

Reforming Lord Cornwallis (1) 1778-1791

In 1786, Lord ~~Govt~~ Cornwallis became the Governor General who stayed in position till 1793. During his tenure he made several important and far-reaching reforms in judicial administration, which may be classified in the stages 1787, 1790, 1793.

Judicial Plan 1787 -

By his scheme all revenue and judicial functions were vested with the collector. Collector was given the work of collecting the land revenue within the district and to decide all disputes relating to the collection of land revenue. His office was called a 'Muz Adalat' or 'Revenue Court'. First appeal against his decision could be filed in the Board of Revenue at Calcutta and a second appeal in Governor-General and his Council.

He was also the sole judge of 'Dewan Adalat' for the purpose of deciding the civil disputes. Appeals from Dewan Adalat went to the Sadar Dewan Adalat at Calcutta and a second appeal in King-in-Council.

To assist the collector in civil work an Assistant Registrar was appointed who had power to decide cases upto Rs. 2000. But decree was enforceable only after the approval of collector.

Collector was also given magisterial powers.

He had powers to arrest the criminals, hear evidence against them and commit the case to the criminal court to be tried by it.

In petty matters he was allowed to give punishment upto 15 stripes or 15 days imprisonment.

He had no power to decide cases of higher punishment.

He had to refer them to criminal court.

Whatever good had been done by Hastings by separating revenue and judicial functions was undone by his plan which reunited the two functions.

Judicial Plan 1790

mainly pertained to the Criminal Administration of justice as it was suffering from various defects like - (1) It was completely left in the hands of Muslim officers, without any proper control. Judges were not competent and were also paid very little for their work.

(2) The Mufasssil Fauzdari Court had vast power and with absence of proper control these courts became autocratic.

(3) The judges were paid very low salary out of the amount of Mawani's allowance, with such a low salary there was every possibility of accepting illegal gratification.

(4) Many cases protection was afforded to the criminals by Zamindars and by their influence over the Muslim judges they could get the criminals escape from the clutches of Judiciary.

(5) There was no relation b/w the severity of crime and punishment provided for that. Full freedom was given to the courts to give punishment as they liked.

Lord Cornwallis circulated a questionnaire to all the magistrates to ascertain their views and the existing facts about the Criminal Justice System.

The 1790 reforms eliminated the name of Mauwat from the Criminal Justice Administration. The administration was entrusted to Company's servants who were to be assisted by Muslim law officers.

Three types of Courts were created —

① County District Magistrate → He was given almost the same functions which he had under the plan of 1787.

② Circuit Courts → Entire Mofussil area was divided into four divisions. In each division a Circuit Court was established. It consisted of two servants of the Company. It was a moving court which visited every district twice a year to try the persons charged — started by the magistrate.

③ Sada-Hizamut Adalat → It was transferred to Calcutta where the Governor General and Council sat as its judges assisted by Muslim law officers.

The system created in 1790 worked very well. The only defect revealed was that the Courts of Circuit were called upon to handle huge amount of work. In 1792 Cornwallis empowered magistrates to give punishment in cases punishable up to one month's imprisonment. This reduced the pressure on Circuit Courts.

Cornwallis also started some humanitarian reforms like allowance to the prosecutors and witnesses who came to the Court for the abolition of the provision for

attachment of property, provisions for the treatment of criminals after their release from the jail.

Judicial Plan of 1793 →

- Scheme of 1787 was fundamentally unsound. The Collector ~~was~~ had been vested with so many powers very soon he became an autocrat.

