising agencies like education. Hence their legal British identity was not accompanied by the other attributes of being British in political, social and cultural terms. Their British identity was therefore only a one-dimensional legal personality.

Adjudication within the consular courts was vested in the consular officials. Since the consuls were also

concerned with political matters, it was inevitable that political considerations impinged upon what was purely legal jurisdiction. As long as the court was attached to the consulate, it could not escape such political influence. After the IBEAC started its operation in 1888, the consular court tried to entrench the influence of the company when the Indian community objected to its jurisdiction. This was a political judgment and not a purely legal consideration. The deportation of Peera Dewji on purely political grounds illustrated the political dimension of the consular courts' work. It was only after the establishment of the Protectorate in 1890, when the court was separated from the consulate, that the situation began to improve. The courts, however, were only separated from the consulate when British power and influence were an established fact. The Indians as a community had been weakened, and British law had not stood by impartially, nor had it helped the weaker side, but had made the "way smoother for the stronger".  

The British consuls had invariably been of English origin and had used Indians as subordinate staff at the consulate. The consuls could not properly protect Indian interests because they lacked the understanding, perception and perspective to protect such interests. Indian consuls, if they had been employed, might have recognised the complex situation of the Indian community. Therefore they might have been better able to look after and further Indian commercial interests more realistically. The English consuls were mainly concerned with enhancing Indian interests in so

20. Ghai and McAuslan: Public Law, p.34.
far as they eventually enhanced metropolitan interests. The two symbols of such interest in the nineteenth century were the IBEAC and the BISN. As the importance of the British India Government decreased in direct proportion to the expansion of European interests in East Africa, the Foreign Office acquired a greater share in the affairs of East Africa. As has been mentioned earlier, from the perspective of the Foreign Office the Indian community and their commerce did not loom large, unless they could be used to entrench British interests. The Indians were used only as intermediaries between the colonizers and the colonized, a role which the Indians had acquired through their special status in the nineteenth century. However, the importance of the special status diminished in the colonial period because of the limitations imposed by the colonial framework and the presence of a large European settler community.

The participation of the Indians in the slave-based economy was particularly inimical to their interests. In as much as the slave-based economy began to disintegrate, their cumulative political and economic strength began to diminish. The restructuring of the "legitimate economy", popularised by Livingstone, did not take place in accordance with their interests. Those Indian merchants who could transform their role began to function within the bounds of the British dominated legitimate sphere of commerce.

The older Indian commercial establishments began to decline at the end of the nineteenth century. The firms of Topan and Sewji disappeared at the turn of the century. Newer enterprises more closely allied to the mainland trade, an area under direct British control, began a new lease of life. The
firms of Jeevanjee and Alladina Visram played a prominent role in the period of colonial expansion.

Once Britain established a protectorate in 1895, the unregulated and spontaneous migration from the Western coast of India had come to an end. The nature of the mainland economy was changing and indentured labour from Punjab, Sind and United Province was brought to build the Uganda Railway. A successful Parsi firm of A.M. Jeevanjee was helped to recruit labour for the East African Protectorate, and instead of traders a new class of maistres or gangers, skilled labour and sub-contractors were coming to East Africa.

The importance of Zanzibar and the Indian community there had receded. The Gujarati languages and culture in Zanzibar and on the coast were now supplemented by North Indian languages and culture. During the period of unregulated and spontaneous migration the Indian communities had retained their languages and culture. Despite the rigours of the indenture system and the fact that over half the railway coolies returned to India, the Indians did not forget their languages. All through the nineteenth century, except for the last decade, there had been no schools for Indians in Zanzibar, and this lack of schooling assisted the preservation of language and culture.


