



Judicial Reforms In British India Case Study Of Warren Hasting Era (1772-85)

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Abstract

The judiciary in Pakistan has developed to colossal scale and plays an important role in the administration of the nation. But it is not the same always. The paper talks about a brief introduction to the growth of the legal system in British India. When Warren Hasting became the Governor General of Bengal took, the administration of justice was not too good. This paper offers a view about the various judicial reforms of Warren Hasting. . The paper also offers that even after the reforms, judicial system was not able to obtain the perfection so desired by Hastings but the existence of such a system of judicial administration in itself was commendable and exists even today.

Key Words: Judiciary, Judicial administration, Collector, Adalat System, Muffossel

Introduction

Under the Mughals, the Diwan and Subah were used for collecting and deciding the revenue and case related to the lands, respectively. When in 1765, the Company was granted the status Dewani, it got the liability of civil justice. Time after time the responsibilities of the company enhanced. Some crucial changed were put forward in revenue system and with the changes in revenue system the changes in civil justice were unavoidable. But the criminal justice was the obligation of Nizamat to control it all over the controlled region. So it was out of control for the company to brought changes in it. But it was not considered by the company they modified these laws time to time, when it was needed (Jain, 1972).

After the East India Company carried the day in the Battle of Plassey, it got the diwani rights (the right to adjudicate revenue and civil matters collect revenue and keep the surplus); the company wanted that it needed a homogenous and efficient system to collect revenue and administer justice (Macaulay, Adam & Dickson, 1890). Warren Hasting played a crucial role in the battle and impressed Robert Clive, the first Governor-General of the Presidency of Fort William in Bengal, who desired to become the British Resident at Murshidabad, the capital of Bengal, in 1758. After quickly rising up the ranks, in 1771, he was appointed the Governor of Calcutta (Johns, 1918). When Warren Hasting became Governor of Bengal; administration of justice was very fragile. It was about to demolish. The dual system was very shoddy and disappointing. Judiciary had become the tool of oppression in the hands of culprits. When Hasting came to know about that the judiciary had become very fragile so for the profit of company and to free the inhabitants from the oppression he propounded and modified the previous system (Gleig, 1841).

Warren Hastings hence commenced to make colossal changes in the administration of justice. Warren Hastings understood that the impartial justice is quite important for the strong administration of justice and for collecting the revenue as well. He adopted some provisions for criminal and civil courts and modified the system (Sen, 1997). One of the crucial developments which took place was that the three presidencies Bengal, Bombay, and Madras were divided into a number of districts for the amelioration of administration. All in all, the coming of Impey to the office proved very fructuous because he was a very intelligent Officer. The establishment of Civil Procedure Code was one of the best achievements of Impey, because it was for the time the law procedure was made easy that even the illiterate could understand it (Macaulay, 1893).

Hastings' Judicial Reforms

Warren Hastings gave much attention to the task of reform of judicial system. He started various reforms by making the judiciary more and more effective. There are four stages of his judicial plans.

The Judicial Plan 1772: First stage of Justice Administration

The plan of 1772 was the first Anglo-Indian Code, which was devised by Warren Hastings contained thirty-seven laws regarding civil and criminal codes. It was made according to the indigenous laws of people because the inhabitants were very accustomed to the native law. The main aim was to eradicate the shortcomings of the local laws. Thus the area, where the new devised laws had to be imposed, were divided into various districts, each district had a head know as collector. He needed to be a Britishers. Mainly in system the native laws were followed because they wanted to overcome all the shortcomings of the lock laws. It had achieved that to great extent (Verma, 2018). Main merits of the system are discussed below.

Civil Justice: To solve the civil cases, containing; property, inheritance, succession, caste, marriage, contracts, accounts etc the Mofussil dewani court was established in each district

. Cases would solve with accordance to the laws of Hindu and Muslims separately. In the matters of Hindu, the collector was helped by Pandit while in Muslims cases the Molvi did so. One could appeal in Sadar Diwani Adalat in Sadar Dewani Adalat if the case exceeding Rs. 500. The Court contained Governor, President and other two members from council helped by Diwan and Kanungos. This court was also modified time by time (Parikh, 2012).

Criminal Justice: To solve all cases regarding crimes and misdemeanors, Mofussil Faujdari Adalat was formed in each district. The court was headed by collector and assisted by Qazi and two molvies, who had the knowledge of Sharia. The court had the power to solve and punish the criminals; however, it didn't have the power of death sentence. Cases regarding capital punishment were to be solved in Sadar Nizamat Adalat with consultation of Nawab (Mittal, 2017).

