

Issues relating to Judicial Reforms in Ancient India - as a Glance

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Abstract: The Indian subcontinent, the great landmark of South Asia, is the home of one of the world's oldest and most influential civilizations. Ancient 'India' included the entire subcontinent - containing not only what is now India but also what became Pakistan and Bangladesh. Humans began living in the Indian subcontinent in prehistoric times. People started farming the land and raising animals in the area before 7000 bc. Archaeologists have uncovered the remains of ancient cities, towns, and villages showing that a highly sophisticated culture - the Indus civilization - dominated the northwestern part of the subcontinent from about 2500 to 2000 BC. This culture was based in the valley of the Indus River, with its main cities at Mohenjodaro, Harappa, and Kalibangan (all now in Pakistan). The Indus civilization lasted until about 1700 BC.

INTRODUCTION

From the Indus civilization period on, India functioned as a virtually self-contained political and cultural area. It gave rise to a distinctive tradition that was associated primarily with Hinduism. The roots of Hinduism can largely be traced to the Indus civilization. Other religions, notably Buddhism and Jainism, originated in India. Islam was brought to the area starting early in the 8th century AD. Throughout the centuries residents of the subcontinent developed a rich intellectual life in such fields as mathematics, astronomy, architecture, literature, music, and the fine arts. This paper broadly speaks about the reforms made by various rulers in the ancient period.

Lord Cornwallis:

He succeeded Warren Hastings and came to India in September 1786 and he continued to be the Governor General up to 1793. He introduced reforms in the administration of civil and criminal justice, and great

success was achieved in controlling corruption. The regulating act did not establish a control over the directors of the company, and also did not strengthen the power of the parliament over the company. William Pitt the Younger, became the Prime Minister of England he wanted to deal not only with the problems relating to administration machinery in India but also the wanted to strengthen the power of the parliament over the company. Through Pitt's India Act, 1784, he strengthens the power of the constitution over the company. The Pitt's India act brought about many changes by setting up Board of Directors and recognizing the Court of Directors.

Cornwallis was appointed as the Governor General, he accepted the post with two conditions namely, the governor general will have the power to over ride his council and the office of the Governor General and the Commander in chief will be united under one person. So the Governor General and Council became the Governor Genera in Council.

Cornwallis took special interest to solve the problems with the land revenue, to improve the administrative machinery, and to introduce reforms in the judicial system. The functions of the Revenue Collector, Civil Judge, and Magistrate were given in the hands of a same person. Regarding the criminal jurisdiction, it was stated that powers of trail and punishment must, on no account be exercised by any other than the established officers of the Muslim Judicature¹. The Governor General was specially required to keep a strict watch on the methods by which the servants of the company became rich².

Cornwallis had little knowledge regarding the Indian affairs, for this Cornwallis largely depended on his

1 V.D. Kulshreshtha's, *Landmarks in Indian and Constitutional History*, Tenth Edition. Pg.115.

2 Cornwallis Correspondence Part 2, 194.

advisors³. But he had a thorough knowledge of the defects of the Regulating Act and the Act of Settlement and the role of Warren Hastings in India.

Judicial reforms of Cornwallis

After Warren Hastings, Lord Cornwallis was another who introduced various reforms. He introduced reforms in both civil and criminal justice. He was successful to a great extent in removing the uncertainty and confusion about the revenue collection. He reduced the existing districts from 36 to 23. For each district English servants of the company were appointed as collectors. The collector was in charge of collection of revenue, decided cases and all the matters relating to the revenue. He was authorized to act as judge of Mofussil Diwani Adalat and to decide all civil cases. He was also to act as Magistrate of the District. He decided the revenue cases and the revenue court was known as Mal Adalat. Appeal from Mal Adalat to Board of Revenue at Calcutta and then to Governor General in Council. In the Mofussil Diwani Adalat the collector was judge to decide all civil cases and boundary disputes of Zamindars. Appeals from Mofussil Diwani Adalat were laid before Sardar Diwani Adalat, the judge was GGC for the matter more than Rs.1000/-. Appeals from Appeal from Sardar Diwani Adalat were allowed to King-in-Council in England.

For each district the Registrar was appointed to decide the civil cases to the value of Rs.200/- But the decree passed by the Registrar must be countersigned by the Mofussil Diwani Adalat (the collector). The collector was to act as Magistrate he was empowered to arrest, try and punish the petty offences. The punishment was up to 15 strokes /15 days imprisonment. Offences relating to more than this were sent to Mofussil Nizam Adalat for trial. The British subjects apprehended by the Magistrate because if the Magistrate feels that it was a fit case for trial, the British subjects were sent to Calcutta for trial. But the European was not sent for trial at Calcutta as they were not subjects of British. Some of the demerits were the collector was overpowered. He misused his powers for personal gains. The collector was more interested in collecting the revenue, because the promotion was based on the

revenue he collected. So he neglected the administration of justice.