22. ibid.. p.211. The Hindu community was constantly being encouraged by Sir Bartle Frere to westernise through education as the Parsis had done in India. See B.N. Pitale (ed.) Speeches and addresses of Sir Bartle Frere (Bombay, 1870), pp 131, 179, 208, 213.
mainland had been transformed from an earlier independent position to that of being directly part of British colonial rule. While distinct sects and communities remained they were increasingly being dealt with as stereotyped uniform minority. Their contacts with metropolitan trade became exceedingly strong. The Zanzibari trade itself was not as powerful a factor in East Africa as it had been during the nineteenth century. The Indian commercial class was gradually being transformed into a vast class of dependent retail and wholesale traders to service the East African Protectorate.

The British consuls held magisterial powers from the Bombay High Court. While the British consuls and the Indian community in Zanzibar were not generally aware of it, one issue was particularly relevant to them. Despite the Queen's Proclamation of 1858, explicitly enunciating equality, there existed a conflict between professed intentions and practical reality. The covenanted service had especially remained a European service and had not been opened competitively to Indians.

In 1883 Lord Ilbert, with the support of the liberal Viceroy Ripon, introduced a Bill to give Indian magistrates and Sessions Judges the same powers as their European


24. See Chapter III, Section 1(b), "Orientalisation and Jurisdiction".
counterparts (to try Europeans). More than any of the other previous measures to bring equality for Indians and Europeans in the Indian covenanted service, this law led to "immediate uproar among the European community. After a year of ferocious European opposition to the Ripon Bill, both in India and in Britain, Ripon was forced to accept defeat." This controversy was particularly relevant to British Indian subjects in Zanzibar because they were apparently enjoying privileges in extraterritorial terms as British subjects. The very same authority in India which had the powers to provide these privileges to Indians in Zanzibar was unable to accept the equality of Indians in official circles.

In India, the "agitation against the bill" was "one of the most unsavoury episodes in modern Anglo-Indian history". The Ripon Bill controversy was an eye-opener to the Indians, since it made them realise that justice was not to be expected where the privileges and vested rights of Europeans were concerned. To obtain this they needed to organise, agitate and prepare for a long fight to obtain equality.

In Zanzibar the myth of equality and privilege obtained under

25. The objection of many Europeans was based on the "Principle of unripe time (which) is that people should do at the present moment what they think right at that moment, because the moment at which they think is right has not yet arrived". See A.M. Cornford: Micrographica Academica (Cambridge, 1949), 4th ed., p.16.


27. Anil Seal: Indian Nationalism, p.165. It gave the Indians an object lesson in the "arts of unprincipled, but highly organised agitation".

extraterritoriality was not generally challenged in a systematic way, and continued to prevail until 1890. Thus the nineteenth century fragment of Indian society in Zanzibar had missed an opportunity to organise against feigned privileges and equality and it was left to their twentieth century counterparts to recognise these anomalies in the colonial context.

With respect to British Jurisdiction over Indians (or Asians, as they came to be known after the Second World War) it can be asserted that British extraterritorial jurisdiction in the nineteenth century Zanzibar laid the foundations for the anomalous position of the British Indian community in twentieth century East Africa. The process was accelerated during the colonial period, and during the post-colonial period it culminated in the implementation of the Commonwealth Immigration Act of 1968.

The main burden of this thesis has been to examine the gradual one-dimensional British personality of the Indian community in Zanzibar. The culmination of this was the strongly entrenched British nationality of the Indian community in legal terms, and yet because of the character of the Indian community they remained outsiders. They were therefore placed in a position where they could be portrayed as non-belongers. This element of non-belonging was asserted by labelling them

...a group of men and women with no genuine links with this country, whose passports were issued in a fit of absent-mindedness.29

This thesis has attempted to show that on the contrary British nationality was vigorously asserted throughout the nineteenth century on behalf of the Indian community by British authorities. In short, Indians gained the narrow advantages of being British subjects (being tried before the British consular courts), but few of the wide social and political advantages assumed to be part of this nationality. In the end they paid the ultimate price of losing their nationality altogether.\(^{30}\) The duties of the Indians as British subjects have been enforced since the nineteenth century, and yet the imposition of such duties has not entailed any guarantee of their rights. Once their function in helping to entrench imperialism had become obsolete, the imperial power has denied them citizenship as a matter of right; but rather as a matter of reluctant charity once they have been reduced to the status of refugees.\(^{31}\)