Structure of Sadar Nizamat Adalat:

Daroga-i-Adalat: he must be an Indian, seconded by head Qazi, and three Molvies. This was the court of appeals.

Revenue Administration: The whole plan of 1772 is known as Hasting's Reforms. The boards at Murshidabad and Patna were put to an end and whole authority of revenue was vested in newly created board of revenue in Calcutta. It contained Governor General and other members from council. They had to meet two times in a week. They would discuss all the matters regarding revenue. With the changes in revenue system, the treasury was also shifted to Calcutta (Singh, 1994).

Miscellaneous Provisions: To eradicate the defects from the previous system, in open courts every case had to be solved. All the records of cases would be saved. All the defective laws and impositions were eradicated. The fragile justice was made very effective (Parikh, 2012).

Defects of the Plan- The over-centralization of powers in a single hand was the major defect of this system. All the powers were given Collector, who was responsible for the whole system single-handedly (Weitzman, 1929).

The Judicial Plan was only limited to Bengal, Bihar and Orissa. Hastings made provisions for Muslims and Hindus only, which was the biggest blunder. He should have made some provisions for the other communities as well like, Christians, Sikhs and Parsi (Parikh, 2012). Though there was no proper way of communication to access everything. So due to the weak supervision the officers misused their power to great extent. Another defect was that, the English officers didn't even know about the indigenous laws and the native officers deliberately misinterpreted the laws for their personal means. Therefore the system was quite nebulous (Chaudhury, 2011).

The Judicial Plan 1774: Second Stage of Justice Administration

The office of Collector was abolished in 1773. The Court of Directors took this decision in England. New Plan was needed because the 1772 plan was defective and fragile. A new Plan was founded in November 23, 1773, which was implemented on January 1774 (Parikh, 2012). Various reforms were brought forward regarding revenue, civil justice, and criminal cases. These reforms are discussed below.

Revenue: Collectors who were from English company, replaced by an Indian officer known as Diwan and Amil. Mofussil Diwani Adalat was created to collect revenues. The whole area of Bihar and Orrisa were divided into six divisions. Calcutta, Burdwan, Murshidabad, Diniapur, Dacca and Patna were the headquarters of those divisions. In each division, Provincial Council was created, which consisted a Chief and four veteran servant of company. A committee headed by two members from Councils and three other servant, was established in Calcutta for collecting of revenue. Other courts were also established for solving the minor disputes of farmers and other local inhabitants (Verma, 2018).

Civil Justice: The process of appeal was making easier in the 2nd phase of the reforms. However it was considerably more difficult in the 1st phase. All cases, which were decided in Mofussil Adalat now, can be decided in the Provincial courts irrespective of the value. Other provisions were also added for appeal in Sadar Diwani Adalat (Mittal, 2017).

Criminal Reforms: The officers, who were working in Faujdari Adalats, prohibited from holding another office or lands. They had to live in those areas where they did their jobs. In the new system the inhabitants had the authority to lodge complaints against the officers in the office of Governor General, who then referred them to the Sadar Nizamat Adalat for further investigation. The new system was quite good than the previous one although it had some defects however It was modified in 1780 (Weitzman, 1929).

The Judicial Plan 1780: Third Stage of Justice Administration

The demerits of 1774 judicial were came into forefront, when the conflict was started between Supreme Court and Mofussil Adalat while deciding Patna Case. As it was common in those days the Qazis and Molvies were solving the matters in Provincial and Mofussil courts according to their own way. No heed was paid to the English law (Singh, 1994). The Qazis and Molvies collected evidence through their own procedure they did not follow any recognized way. When the Supreme Court officers came to know about this, they passed a judgment that they didn't follow the way which was proposed by Supreme Court. Thus the case was solved but Supreme Court hurdle it. The Qazis and Molvies were sent to jail for following their own way. This decision halted the other officers for joining the Provincial courts (Mittal, 2017).

The system was modified by Hasting in 1780, when came to know about its shortcomings. In the new Plan the Judiciary and Revenue was bifurcated from each other and separate authorities were formed for it.

1- To solve all the disputes regarding Revenue.

2- To decide various disputes.

Under the new Plan, Provincial Councils had the authority to decide cases regarding revenue. Other powers were taken from it (Weitzman, 1929).