The scheme of 1793 made extensive reforms in the entire legal system which may be discussed as follows -

General features -

- ① Separation of Executive and Judiciary
Collector was responsible only for collection of revenue. The power of administering civil justice was given to diwani Adalat.
- ② Control of Judiciary over executive → The Collectors and all executive officials were made amenable to the diwani at Adalats for their official acts. They were to be personally liable and could be required to pay damages to be injured party for violations of the Regulations. Thus for the first time a privilege was given to the people to get remedy against the Company's officers who committed ~~any~~ any wrong against them.
- ③ Governmental liability - Any person could file a suit for damages in the diwani Adalat against the govt. in the same way as he could file suit against a private person.
- ④ British subjects and diwani Adalats - The position upto now was that native could obtain redress against the British. British subjects only in the Supreme Court of Calcutta. It was very difficult

for natives to reach the Supreme Court because of their poverty and long distance. To avoid this the diwani adalat was given a power not to allow any British subject to live beyond 10 miles from Calcutta unless he executed a bond that he shall be liable to the jurisdiction of the Court in cases up to value of Rs 500.

③ Reorganisation of Courts —

The courts were fully reorganised by the 1793 Scheme.

① Civil Judiciary — A complete hierarchy of courts was established to deal with civil matters.

(a) Sadar Diwani Adalat — The Highest Court in the judicial hierarchy, consisted of Governor General and Council. It heard appeals against the decisions of Provincial Courts of appeal on matters existing below. These courts should have supervision and control over the lower judiciary. The Court could receive any original suit to be referred to it if the Provincial Court or the Diwani Adalat had neglected to entertain the matter. It also heard and decided charges of corruption and incompetency against the judges of lower courts.

(b) Provincial Courts of appeals — Till now the only appellate court was Sadar Diwani Adalat functioning in Calcutta. The provincial courts were established in four divisions which had the jurisdiction to try civil suits referred to it by the govt. or the Sadar Diwani Adalat etc. The courts consisted of three Company's servants as judges.

① Diwani Adalat → (1) Civil servant of the company was appointed as the judge of diwani adalat who had no work except deciding civil and revenue disputes.

② Registrar's Court — Diwani Adalat could refer the suits upto Rs 200 to the court of registrar which was held by a serving company.

③ Munsif's Court — Zamindars, Tehsildars etc. appointed as munsifs to try suits upto the value of Rs 100.

④ Ameen's Court — It had the same composition and powers as the court of munsif, however it could not entertain a case directly unless referred to it by the diwani adalat.

⑤ Criminal Judiciary → Under 1793 Plan only two important changes were made — in the place of collector, the judge of Diwani Adalat was appointed as the magistrate and the circuit court was transferred to the provincial court of appeal.

Other Reforms —

① Abolition of Court fee

② Legal Profession → Sader Diwani Adalat was authorised to appoint pleaders. The persons having some legal knowledge.

(8) (1)

③ Cornwallis Code — Regulation made by Governor General and Council had to have a Preamble and title by which the nature and purport of the Regulation could easily be ascertained. The Regulation were to be produced in the form of sections and clause to be numbered serially. Later on these collected Regulations were called as Cornwallis Code.

④ Native Law Officer → Their position was improved by requiring that they shall be appointed by the Governor - General and Council from amongst the people of good character and having the knowledge of law. They could not be dismissed except for incapacity or misconduct in their public duty.

Critical appraisal of 1793 Plan

1793 plan was very logical, comprehensive and well planned. The new system was based on the principle of checks and balance — the executive officers were amenable to Courts and were personally liable for their official ~~for~~ acts on the judicial ~~system~~ side as elaborate system of supervision and appeals was introduced. First time the 'rule of law' was established in the provincial area.

Defects — ① The provision of two - three appeals made the judicial machinery complicated and slow-moving.

② Indians were excluded from the judiciary except at ~~the~~ low level of transit. 1. of Govt.

Law of law mostly criminal law.

Principle - Principle of Equality

↓
Things of Justice
Principle

- ① Equal Justice principle
- ② Equal opportunity (should be removed)
Inequality should be removed
- ③ different principle - Equality before law

Principle of Justice -
absolute justice
Equal Justice

East India Comp. and It's Early Settlement:

①
②

- EIC was established by a charter granted by Queen Elizabeth on 31 Dec 1600, ~~was~~ whose title was "The Governor and Company of merchants of London trading into East India".
- It was given exclusive right to trade in all parts of Asia, Africa and ~~Africa~~ ^{America} except Europe.
- ~~Grant~~ Charter was granted for 14 yrs. and it could be renewed by another 15 yrs if it did not prejudicially affect the crown and it's people.
- Company was managed by Court of Directors, ~~the members~~ of the comp. In a General meeting called the "Court" elected annually a Governor and 24 directors to look after and manage the affairs of the Company.