The common code of British nationality of the Indian community resulted from the British Raj in India. This thesis has demonstrated the common code of British nationality of the Indian community in nineteenth century Zanzibar. This community was used to entrench imperial control during the pre-colonial, colonial and neo-colonial eras of imperialism. While there is a continuity in the assertion of their nationality, this thesis has only focused on the pre-colonial era. The consuls appointed by the Foreign Office had directly participated in laying the structural foundations


\(^{31}\) ibid.
for an unequal status in the commercial sector. Through discriminatory practices:

The much vaunted common status of British subjects did not connote any substantial equality.32

The assertion of British nationality, and at the same time the denial of it, has been particularly painful to the British Asian community.33 This is especially true in the present context because of their "bourgeois mind and the prevailing insecurity in the country (Uganda)".34 This situation has not suddenly arisen in the post-colonial era, but is firmly rooted in the nineteenth century. While the substance of the following statement is valid, it is unfortunate that because of the previous studies the pre-colonial roots of Indian dependence on Britain have not been adequately stressed:

But there are aspects of this situation which are certainly beyond their control, such as their inbuilt commercial psychology of frugality, austerity, industry and quick grasp of business matters, their organisational skill and the fact that they had, as a result of discriminatory colonial policy...a considerable lead over Africans in this area.35

Hence, while the pros and cons of the Indians as British subjects have been examined from the perspective of the


35. ibid., p. 10.
colonial period, those from the nineteenth century have hitherto been obscured. The Asians in Uganda stated in 1972:

The small minority community of Asians in Uganda lacks the constitutional authority and organizational resources by itself to bring about major economic and social changes that appear necessary at the present time.36

The importance of this statement lies firstly in its admission of the importance of the Asian community given the ills of a neo-colonial system in Uganda. Secondly, the fact that the Asian minority had become so vulnerable in the 1970s was a consequence of a long process of pre-colonial and colonial history when they were alienated from the local East African societies.

The origins of the current position of the East African Asians has its origins in the nineteenth century. Britain no longer has pretensions towards exercising extraterritorial powers; the concept is even used to disclaim responsibility. For example, the British Government has refused to accept its citizens as a result of the 1968 Immigration Act:

The British Consul cannot interest himself officially in the case...because not having "landed" in Germany, they are not formally within his "parish". The consul said, "They are in extraterritorial position, so I have not been to see them. But I would not go anyway, unless I was asked to, or if someone was ill."37

Ironically, in the case of East African Asians, the concept of extraterritoriality has come full circle. Whereas Britain had used the concept of extraterritoriality to control the Asians in the nineteenth century, it is quite apparent that Britain has little use for the descendants of the Indian

36. ibid., p.13.
settlements. This study has described the process whereby the East African Asians subordinated and negated their political, economic and social identity and in return acquired British nationality. Both Britain and the Asians will find it difficult if not impossible to shed their nationality, which was asserted and acquired through such a tedious process. A dominant power might impose its will over a powerless minority, but the historical process, its Nemesis, will not allow it to shirk its obligations so easily.

1) THE SULTANS AND PERIODS OF THEIR REIGN

Sultan Said Seyyid 1804 - 1856
Sultan Majid 1856 - 1870
Sultan Barghash 1870 - 1888
Sultan Khalifa bin Said 1888 - 1890
Sultan Seyyid Ali bin Said 1890 - 1893
Sultan Hamed bin Thuwani 1893 - 1896

2) BRITISH CONSULATE AND POLITICAL AGENCY

The British Consul in Zanzibar was responsible to the Foreign Office from 1841 to 1890. In 1873 the Consul was upgraded to Consul General. As Political Agent, the Consul was responsible to the Bombay Government from 1841 to 1873, and directly to the Government of India from 1873 to 1883.