Provincial Court of Diwani Adalat

Provincial Courts were established in each headquarter of the six units or divisions. This court was headed by an officer, who was to be selected by company. This officer was the superintendent of Diwani Adalat. He was to be appointed by Governor General. Thrice a week the meeting of these courts held. They would decide matters regarding: property, inheritance and other agricultural matters. They had the power to decide cases upto Rs. 1000. These courts did not have the power of appeal (Singh, 1994).

The plan of 1780 was way modified than the previous one. The foremost merit was the separation of the Judiciary and executive. This separation of function made the other functions quite easy therefore it was liked by everyone. But the plan had some defects as well; the officers or Superintendent selected by the company was not among the senior members of the company. Sometimes the company might have chosen the native officer who might not have been aware of English language (Mittal, 2017). The Governor-General had no time to sit in the Sadar Nizamat Adalat to supervise the work of these courts. Another defect was that the number of Courts in Bengal was only six, which was very less for the vast area of Bengal. There should have been more courts to control the whole area. Due to all these defects there were colossal chances of oppression (Weitzman, 1929).

Appointment of Impey at Sadar Diwani Adalat: The Judicial system was modified time by time but it needed swift changes under a strengthened supervision. Sadar Diwan Adalat had the power of appellate jurisdiction and also had the authority of the supervision of lower courts. But at that time the Sadar Diwani Adalat had various defects which were confessed by Governor General (Singh, 1994). To overcome all these defects Governor General appointed Impey as the Judge of Sadar Nizamat Adalat, on the salary of his own will. Before the council had to decide the decisions of courts but now all these power were given to Impey through which they would mitigate their burden. This decision proved very fruitful. Impey came into office in 1780; he remained in office till 1782. After some gape he was again appointed again on May 3, 1782 as a Judge of Sadar Dewani Adalat. But due to conflict with Lord Councilor he again gives up the post. The previous council again came into force when Impey give up his post (Mittal, 2017).

The appointment of Impey was very fructuous for the justice system in Indian. Because justice during that time was very fragile and all the previous efforts proved futile but with the joining of Impey the Justice was very modified. In the fulfillment of his duty, he modified the civil courts at first. He propounded 13 articles which were later enhanced in 1782 to 95 articles. This was the first Civil Procedure court of India (Singh, 1994).

Reforms by Impey

For almost one year Impey remained in office during that little duration he brought very crucial changes in the judicial setup. Impey mainly issued regulations for Moffusil areas.

1. All the cases to be heard in open courts at the divisions. This authority was given to Diwani Adalat. The law officers had only the authority to make and implement law they did not have the authority to give capital punishments. Earlier they had this power but after Patna Case this provision was taken from it.
2. To overcome the defects the number of the Diwani Adalats was enhanced from six to eighteen. These changes were very good for the people far areas.

3. The composition of a civil procedure Code was one of the best things which was brought by Impey. It was established for the first time in INDIA. The Code came into force by the G.G and Council on 5 July 1781. Although the Code did not give good results, however the procedure was quite easy that people knew about law very easily. All the courts had to follow the specified procedure. There were 95 clauses included in this code.

4. The provisions regarding inheritance, succession, caste, marriage etc were still incomplete. But after coming of Impey to the office, he gave a perfect procedure for it. The word inheritance was replaced by succession. All the gaps were filled by Impey through implementing new provisions.

5. The modification of Sadar Dewani Adalat was one of the vital features of the plan. Union of power and Board of Superintendence was amalgamated and it had given the power of appellate jurisdiction. All the inexperienced judges were removed from their posts because they didn't have any knowledge of local law and language. This was also a crucial step (Mittal, 2017).

The following functions were given to Sadar Diwani Adalat. (a) Cases exceeding Rs. 1000 could appeal. (b) All the civil nature cases referred by G. G can be decided here. (c) All the lower Courts were put under its authority. They could also remove lower courts judges, if they had committed any crime but the final decision of removal was in the hands of Governor General (Parikh, 2012).

The Judicial Plan 1781: Fourth Stage of Justice Administration

In Calcutta, the Sadar Nizamat Adalat was formed in 1772. In 1775, to avoid conflict and interference with the jurisdiction of Supreme Court, it was shifted to Murshidabad (Mittal, 2017). There Reza Khan, the Naib-Nazim, took the charge of it. In 1776, Reza Khan adopted a plan for criminal justice under which 23 Faujdari Adalats in all were formed in the units. But soon that system became very loose, because the Collector or the Governor-General and Council could not give enough time to have an efficacious control over these courts; they could not give fair justice to the people. It was just like justice delayed is justice denied. The accused had to remain in custody for years before his trial was finalized. The conditions of prisons were very autocratic (Singh, 1994). There were various

shortcomings which needed to be amended in that plan. The Muslim law of crimes was also very defective; it was modified for time being the original laws were not followed by anyone. When Hasting came to know it in 1781, he modified the previous system and adopted a new set of laws, which was quite better than the previous one (Parikh, 2012).