Problems of Judicial Reforms (1793-1833)

The existence of a dual court system of court, king's court and the company's court created many difficulties and conflicts. There was jurisdictional problem between the Supreme Court and the Mofussil Courts. Laws applied by the king's court differed from the company's court. Supreme Court claimed superiority and declared that Mofussil's interference with its jurisdiction as contempt of the court⁴. There was a necessity to coordinate and correlate the functions of the two sets of the court. The long period during which the Governor General and members of the Bengal Council had been the judges of the court came to an end. They were replaced by the covenanted servants of the company who were not the members of the government.

Impact of reforms of Cornwallis (1793)

The defects of Cornwallis's plans were gradually becoming noticeable. The courts failed to protect the rights against the Zamindars. Litigation amongst the richer section of the society also increased. On the whole the litigations clogged the courts and the sale of estates became frequent⁵. In civil courts the cases piled up, which in turn affected the revenue collection. In 1794, steps were taken to resolve the issues.

Reforms of Sir John Shore (1793)

Sir John Shore, was well aware of the situation in India by his experience with Lord Cornwallis. In 1793 the Registrar's court was empowered to decide cases up to Rs.200. Registrar's decision will be valid only if it is signed by the Diwani Adalat. In 1794, Regulation 8 provided that Registrar's decision will be final in all civil suits up to valuation of Rs.25⁶. Judges of the Diwani Adalats found countersigning the Registrar's judgments as a difficult task. The Regulation also authorized the judges of the Diwani Adalats to refer to the Collectors for the scrutiny and report the cases involving the adjustments of accounts. The findings of the collector's report were not binding on judges and

³See, A.B. Keith, *A Constitutional History of India*, 1600-1935, 105.

⁴ Indian legal history (1972) chap.14, 338-339

⁵ A.B. Keith, *A Constitutional History of India*, 43

⁶ W.H. Morkley, *The Administration of Justice in British India*, 61

they were free to decide the cases according to the law. In 1794, The collection of revenue and administration of justice were joined to dispose arrears and to secure collections of revenue. In 1795, the work of the Diwani Adalats were reduced, and the appeal cases up to Rs.200 were sent to the court of appeal since there were lack of judges it caused a great inconvenience for the litigant parties. The District Diwani Adalats were authorized to hear all civil cases in which valuation was more than Rs.200.

Another important reform is imposition of court fees, earlier in 1793 Lord Cornwallis abolished court fee. Court fee was not only imposed on new cases but for the pending cases too. If the court fee is not paid within the given time the case would be dismissed. In 1797, Sir John Shore further increased the court fee and it was made compulsory to use special stamp papers for filling papers in the court. Decrees of the Provincial Courts of Appeal were final in the case of money or personal property up to five rupees in value, appealable to Sardar Diwani Adalat and further appeals to King in Council. The administration of Justice in India was reformed by the passing the Act of 1797 which reduced the number of judges in the Supreme Court at Calcutta to three. The act also recognized and conformed the preparation of a Code of Regulation⁷. The courts were required to administer justice according to those regulations.

Reforms of Lord Wellesley

In May 1798, Lord Wellesley arrived in India and succeeded Sir John Shore as Governor General. Lord Wellesley was against the concentration of judicial, legislative and executive powers in the Governor General Council. Therefore the Regulation 2 of 1801 provided that the Sardar Diwani Adalat and the Sardar Nizamat Adalat were to be presided over by three judges selected and appointed by the Governor General in Council. Chief judge would be the member of the council and the other two judges are the covenanted civil servants of the company.

In order to clear the pending cases the Head Native Commander was appointed as Sardar Ameens were appointed. They were authorized to decide cases

valuing up to Rs.100, which is to be referred by the judges of the Zila and the city courts. So in zillas and city courts assistant judges were appointed to dispose the pending cases. They were required to hear appeals from the Court of Registrars and original suits from the Zila and city courts. During Lord Wellesley's period the adalat system extended ceded and concurred territory⁸.

Reforms of Lord Cornwallis

Lord Cornwallis came to India for the second time and succeeded Lord Wellesley. He introduced a very important reform in the constitution of the Adalats. It was stated that chief justice will not be a member of the council instead a covenanted civil servant of the company will act as chief Judge. His aim was to separate the judicial functions from the executive and judiciary.

Reforms of Lord Minto

Lord Minto was appointed as Governor General of Bengal government of the company in July 1807. By regulation of 15 of 1807, Lord Minto increased the number of judges of Sardar Adalats from three to four. Out of these four judges, the chief judge was appointed a member of the Governor General's council, in this way he mixed the judicial functions with legislative and executive. The number of the judges of the Sardar Adalats were increased from three to four specially to dispose the pending cases. The Magistrates powers and jurisdiction was also increased. They were authorized to punish offenders with a fine up to Rs.200/- and punishment not exceeding six months⁹. The original jurisdiction of the Zila and the City courts were restricted to cases value not more than Rs.500/. Due to great increase in the cases before the Sardar Adalats it was considered necessary to increase the number of judges. Regulation 12 of 1811 authorized the Governor General to appoint the civil judge. Now onwards the Chief Judge was not required to be a member of the Council. Thus, the judicial function was separated from the executive and legislative.