3) BRITISH CONSULS AND POLITICAL AGENTS

Captain A. Hamerton 1841 - 1857
General Rigby 1858 - 1861
Sir Lewis Pelly 1861 - 1866
Colonel Playfair 1867 - 1870
Sir John Kirk 1873 - 1887
C. MacDonald 1887 - 1888
Sir Charles Euan-Smith 1889 - 1891
Sir Gerald Portal 1892 - 1894
Sir Rennel Rodd 1893
Sir Arthur Hardinge 1894 - 1900

4) Sir Lloyd Mathews was appointed to command Sultan Barghash's soldiers in 1877, and in 1890 he became the Sultan's First Wazir (Minister).
<table>
<thead>
<tr>
<th>DATE</th>
<th>TITLE OR SUBJECT MATTER</th>
<th>MODIFICATION</th>
<th>REFERENCE</th>
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<tbody>
<tr>
<td>30 April 1877</td>
<td>Slave Trade Act, 1876, Applies to Zanzibar</td>
<td></td>
<td>Ibid., Vol. XIV, p. 1005.</td>
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<td>6 September 1880</td>
<td>Collisions at sea</td>
<td>Repealed</td>
<td>Ibid., Vol. 15, p. 948.</td>
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<td>1 April 1881</td>
<td>British Consular Jurisdiction</td>
<td>Repealed by Zanzibar Order in Council, 1884.</td>
<td>Ibid., Vol. 15, p. 948.</td>
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<td>27 February 1882</td>
<td>Zanzibar (Indian Penal Code) Order in Council</td>
<td></td>
<td>Ibid., Vol. 15, p. 948.</td>
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<td>17 October 1884</td>
<td>British Jurisdiction</td>
<td>Revoked by Order in Council of 29 Nov, 1884.</td>
<td>Ibid., Vol. 17, p. 1092.</td>
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<tr>
<td>29 November 1884</td>
<td>British Jurisdiction</td>
<td>Repealed by Zanzibar Order in Council, 1897.</td>
<td>Ibid., Vol. 17, p. 1092.</td>
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<tr>
<td>17 December 1888</td>
<td>Government of British subjects</td>
<td></td>
<td>Ibid., Vol. 18, p. 1197.</td>
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<td>17 December 1888</td>
<td>Application of Naval Prize Act</td>
<td>Expired</td>
<td>&quot;</td>
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<td>2 March 1889</td>
<td>Deportation</td>
<td>Repealed by Zanzibar Order in Council, 1897.</td>
<td>Ibid., Vol. 18, p. 1199.</td>
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<td>Date</td>
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<td>11 August 1902</td>
<td>East Africa - Protectorate Court of Appeal</td>
<td>Repealed by East Africa Court of Appeal Order in Council, 1903.</td>
<td><em>Vol.23</em>, p.76.</td>
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<td>The Lunacy (District Courts) Act</td>
<td>No. 35 of 1858</td>
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<td>The Indian Lunatic Asylum Act</td>
<td>No. 36 of 1858</td>
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<td>No. 45 of 1860</td>
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<td>No. 6 of 1864</td>
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<td>The Hindu Wills Act</td>
<td>No. 21 of 1870</td>
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<td>The Indian Evidence Act</td>
<td>No. 1 of 1872</td>
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<td>The Indian Contract Act</td>
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<td>The Indian Oaths Act</td>
<td>No. 10 of 1873</td>
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<td>The Indian Majority Act</td>
<td>No. 9 of 1875</td>
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<td>The Transfer of Property Act</td>
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<td>The Code of Civil Procedure</td>
<td>No. 5 of 1908</td>
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<td>The Inventions and Designs Act</td>
<td>No. 5 of 1888</td>
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<td>The Prevention of Cruelty to Animals Act</td>
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     5-1-1873.

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