Reforms in the Criminal Judicature

To make the justice process swift and to bring the criminals to trial, the Mofussil Diwani Adalats Judges were appointed as Magistrates also. For some time they remained devoid of any jurisdiction to utilize it. They were only given the authority of sending criminals to nearest Faujdari Adalats for trails with written accusations (Mittal, 2017).

Warren Hastings formed a separate unit at Calcutta, to have an effective supervision over the trails of courts including the Sadar Adalat. This department had received the overall details of all the cases monthly. The Remembrance, an experienced member of the company had to work under the supervision of Governor General. He had the charge of analyzing and to prepare extract from the dispatched reports of the Magistrates and Court. But the authority of this officer was not quite strong. The system did not prove to be effective (Parikh, 2012). The Remembrance mainly depended on the information that he was getting time to time from various courts. But it was very defective for the justice systems. Because original information may be concealed from the remembrance, the courts could manipulate him very easily, because he relied on them. All these shortcomings needed to be modified (Singh, 1994).

From 1780s onward some effective reforms were brought in. Like in 1782 the number of Faujdari Adalats was reduced from twenty three to eighteen. While in 1785, for more swift and efficacious administration of criminal justice, the Magistrates were given the power to try small offences; but the Magistrates did not have the power to give capital punishments like cutting of any hands or any other limb of body, or killing of accused person or putting the criminals behind the bars for more than 4 days or corporal punishment, all they powers were not given to the Local Magistrates (Mittal, 2017). They didn't even have the authority of punishing the criminals for petty offences; they had to send them to Faujdari Adalat. They only had to decide that what would be the suitable punishment for the accused (Weitzman, 1929).

Conclusion

Warren Hastings judicial reforms have left a deep impact on the judiciary of Pakistan. However, his reforms are not perfect. There are some defects in those reforms. Appreciating his contributions, some of his reforms sound quite good. Those reforms justify that he was not only a good administrator but also a man of great mind. For eradicating the evil of the existing judicial setup he introduced the method of trial and error and took some bold steps to remove such defects which might fragile the system. He proved himself one of the best servants of the Company because he worked hard during that time when the system of company was very fragile. Various regulations were implemented by him who made the system very best. While taking notice of his flaws, one may notice that, in certain area he constituted criminal courts which had various defects

like the Muslim criminal law was very severe but he could not modify it. One may think that he wanted not to touch the native laws and it may be right. When the judiciary and empire was at the fragile state the only person who strengthened it is no doubt Hasting.

References:

Chaudhuri, K. C. (2011). *History of Modern India*. New Central Book Agency.

Gleig, G. R. (1841). *Memoirs of the life of The Right Honorable Warren Hastings*. Vol. II.

Jain, M. P. (1972). *Outlines of Indian legal history*. NM Tripathi.

Jones, M. E. M. (1918). *Warren Hastings in Bengal, 1772-1774* (Vol. 9). Clarendon Press.

Macaulay, T. B. M. B. (1893). *Warren Hastings*. Macmillan.

Macaulay, T. B. M. B., Adam, G. M., & Dickson, G. (1890). *Warren Hastings: An Essay*. Copp, Clark Company.

Mittal, J. K. (2017). *Indian Legal and Constitutional History*. Allahabad Law Agency.

Paranjape, N. V. (2006). *Indian Legal and Constitutional History*. Central Law Agency.

Parikh, M. (2012). Tortious Liability for Environmental Harm: A Tale of Judicial Craftmanship. *Nirma ULJ*, 2, 75.

Sen, N. (1997). Warren Hastings and British sovereign authority in Bengal, 1774–80. *The Journal of Imperial and Commonwealth History*, 25(1), 59-81.

Singh, M. (1994). *British Revenue and Judicial Policies in India: A Case Study of Deccan, 1818- 1826*. Har-Anand Publications.

Verma, H. (2018). Concept and History of Judicial Independence in India. *Indian JL & Just.*, 9, 19.

Weitzman, S. (1929). *Warren Hastings and Philip Francis* (No. 56). Manchester University Press.