Powers - By majority vote the Court could make any reasonable law, orders, ordinances for the good government of the Company

- for any violation of these laws the Court could also provide such pains, punishment and penalties as they deemed fit but they should be reasonable and in accordance with the statute & custom of England.

- Second EIC ~~to~~ was incorporated under a Charter of 5 Sep 1698 issued by William III and Commerce of India was exclusively granted to them.

- Two Companies were united together and called a East India Company

- Under the new Charter the total number of members of the Company constituted the General Court had 24 directors ^{elected annually} & called the Court of directors for the purpose of managing and directing the affairs of the Company.

- To establish the accountability of the Company to the Crown the Company

was bound to submit an annual statement to the British

The Constitution of Company remained unchanged until the
Enactment of 1773 Regulatory Act.

- To handle the problem of disobedience and lawlessness in respect of functioning of Company. Crown issued a ^{Royal} Commission in 1608 and authorised Commander-in-Chief of each voyage to punish for serious offences.

- By the charter of 1661 Company was empowered to appoint a Governor and Council at its factories and they were allowed to judge all persons under the Company in all civil and criminal cases. The charter conferred executive powers in Governor and Council.

Settlement in Madras

Madras ~~State~~ was founded by Francis Day in 1829 as
a Pious Trust for the benefit of the poor by Hindu Raja. A few years
established KLG while town and villages out outside KLG boundaries
may be divided into 3 s.

Legal system - that existed in Madras upto 1726 may be divided into 3 s

- Legal system - But existed in Madras upto 1726 may be divided into 3 stages
- ① First stage (1639 to 1665) - Madras was subordinate to Secretariat and its chief officer was called 'Agent' who administered the affairs with the help of Council.

- ① Agent and Counsel for Black men.

- ① Agent and Council for the Black thea.
② Charity Council for the Black thea.

① Agent and Court
② Charities Court for the Black
or Senior Jurisdiction and persons were not clearly defined
they generally used to sent serious offences to the
England.
was presided by village headman H.

This generally used to see
 England.
 (1) The Co. was presided by village headman He Adiga
 Company two servants were with him. He sat in his court after
 dismissal of the Adiga or growing disturbance. He could
 decide any petty civil and criminal matters but on such non was
 no any prescribed law to deal with serious offences. Matters used
 by native Rajas who either used to give directions
 or made to decide the matter

Through the Charter of 1661 Company was authorised to appoint Governor and other officers in India and patron and non-employment of Company.

Second Stage (1665-1686) - Mr Ascentic Dancer was being on a charge of murder before the agent and Council. They referred matter to the England. To get rid off from such kind of inconvenience in 1665 Mather was given the status of Presidency.

Council. In 1678 Governor and Council resolved that they would sit as a court for two days in a week to decide all cases in all civil and criminal matters with the help of 12 men jury and the court was called High Court of Judicature. They were also allowed to hear appeal against Choultry Court.

Third Stage (1686-1816) In 1686 the increasing number of ships Admiralty Courts were established. It had 8 members. One was learned in civil law and other five were merchants appointed by Company. The court had to apply principles of equity justice and good conscience and customs of merchants.

Under the Charter of 1697, East India Company proposed to establish a Corporation in Madras. First Corporation was established in Madras having 1 Mayor, 12 Aldermen and Mayor was to be elected annually.

Mayor Court's jurisdiction was extended to all civil and criminal matters. They had power to punish any Indian and English men subject to the condition that the Englishmen could be punished from death sentence.

After the establishment of Mayor's Court Choultry Court lost its importance.