⁷ Lord Macaulay's *Legislative Minutes*, 220-224

⁸ V.D. Kulshreshtha's, *Landmarks in Indian and Constitutional History*, Tenth Edition. Pg. (169)

⁹ T.K. Bannerjee, *Background to Indian Criminal law*, 154.

Reforms of Lord Hastings

After Lord Minto, in 1813, Lord Hastings was appointed as the Governor General. He was in power for a period of 10 years. Lord Hastings introduced many reforms in civil and criminal judicature for the country. In *Charter Act, 1813*, the sovereignty of the crown over the company's territorial acquisitions of India were clearly proclaimed. This claim was announced formally to the diplomatic world and was recognized by the French, the Dutch and the convention with the Netherlands. The position of the British Government was thus, placed "beyond question internationally"¹⁰.

The provincial governments in India were empowered by the Charter of 1813 to make laws, regulations and articles of war of their native and armed forces and authorize the holding of Courts Martial. The territories of India became the property of England. Those trading, residing, or holding movable property at a distance of more than 10 miles from a presidency town, were placed for civil cases, under the jurisdiction of the Civil Courts. Special penalties were provided for theft, forgery, perjury, and coinage offences as the existing provisions of a common statute law were considered to deal with them. In the opinion of the Court of Directors it was necessary to increase the number of Indian Judges, Munsifs, and Sadar Ameen, to deal with the increasing litigation and court work.

In 1814 the jurisdiction of the Munsifs were increased from Rs.50 to Rs.64, authorized to try cases of money and personal property against the natives, appeals were given to District Diwani Adalat. The Sadar Ameen were empowered to decide original suits, referred by the zila and the city courts, upto the valuation Rs.150. decisions of the Sadar Ameen an appeal lay to Zila and City courts whose decisions were final. In 1814 the Zila and the City courts were empowered to decide civil cases up to the valuation of Rs.5000. the post of the Assistant judge was abolished. The no of judges in the provincial council was increased from three to four. Regulating Act 3 of 1812 empowers the magistrates to refer to the natives law officers and Sadar Ameen, they were authorized to punish offenders by imprisonment for a term not exceeding 15 days and fine up to Rs.50. In 1818 the jurisdiction of the magistrates and the joint magistrates

was enlarged and they were authorized to try persons who were charged with offences of theft and burglary and those who attempt these crimes. In 1823 the Court of Circuit and Sardar Nizamat Adalat were given more powers. Lord Hastings took special interest in recognizing the police force to deal with the criminals and to maintain law and order in the country. He realized the importance in removing the defects in the existing Mohammedan Law of Crimes.

Judicial reforms of Lord Bentinck (1828)

Lord William Bentinck, succeeded Lord Amherst as Governor General. He recognized and consolidated the whole system of civil and criminal courts. He abolished the *Circuit Courts* as it was responsible for many defects in the administration of justice in civil and criminal cases. Circuit Courts Regulation 1 of 1829 he appointed Commissioners of Revenue and Circuit to control the working of the Magistracy, Police, Collectors and other revenue officers. Each commissioner was put in charge of a small territory. The provinces of Bengal, Bihar, and Orissa were divided into 20 divisions. Regulation 2 of 1829 provided that the appeals from the Magistrates or Joint Magistrates are to lie to the Commissioner of division. The decision of the commissioner was final and conclusive.

Powers of Sadar Ameen, and city judges were increased. The Magistrates were authorized to refer criminal cases to Sadar Ameen or Principal Sadar Ameen for investigation. It was found that the commissioners of Revenue and Circuit were given too much of work. Therefore, the Governor in Council was authorized by Regulation 7 of 1813 to empower any Zila and City judge not being a Magistrate to hold criminal sessions. It also gave rise to the creation of District and Sessions Courts in each district which decided civil and criminal cases. To avoid delay in the administration of justice he established Sadar Nizamat Adalat at Allahabad. Indians were gradually appointed to hold judicial office. In 1832 the Commissioners of circuit and Sessions Judges were authorized to take the assistance of respectable natives in criminal trials. In the sphere of civil justice also, respectable Indians were appointed as judicial officers. In order to improve the civil judicature all the functions of the Provincial Courts of Appeal were transferred to the District

10 Ibid

Diwani Adalat. Thus the provincial courts of appeal were abolished.

Civil and revenue jurisdiction are given to collector. Suits relating to rent were transferred to the exclusive cognizance of the collector of revenue. Their decision was final. The Act of 1833 established an All-India Legislature with general and wide powers to legislate. The Governor General at Calcutta was made the Governor General of India. By adding a Law member to the Governor General Council and the abolition of the right to legislate by regulation in the provinces, the opportunity for centralization of Law was provided by the Act. Necessity of a general system of judicial establishments and police was also referred to the Law Commission.

SUMMARY

In the judicial reformss in ancient period give pathway for the enactments for the welfare of rule making. Likewise tax collection, court procedure and administration of justice. By giving light to that various criminal as well as civil laws were enacted in India after Independence for the better administration.